

The complaint

Mr M complains that Phoenix Life Limited, of which Standard Life is now part, didn't provide a valuation for his self-invested personal pension (SIPP) in a timely manner when it was requested by actuaries who were conducting a pension review loss assessment for previous unsuitable advice. He said the delay meant the calculation couldn't be carried out in the last quarter of 2022, and when it was carried out in April 2023 the result was "no loss". He said an earlier calculation would have led to him receiving over £56,000 in compensation which he would now like Standard Life to pay him.

What happened

Mr M had held benefits in two Defined Benefit (DB) pension schemes which an adviser had recommended that he transfer into a SIPP with Standard Life in 2017 and 2018. In 2022 the advisory firm carried out a review of all such transfers it had completed and accepted that its advice to Mr M had been unsuitable. It said it would carry out an actuarial calculation to see if he had suffered a financial loss. It wrote to Standard Life in November 2022 for a valuation of the plan as of 1 October 2022. But it didn't receive a reply until January 2023 - so the valuation couldn't be based on figures from 1 October 2022.

Mr M also became aware at that time of a forthcoming change to the way such calculations were worked out – so he deferred the calculation until 1 April 2023. When the adviser carried out its calculation using that date it said that a financial loss hadn't occurred and so didn't make any offer of redress. But Mr M discovered that if the calculation had been carried out using the 1 October 2022 date, he would have been due redress of around £56,000. So he complained to both the adviser and Standard Life.

For its part Standard Life accepted it should have responded sooner and apologised but it said it wasn't responsible for paying any additional compensation arising from unsuitable transfer advice from an adviser. It said the adviser was responsible for the calculation – including using fair and reasonable dates.

Mr M said the adviser was unable to use alternative dates due to the regulator's requirements, and as the information wasn't provided within the same quarter as the 1 October 2022 date that was requested, it couldn't be changed.

Standard Life wasn't prepared to change its view although it did offer to pay Mr M £100 for any trouble and upset the delay had caused.

Mr M remained unhappy with the outcome, so he brought his complaint to us where one of our investigators looked into the matter.

He didn't think the complaint should be upheld noting that Standard Life, in his view, had paid sufficient compensation for the delay it caused. He said he didn't think it would be fair to recommend redress when the actual calculation that was completed indicated no loss had been suffered. He also thought that Standard Life shouldn't be held responsible for any loss caused by unsuitable advice from a third party.

Mr M didn't agree making the following points in response:

- He didn't think any delay in him asking to defer the calculation from February to April 2023 was relevant, as this was when he made the decision not to ask for valuation until its basis was changed. He said if Standard Life had provided the information promptly the situation wouldn't have arisen. He said the delay had already cost him around £50,000 by February 2023 in any case.
- He didn't think the investigator was correct to say he hadn't suffered a loss as the value of the fund was always likely to fluctuate over time and it wouldn't be possible to quantify any loss until he had died. He thought that the "variables" used in any calculation would likely change, which would have necessitated him asking for another redress calculation.
- He also didn't agree with the regulator's position that the calculation should be a one-time only event and would prefer an average fund value to be taken over a longer period. He thought that the calculation didn't give him any of the benefit the adviser said he might get from the performance of the SIPP.
- He didn't think it was fair to use temporary fund movements to conclude that he wouldn't have received any redress and it should be calculated – according to the regulator's direction – at a single point in time, namely 1 October 2022.
- He didn't think Standard Life was responsible for the original mis sale but thought Standard Life's "poor service" meant he didn't receive the redress payment the adviser would have had to pay if the calculation had been carried out when it could have been.

But as the matter couldn't be resolved it was referred to an ombudsman and passed to me to review.

I issued a provisional decision about this complaint on 4 March 2024, here's what I said:

"Did Standard Life cause a delay in providing the SIPP valuation?"

I've seen a copy of a letter the actuaries acting for Mr M's adviser sent Standard Life on 9 November 2022. It requested information about his SIPP including a valuation as of 1 October 2022 so that it could carry out a loss assessment calculation.

I understand the regulatory position here was that any calculation needed to be carried out during the same quarter as the date of the valuation – so in this case before the end of 2022.

Unfortunately Standard Life didn't action the request as it should have done, but I've seen the information it did provide on 3 January 2023 – following a chase up request from the actuary. At that time the transfer value of the plan was £1,053,489.34. But in order to give a guide to the underlying performance of the SIPP I've seen other statements over the preceding 12 months which showed the value was £1,267,876.16 in January 2022 and £999,122.19 on 1 October 2022.

So there's no dispute here that Standard Life did delay in providing the information and it's not been able to provide a compelling reason why it couldn't provide the information shortly after it was requested.

The outcome however was that the adviser couldn't carry out the calculation using 1 October 2022 as the valuation date because it had moved into the first quarter of 2023.

Much has been made of the fact that Mr M himself decided not to ask for the calculation to be carried out for a further two to three months due to a change in guidance from the regulator with effect from 1 April 2023. But I don't think that's material to Mr M's complaint as it's not in dispute that the valuation could have been carried out in the last quarter of 2022 –

using the 1 October 2022 valuation date – if Standard Life had acted reasonably. In any case Mr M has provided evidence to show that if a calculation had been carried out after the January 2023 valuation was received it would have returned a “no loss” outcome as well.

So I think it's reasonable to conclude that it was Standard Life's error that led to the valuation not being provided to Mr M's adviser in time for a loss assessment in 2022 – so I need to consider what would have happened here if it had.

What should have happened and did Mr M suffer a financial loss?

Having concluded that Standard Life should have provided the SIPP valuation at least before the end of 2022 it follows that the adviser could then have then carried out Mr M's loss assessment in the same quarter as the 1 October 2022 valuation date. Mr M has provided evidence – using information set out in the final loss assessment calculation - to show that a calculation carried out in 2022 would have meant he incurred a financial loss of around £56,000, and I have no reason to dispute what Mr M says. So I think he is right to say that an earlier calculation would have led to a different outcome in terms of the loss calculation for him. But that doesn't take into account the overall position Mr M would have been in or the outcome that a 'pension review' style calculation sets out to achieve. So I'll explain Mr M's position here.

Previously the regulator had set out guidance on how firms should conduct pension review loss assessments and its underlying principle was to create a “one time” calculation designed to establish whether a consumer had suffered a financial loss as a result of unsuitable advice to transfer DB pension scheme benefits to personal pensions. If it was demonstrated that the benefits arising from the personal pension wouldn't at least match those obtainable from the DB scheme, then redress should be paid to make up that shortfall in benefits.

So in Mr M's situation a “no loss” outcome meant that his SIPP benefits would at least match the benefits from his DB schemes, and I understand his loss assessment meant he would receive greater benefits - which satisfies his assertion that he wouldn't gain from the “risk” he took by transferring. Mr M will indeed benefit from all the growth from his SIPP – above and beyond the capital required to match the DB schemes.

However had the calculation been carried out in 2022 using the 1 October 2022 valuation point, Mr M would have received redress of around £56,000 because the benefits from the SIPP wouldn't – at that time - have provided the same level of benefits due from his DB schemes. So that redress would have been paid into his SIPP to make up that shortfall. So in essence, regardless of when the calculation was carried out and what the valuation was, the loss assessment meant that Mr M would be put back at least into the position he would now be without the unsuitable advice.

I know Mr M believes he has “lost” approximately £56,000 in compensation but that money would have been required in 2022 to make up the shortfall in his DB scheme benefits.

The position he found himself in following the April 2023 valuation was that, by comparing the benefits which would be provided by his DB schemes with those which would be produced by the transferred sum, there was no shortfall in his DB scheme benefits. So no redress was payable. Indeed one of the reasons behind the formula for the pension review loss assessment was to avoid the concern that Mr M has about the dates used for valuations and the possible financial disadvantage that might be suffered. If Mr M had suffered a loss as a result of the unsuitable advice he would have seen his SIPP compensated appropriately

but if he hadn't suffered a loss – as was the case here – he would benefit from the greater investment growth of the SIPP. His overall position would broadly be the same.

So although Mr M's complaint is about "lost" redress as a result of Standard Life's delay in providing a SIPP valuation I don't think he has suffered a loss in this case. I believe the later loss assessment simply put him broadly into the same overall position he would have been in if the calculation had been carried out in 2022. So I don't think Standard Life needs to make up any redress shortfall to Mr M here.

Standard Life's compensation offer

Standard Life accepted that it did delay in providing a valuation and apologised and said it paid Mr M £100 for the trouble and upset this caused him. And it's clear this was an error and did have some impact on Mr M, causing him concern and worry that he'd lost a significant amount of money. I've carefully considered whether the payment was fair and reasonable in the circumstances, and I think it's broadly within the range of what I would have expected for such matters. So I don't think Standard Life needs to make any further payment here.

Responses to my provisional decision

Standard Life said it had nothing further to add following my provisional decision, but Mr M didn't agree and made the following points in response.

- He was yet to receive the £100 compensation that Standard Life said it had paid him. But in any case he didn't find it an acceptable level of compensation.
- His complaint wasn't about whether he had suffered a loss because of previous unsuitable advice. It was that, had Standard Life responded to a request to provide a valuation he would have received around £56,000 as redress. He didn't think it was fair to widen the scope of the complaint to incorporate whether any redress was fair and reasonable, but simply he thought if Standard Life had acted reasonably he would have received the £56,000 regardless.
- He didn't think it was in dispute that he would have received the £56,000 if Standard Life hadn't made an error and thought we had ignored that fact in drawing our conclusions.
- He didn't think my provisional decision was consistent with the approach that had been taken with his other complaint. He said that because, in his other complaints we had taken the view that we must follow the regulators guidance on pension review calculations and also that the regulator won't consider complaints about its guidance. Therefore, he didn't think my argument that his position was "broadly the same" was fair, as the regulator's guidance didn't allow for such vague outcomes.
- He thought an implication of my argument was that an adviser could delay a pension review calculation until market valuations had increased to ensure a "no loss" position. He thought the regulator's rules meant that if the calculation had been carried out in quarter four of 2022 a payment of around £56,000 would have to be made.
- He explained that because of his personal circumstances his pension didn't allow him to live an "extravagant lifestyle". He wanted to ensure I hadn't made a judgement based on the fact that he still had "a healthy pension" regardless of the outcome of his complaint.
- In an attempt to resolve the situation, he would be prepared to consider a compromise offer from Standard Life – but would require it to be substantial and based on the financial loss he thought he'd suffered.

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.

And having considered Mr M's further submissions and evidence I see no reason to depart from my provisional findings. I know this outcome will disappoint Mr M as I've seen the strength of his feelings and arguments about this matter – so I'll confirm my reasons below.

I'd like first to address Mr M's concern that my decision may have swayed by thinking that he "*had a healthy pension*" and wouldn't be unduly affected by me not upholding his complaint. I understand Mr M's concerns here, but I hope I can reassure him that the value of his SIPP or his pension income was immaterial in my decision. I've taken into account any relevant laws, regulations, regulatory rules, guidance, standards, codes of practice and good industry practice when reaching the outcome.

The delay caused by Standard Life

In my provisional reasons I set out the evidence I'd seen which showed that Standard Life received a request to provide a valuation of Mr M's SIPP, as of 1 October, on 9 November 2022. But that it didn't provide that valuation until 3 January 2023 – which meant that any calculation couldn't be carried out in quarter four of 2022. Standard Life hasn't provided an explanation for that delay, so it's not in dispute that it could have provided the valuation during 2022.

So Standard Life did make an error – which it has accepted – and therefore my focus will be on the impact of that error, what should have happened, and whether Mr M did suffer a financial loss which he thought to be around £56,000.

What would have happened if the valuation was provided in 2022?

If I accept that Standard Life should have provided Mr M's adviser with a valuation in late 2022 it's clear that the advisory firm could then have carried out a loss assessment using the figures from quarter four of that year. And Mr M has provided evidence to demonstrate that calculation would have given him redress of around £56,000 – which I have no reason to doubt or dispute.

But at that time any redress payment would have been paid directly into Mr M's SIPP in order to match the benefits which would have been payable from his DB schemes had he not transferred. In other words because the adviser would have concluded there was a financial loss to Mr M's plan as a result of the unsuitable advice, it would require a payment of around £56,000 to replace those lost benefits. This wouldn't have been a compensation payment to Mr M but a "topping up" of his SIPP to ensure it at least matched the benefits he could have expected from his DB schemes.

Mr M believes that the inclusion of a comparison against the position he found himself in 2023 – when the adviser conducted a loss assessment which showed Mr M hadn't suffered a financial loss - is irrelevant and I should simply accept that he lost around £56,000 because of Standard Life's error and direct it to pay him that money. But that would be to ignore the actual position Mr M found himself in following the calculation.

Mr M needed to be paid redress in order to ensure his SIPP could provide the same level of

benefits as his DB schemes. In 2023 his SIPP's value was such that it could provide benefits in excess of those schemes, however in late 2022 this wasn't the case, and it would have needed to be topped up to provide those same benefits.

So whatever outcome was reached on either date Mr M's position needed to be the same, namely that his SIPP could provide benefits at least equal to the value of the DB schemes. And that's what ultimately happened here, there was no shortfall in his DB scheme benefits so no redress was payable. To ask Standard Life to pay an additional £56,000 now would mean that Mr M's SIPP would be put into a better position than it would have been following a calculation in either late 2022 or in April 2023.

Mr M then went on to suggest that this method of calculating the redress is open to a firm or adviser simply delaying things until markets are in its favour and a calculation is likely to result in no loss. But the same principle would apply here that if a no loss position is reached that means the pension that holds the transferred benefits is of a value that can pay at least the equivalent benefits to the transferred DB scheme benefits.

Mr M has suggested that there are flaws within the assumptions and basis of the pension review loss assessments. That's not something I can comment on here as it's within the role of the regulator to set out guidance for providers to follow when carrying out these complex calculations. But the underlying principle was to create a "one time" calculation designed to establish whether a consumer had suffered a financial loss as a result of unsuitable advice to transfer DB pension scheme benefits to personal pensions.

And that principle also ensured that firms weren't able to manipulate the position and provide a favourable outcome when completing a loss assessment. The evidence here would support the idea because whether the loss assessment was completed in 2022 or 2023 the aim was to ensure that Mr M's SIPP could provide at least the equivalent benefits to his DB scheme pensions and if it didn't, then redress needed to be paid to ensure that position could be met.

So I don't think Mr M has suffered a loss in this case. The loss assessment means his SIPP could provide – as at the date of the 2023 assessment – at least the same benefits (equivalent to his previous scheme) had the calculation had been carried out in 2022. So I don't think Standard Life needs to make up any redress shortfall to Mr M here.

Putting things right

Standard Life said it paid Mr M £100 as compensation for the distress and inconvenience caused by its error. Although Mr M says he hasn't ever received that payment.

But there was a clear error here and I think the impact on Mr M was that he would have been concerned that he'd lost a significant amount of money as a result – although I hope my explanation here will help him to understand why that's not the case. But I think that the offer is broadly within the range of what I would have expected to see for such an error.

If it hasn't already made that payment Standard Life needs to pay Mr M £100.

My final decision

Phoenix Life Limited, dealing with this complaint for Standard Life, has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Phoenix Life Limited, if it hasn't already, should pay £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 30 May 2024.

Keith Lawrence
Ombudsman