

The complaint

Mr K complains that The Royal London Mutual Insurance Society Limited (RL) failed to pay him tax free cash before sending his funds to set up an annuity.

What happened

Mr K said he made clear to RL that he wanted to take his tax-free cash and use the remainder of his fund to purchase an enhanced annuity. He said his pension was worth around £56,400 and RL said his annuity would cost around £42,000 and provide an annual income of around £3,700. RL transferred the total amount to the annuity provider in May 2023 so Mr K said he assumed they would pay him the tax-free cash of around £14,000. When he complained it became clear RL had made a mistake and should have paid him his tax-free cash. The annuity provider said they would have to return all the money because it had used it all to buy a much higher annuity paying around £5,000 gross per year. Since June 2023 he had been receiving about £422 per month net (he was paid for June and July in July). There was then delay with the annuity provider in stopping the current annuity and returning the money. RL then said it could not sort things without verifying his ID.

RL said Mr K had incorrectly filled out the forms. He didn't tick the box to take tax free cash so the whole amount was transferred. It accepted it had made an error as Mr K had said he wanted to take tax free cash so this should have been reflected in the papers sent. It upheld his complaint and said it would reverse the transaction and pay the tax-free cash and pay compensation. It arranged to send a £300 ex gratia payment to reflect the poor service.

Before the money could be returned by the annuity provider it said it needed confirmation from RL that it would accept the money back. The money was sent back in mid-September 2023 but RL then said it needed to verify Mr K's ID because it now needed to pay the tax-free cash. This was completed in late October 2023. The tax-free lump sum was paid to Mr K on 30 November 2023 and the rest of the funds sent back to the annuity provider. The new annuity was eventually set up and started in February 2024.

The investigator said it was clear that RL had made a mistake in not paying the tax-free cash and caused a delay and upheld the complaint. But the annuity provider had also caused delay in returning the money to RL. At its heart the cause of the delay was RL's annuity HUB not querying the tax free cash in the light of its records of what Mr K wanted. Had it done so there would not have been any delay. On balance the investigator thought the checks would have been completed before 30 May 2023 and Mr K would have received his tax-free cash on the same day but instead received it on 30 November 2023. There were also incorrect annuity payments and a delay in setting up the correct annuity. In total there were 181 working days of delays in setting up the annuity. The investigator attributed 133 working days of delay to RL and 48 working days to the annuity provider.

They also suggested interest on the tax-free cash should be paid at the Bank of England Base rate.

The investigator proposed a basis for calculating the loss and suggested a total payment for distress and inconvenience of £450 so that RL needed to pay a further £150.

RL didn't agree. It said:-

- Mr K was partly responsible as he had ticked the annuity application form to show no tax free cash would be paid by RL.
- It confirmed in writing to Mr K that it had paid the full amount to the annuity provider and it believed the annuity provider had written to advise him of the amount of the new annuity.
- Mr K didn't complain until two months after these events.
- It took a month for the annuity provider to return the money.
- In effect the first three months of delay were due to Mr K and the annuity provider.
- When it asked Mr K for information to verify his identify it took from 4 October when it made the request until 30 November to get what was needed. This additional two month delays was due to Mr K.

Based on this it thought the earliest it would have paid the tax-free cash would have been 30 July 2023 and the annuity would not have commenced until September 2023.

The delay by Mr K would also have meant the original annuity quote would have expired.

On that basis it didn't think it should honour the cost of the previous quote. It further felt the new annuity should have started in December given it had returned the money on 30 November 2023.

On that basis Mr K had missed out on annuity payments for September, October and November 2023.

In reality the new annuity was higher than the previous one and was paying £3,988.68 per year gross compared to the £3,789.24 gross per annum and the original quote which was lower at £3,722.64 gross.

It therefore didn't think Mr K had suffered a financial detriment because his annuity had started sooner than it would have done had it paid tax free cash at the outset and the new annuity was higher.

The investigator didn't agree and said the HUB should reasonably have questioned the completed form. If it had the delay would most likely have been avoided. Also verification checks would have been completed from the file as he had provided verification information earlier on in the process.

RL responded further to say that Mr K had received monthly payments from the new annuity provider.

All payments were made on the first of the month, variations in amount were due to tax, It said that payments were missing for August and September 2024 but an additional payment was made in March 2024 to reflect the new annuity starting. It do not have details of how that amount was calculated.

The investigator said the redress methodology was still appropriate although payments made would need to be reflected.

RL said it still thought Mr K was being over compensated but did not explain further why.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered the points that RL has made.

It is clear that RL was responsible for the Hub providing the annuity quote and that Mr K had made clear it wished to take tax free cash and the rest as an annuity. It was also clear that the annuity provider could not make a tax-free cash payment (hence the later need for it to return the money to enable RL to do this).

RL is regulated by the Financial Conduct Authority (FCA or Regulator) in the provision of its services. The Regulator sets out various principles for business including that:-

- Principle 2 – a firm must conduct its business with due skill, care and diligence.
- Principle 6 - a firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 7 - a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

I have considered the further arguments presented by RL in the light of these principles. Given that Mr K had been very clear that he wanted to take his tax-free cash I think it was up to RL and the annuity hub for which it was responsible to ensure the papers were correct and reflected his wishes. That would mean the papers sent were appropriate to his wishes and/or that the papers returned were checked to ensure they correctly reflected his instructions. So I don't accept that Mr K is responsible for part of the delay due to ticking the wrong box on the form.

I note that RL sent all the money to the annuity provider. But I don't think that is something that Mr K should reasonably have noticed. Fund values often fluctuate until they are finally crystallised and further Mr K had no reason to believe that the amount sent was wrong at the time it was sent and therefore to double check it.

It was only two months later that Mr K noted he had not received his tax-free cash. I don't think that is unreasonable. As is clear from the timeline in this case, all of these processes take time, often months not weeks. I don't think it was unreasonable for Mr K to wait before questioning the absence of tax-free cash.

But in any event had RL not failed to identify the error in the original papers (contrary to principle 2 and 6 above) it would not have been necessary to rely on Mr K noticing that all the money was transferred nor to wait two months before questioning the absence of tax-free cash. For those reasons I don't think it is fair or reasonable to say that Mr K contributed to the delay caused by the error on the form and the time taken by Mr K to notice it.

Further I have considered the delay caused by the need to complete verification before paying the tax-free cash. RL has not denied that this would not have been needed had it

paid the tax-free cash at the outset. So the need for the information and the delay that this caused relates directly back to the original error.

But for the error by RL the verification information would not have been needed and no delay caused. Further Mr K made clear that he did not have access to copiers and scanners and providing the identification information was not easy for him. So to that extent I don't think RL paid due regard to his information needs as reinforced by Principle 7 above.

So for all those reasons I think that the original timeline presented by the investigator is fair and reasonable. I think it is fair and reasonable to conclude that but for the error the tax-free cash would have been paid on 30 May 2023. That would also have meant that the original annuity quote would not have expired.

As I have concluded that RL caused a delay I can consider an award for financial loss and distress and inconvenience arising from that.

The purpose of an award for financial loss is to put Mr K back as closely as possible into the position he would have been in but for the delay.

In considering an award for financial loss I have noted that Mr K was paid the same amount of tax-free cash in November 2023 that he would have received in May 2023. It does not seem that any interest was added to reflect the fact that Mr K was deprived of the use of that money from May to November.

I therefore think it is fair and reasonable that interest should be paid on the amount paid being £14,107.34 at the rate of 8% per annum simple from 30 May 2023 to 30 November 2023.

He should also be paid interest on that interest at the rate of 8 per cent per annum simple from 1 December 2023 to the date of actual payment pursuant to this decision.

I think that amount should be paid by RL without apportionment between it and the annuity provider as I think the delay in the payment of the tax-free cash was RL's error. To the extent that RL has paid any interest on that amount it can be deducted and the balance paid.

With respect to the annuity payments it seems that the new annuity that started in 2024 was at a higher rate than would have been the case had the original annuity offer been implemented in 2023. To that extent Mr K has benefited from the delay and is now receiving a higher annual income so there is no loss due to a change in the rate of annuity applied to the money transferred.

However it is clear that Mr K has missed out on some monthly annuity payments due to the delay in returning the money and setting up the new higher payments. In particular RL thinks that he has missed out on payments in August and September 2023.

In order to simplify the calculation and the payment I propose that Mr K should be paid the two missing payments for August and September 2023 which for these purposes I have assumed to be £307 net per month. Mr K would always have had to pay income tax on this amount so I don't propose that this amount should be grossed up.

As Mr K was deprived of use of this money interest at the rate of 8% per annum simple should be applied to the £614 from the 1 August and 1 September 2023 to the date of actual payment. In order to simplify matters I suggest interest is applied on the total net payment from 1 August 2023.

In accordance with the conclusion above RL should pay for 133 of the 181 working day delay I think that RL should pay 73% of that amount to Mr K.

I reflect that this is not an exact measure of the net loss that Mr K has suffered but I think it is near enough and keeps the calculation simple and neither party has objected to this approach.

Distress and inconvenience

The purpose of an award for distress and inconvenience is to reflect the impact on Mr K and not to punish RL. It is clear that the stress of these events has been material for Mr K and that his age and health have made that impact more significant. He has clearly been put to time trouble and inconvenience in dealing with the complaint and this went on for a period of months. He also said it affected his plans to downsize and move closer to his family. In the light of that I consider a total payment of £450 for the effect on Mr K should be paid. RL has already paid £300, so I'm recommending they pay a further £150.

Putting things right

In order to put things right RL needs to pay Mr K:-

1. interest on £14,107.34 at the rate of 8% per annum simple from 30 May 2023 to 30 November 2023. To the extent that RL has already paid any interest on this amount it can be deducted from the amount calculated and a net amount paid.

And

2. such amount as is equal to interest at the rate of 8 per cent per annum simple on the amount of interest calculated in 1 above (as adjusted for any interest already paid) from 1 December 2023 to the date of actual payment pursuant to this decision.

And

3. 73% of £614 plus 73% of interest at the rate of 8% per annum simple on £614 from the 1 August 2023 to the date of actual payment pursuant to this decision.

Tax may be due on the interest elements. If RL deducts tax, it should provide a tax certificate to Mr K.

I sent this proposed redress approach to RL who said that they accepted it. Mr K did not make any further comment.

My final decision

I uphold this complaint.

I direct that The Royal London Mutual Insurance Society Limited should within 30 days of this service notifying it that Mr K has accepted this decision:-

1. Pay to Mr K such amount as is calculated in accordance with the putting things right - financial loss section of my decision above
2. Pay Mr K such further amount as required to ensure the total paid to him for distress and inconvenience is £450.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 January 2025.

Colette Bewley
Ombudsman