DRN-4508528

The complaint

Mrs M complains that Standard Life Assurance Limited continues to unfairly add administrative fees to her pension plan that she is unable to close since it contains an illiquid investment.

What happened

Mrs M has held pension savings with Standard Life since 2008. Her pension savings were transferred to Standard Life following advice she had received from a financial advisor. In 2009 that advisor recommended that Mrs M should invest part of her pension savings into a exempt property unit trust fund ("EPUT"). In 2014 Mrs M decided to take some income from her pension savings and they were transferred by Standard Life into a drawdown arrangement.

The advice that Mrs M received from the financial advisor is not the subject of this complaint. The financial advisor is no longer trading, and Mrs M has referred a complaint about the suitability of the advice she received to the Financial Services Compensation Scheme ("FSCS"). I understand that Mrs M has received an interim payment from the FSCS in respect of the advice she was given to invest in the EPUT.

The EPUT is a close ended fund. That means that the fund is closed to any redemptions or further investment until a time to be decided by the fund administrator. I understand that, in December 2021, to allow for further property sales to be completed, the expected life of the EPUT was extended by three years to December 2024. And that means that Mrs M is not able to withdraw the majority of her remaining pension savings from her plan.

Standard Life makes an administration charge to holders of its pension plans. Given the nature of the EPUT investment that Mrs M holds, that charge currently amounts to £524 per annum. And, since Mrs M's plan has been in drawdown since 2014, an additional "Yearly Charge for Pension Withdrawal" of £158 is payable. So Mrs M needs to pay total annual fees of £682 to Standard Life.

In May 2023 Mrs M asked Standard Life to withdraw her remaining pension savings and close her plan. Standard Life explained that the investment held in EPUT could not be withdrawn. And it told Mrs M that, in line with its terms and conditions, she would be required to leave three years' worth of fees in her account from the remaining liquid pension investments she held. So it told her that she would only be able to take income of around £100 from her pension plan.

Mrs M's complaint has been assessed by one of our investigators. She thought that Standard Life's charges were in line with its published terms and conditions. And she thought that it had been the responsibility of the financial advisor to make Mrs M aware of those charges. So whilst she had sympathy for the position Mrs M now finds herself in, the investigator didn't think the complaint should be upheld.

Mrs M didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs M and by Standard Life. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I think it is first important to understand the roles of the two regulated businesses that Mrs M has dealt with. She received advice from her financial advisor when the investment in the EPUT was first made in 2009. And Standard Life is responsible for the administration of Mrs M's pension plan and her pension investments. But, importantly Standard Life didn't give Mrs M any advice about whether to take its pension plan in the first place, or on the investments she made. So I don't think Standard Life bears any responsibility for ensuring the pension plan, or the investments Mrs M made, were suitable for her circumstances. That was entirely the responsibility of the financial advisor.

So what I need to consider here is whether the administration fees that Standard Life is charging to Mrs M's pension plan are in line with the terms and conditions that apply.

Standard Life categorises investments that can be held in the pension plan from level 1 to level 3. The EPUT investment is categorised as a level 3 fund. Standard Life's charges are based on the highest level fund held within the plan and the value of the plan. So Mrs M needs to pay a yearly administration charge of £524 (since her total holdings are less than £100,000).

As I said earlier, in 2014 Mrs M took some income from her pension savings. To do that she needed to place her pension savings into a drawdown arrangement. To hold level 3 investments in a drawdown plan, an additional yearly charge of £158 is payable.

Standard Life clearly sets out the charges that a consumer would need to pay, depending on the value and nature of their pension investments, in its product literature. That should have been provided to Mrs M by her financial advisor when the plan was first opened, and any changes would have been advised to her in line with the terms and conditions of her plan. So I am satisfied that Standard Life is entitled to make the annual charges I have set out above for its administration of Mrs M's pension investments.

The relevant terms and conditions go on to further explain what should happen when an illiquid investment is held within a pension plan. They explain that it is necessary to retain liquid assets within the pension plan equal to three years' charges. That provides a degree of certainty to Standard Life that its charges will be met in the forthcoming years despite the remaining holdings within the pension plan being unable to be liquidated.

When Mrs M asked to withdraw her pension savings, Standard Life explained that, although the majority of her remaining monies were invested in the EPUT, she did hold some investments that were liquid. Standard Life told her that their value was around £2,250. But the majority of that money would need to be retained to provide the three years' fees I've mentioned above. So Standard Life told Mrs M that she would only be able to withdraw around £100.

Again, I find that the information Standard Life has provided to Mrs M is in line with the relevant terms and conditions. So once more I think that Standard Life has treated her fairly.

I have a great deal of sympathy for the situation that Mrs M finds herself in. But that is not due to the actions of Standard Life. It seems from the findings of the FSCS she was mis-sold an investment in the EPUT by her former financial advisor. And as a result of the illiquid nature of that investment she is required to pay significant administration charges to Standard Life with no guarantee when those charges will end.

I think that Standard Life is acting correctly in making the charges. But, as Mrs M has pointed out, the charges are only arising as a result what appears to be an incorrect recommendation from her former advisor. I understand that Mrs M intends to ask the FSCS to further review the losses she is facing as a result of this investment. It will be for the FSCS to decide whether Mrs M is due any further compensation in relation to the charges she is paying, and has previously paid, to Standard Life for her ongoing pension plan.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Standard Life Assurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 February 2024.

Paul Reilly
Ombudsman