

The complaint

Mr G's complaint relates to a Group Self-Invested Personal Pension (Group SIPP) held with Standard Life Assurance Limited (SL). Phoenix Life Limited is responsible for complaints made against SL.

Mr G employed an Independent Financial Adviser (IFA) to advise him on the funds his pension was invested in. Mr G says SL's actions caused delays in switching funds, ultimately causing him a financial loss.

What happened

I issued a provisional decision about this complaint on 11 March 2024. In that decision, I set out the background to this complaint as follows:

"In 2022, Mr G wanted to review the funds his Group SIPP policy was invested in. He sought advice from his IFA. On 6 May 2022, Mr G's IFA asked SL for a list of open funds available to Mr G together with a link to performance data. SL responded on 11 May 2022 to say:

"As there are a large number of funds available to the member I am unable to provide you with a list of funds available, please go to [the website] Click on the Investment Choices tab and you will be able to view charges, fund codes and have access to details of the full fund range in the How to choose the right investment options for your pension booklet.

To view performance please go to [a website] and click on the Online services tab, you will then find a fund filter which includes daily prices and fact sheets."

SL also confirmed 75% of Mr G's 75% pension was invested in the SL L&G Pre-retirement Pension Fund and 25% was in the SL L&G Cash Pension Fund.

On 23 June 2022, Mr G called SL because his IFA had recommended he switch into the SL VT Seneca Diversified Growth Pension Fund. One of SL's 'Trades Team' told Mr G the fund's name had been switched to Seneca Momentum Diversified Growth Pension fund. Mr G said SL's adviser could not say whether this was a simple name change or whether the fund itself had changed. So, Mr G chose not to go ahead with the switch and asked his IFA for further advice so he could be 100% confident that the change in name was cosmetic only and there was no change to the underlying funds. Mr G's IFA replied to Mr G on 24 June 2022 to say *"the Momentum Diversified is not the same fund"*.

Mr G rang SL's Trades Team again on 28 June 2022 and SL was again unable to assure him the only change to the Seneca Momentum fund was its name. Mr G says he asked for an updated list of available funds. Mr G had not received an up-to-date list by 1 July 2022, so he complained to SL. SL emailed him to say an up-to-date fund booklet would not be available because changes were being made to it.

On 18 July 2022, Mr G emailed SL. In his email, he says *"I am still waiting for the up to date list of funds available under the [scheme] that still needs to be sent to me so I can switch my funds – how hard is it to send out the list?"*

Mr G spoke to SL on a number of occasions in August. On 12 August 2022, SL's call note says:

"I called Mr [G] and explained I don't have an exact date when the new version of the [fund booklet]... - I've just been told it's "imminently". I confirmed to Mr [G] that the most up to date fund information is available through his online account, which he and his IFA could look over. Mr [G] is going to discuss with this IFA and will come back to me next week."

SL's complaints handler has said:

"Throughout my investigation of this complaint I've been in regular contact with Mr [G] by telephone. When I spoke to him on 17 August 2022 I made it clear that I would not be able to give a firm date when the new version of the [fund booklet] would be available. However, he should not continue to delay working with his adviser to consider an alternative fund switch. I explained to Mr [G] how he and his adviser could go online to find the most up to date fund list. I also confirmed that we would pay any reasonable costs that his adviser would charge him for spending time again advising on a fund switch. In addition, to recognise the out of date booklet we had previously provided, we would also arrange for a comparison calculation to be carried out to see if Mr [G] would have been better off if he had invested in the SL ABRDN Sustainable Index World Equity Pension Fund from 23 June 2022."

Mr G provided a quote from his IFA for further advice. On 26 August 2022, SL spoke to Mr G again. It's call note says:

"I called Mr [G] to discuss this email.... I said to Mr [G] that as the new version of the [fund booklet] is still not available we would be willing to cover the adviser fee outlined in the email for taking further advice on switching funds. I've agreed to this as the adviser will need to be with Mr [G] when he logs into his online account to view the most up to date funds available."

SL also confirmed the above offer in writing. SL also said it would consider if Mr G had suffered any financial loss due to the delays in switching:

"Once you have confirmed your fund selection please let me know. At that point we will then consider if you have suffered any financial loss due to the delay from the date you originally wanted to make the fund switch (23 June 2022)."

Mr G met with his IFA again on 12 September 2022. Mr G said he had still not been provided with a fund guide, so they had to look through the list on the website together. And on 13 September 2022, Mr G switched into the SL ABRDN Sustainable Index World Equity Pension Fund. SL wrote to Mr G to confirm the changes to his investments from 15 September 2022, which were valued at £373,716.50.

On 20 September 2022, Mr G emailed SL to say he had understood SL would let him know when the switch had completed. Whilst he had not heard from SL, he had seen the switch had gone ahead. Mr G then sat out he thought he should be

compensated. SL responded on 23 September 2022 to say:

“our calculation to find out what position your plan would be in now had your switch been processed in June will be done as you have described... To clarify, the calculation will assume you gave the switch instruction when you called on 23 June 2022, which with out forward pricing policy would mean the switch would have been processed on 27 June 2022.”

On 4 October 2022, SL issued its final response to Mr G’s complaint. It said:

- SL had not been able to provide Mr G with a fund booklet for the Seneca Momentum Diversified fund. But SL said its up to date fund list had always been available online, as it explained on 11 May 2022.
- SL had told Mr G, incorrectly, that once he had chosen an appropriate fund to switch into, his instruction would be backdated to 23 June 2022. SL said this was a mistake and it apologised.
- SL had since the loss Mr G sustained from not switching on 27 June 22 was over £66,600 and it was not reasonable or proportionate to cover this cost.
- SL recognised Mr G had to seek further advice from his IFA. It paid Mr G £1,200 to cover the costs he incurred.
- To apologise for the inconvenience it caused, SL said it would pay Mr G £1,000 compensation.

Unhappy with this response, Mr G referred his complaint to our Service. One of our Investigators reviewed this complaint but didn’t uphold it. In summary, our Investigator said that where an error occurs, our aim is to put the consumer back in the position they would have been in had the error not happened. Our Investigator did not think SL made an error as the fund data had always been available on SL’s websites. The investigator thought that even if the booklet containing the fund list had been available, additional research would still have been needed. Our Investigator said the attempted fund switch on 23 June 2022 and the completed fund switch on 13 September 2022 were completed in the absence of the fund booklet. So, our Investigator thought the fund switch could have been done before 13 September 2022 and SL was not responsible for any fall in the value of Mr G’s pension in the meantime.

Whilst our Investigator did not think SL was obliged to backdate the fund switch, they said SL had offered compensation of £1,000. Our Investigator thought this, alongside SL paying Mr G’s additional advice costs of £1,200, was fair. In summary, Mr G said:

- The information on its website, that Mr G’s IFA was directed to, did not confirm that the SL VT Seneca Diversified Growth Pension Fund had undergone a name change or that it was closed to new business.
- SL had been unable to assure Mr G that only the fund name had changed. Mr G’s IFA thought the Momentum Diversified Growth fund was not the same as the Seneca Diversified Growth fund, as demonstrated by the two funds having different asset allocations according to the fund factsheets.
- From 1 July 2022, Mr G was told by SL a fund booklet would be available ‘shortly, and he lost time in reliance on SL’s statements. Had SL told Mr G the

old booklet was still relevant and capable of being used, he would have acted to switch his funds. Similarly, SL could have told Mr G's IFA to access its Advisor Zone website to view fund information rather than having to visit Mr G's home.

- SL said it would compensate Mr G for any fund loss. So, Mr G relied on this assurance that there was no prejudice to Mr G by taking his time and taking further advice from his IFA.
- SL's tardiness, inaccuracies and direction resulted in Mr G remaining in a poor set of funds for an excessive time on the promise of eventual compensation.

In response, our Investigator said it was not SL's responsibility if the VT Seneca fund factsheet did not state the fund name had changed and they would not have expected SL to comment on whether the underlying funds had changed. Our Investigator reiterated it was still possible for Mr G's IFA to use the 2020 booklet to identify the funds available to Mr G then use the information available online to carry out the fund switch.

Mr G reiterated he and his IFA were following SL's instructions in waiting for the updated booklet. SL should have explained the information needed was available online. As Mr G did not accept our Investigator's opinion, this complaint was referred to me for a decision."

I then set out my provisional decision, and recommendation on what SL should do to put things right, as follows:

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

In SL's final response of 4 October 2022, it said *"the booklet is not the only source of information on available funds. The up to date list of funds has always been available online and this was highlighted in the email we sent to [Mr G's IFA] on 11 May 2022."* So, SL has suggested Mr G should have been aware the fund booklet was not necessary and had all the information he needed to research available funds from this date.

I have considered carefully SL's email to Mr G's IFA on 11 May 2022. It provided a link to its website and a link to the current fund guide. I do not think this letter says the fund booklet was unnecessary and a decision could be made on the funds available without access to it, as suggested in SL's final response of 11 October 2022. And in any event, this email was sent to Mr G's IFA, not Mr G. Here, Mr G's IFA was providing a one-off recommendation to Mr G on where to invest his fund. Mr G's IFA was not arranging the fund switch itself. Instead, SL was dealing with Mr G. Having reviewed the evidence available, I do not think SL's letter of 11 May 2022 shows it clearly communicated to Mr G himself that the information he needed was online and he was able to transact a switch without the up-to-date fund booklet.

I have reviewed the fund booklet SL sent to Mr G's IFA, which was published in July 2020. On page five, it says the funds listed in the document were correct when it was published. SL said it cannot guarantee that all funds will be available when you make the investment. So, I do not think SL was responsible for ensuring the booklet was up to date when Mr G wanted to make the switch on 23 June 2022. But from the information available, it appears Mr G was able to invest in the renamed SL VT

Seneca Diversified Growth Pension Fund. However, given the name change and lack of certainty that the fund name was the only change, Mr G wanted his IFA to check the details of the Seneca Momentum Diversified Growth Pension fund.

When Mr G called SL again on 28 June 2022, it was unable to confirm details of the new fund or confirm when the booklet would be available. Given the booklet was being updated, I do not think it was unreasonable that SL could not confirm provide the assurances Mr G sought about the make-up of the underlying funds in the Seneca Momentum Diversified Growth Pension fund there and then on the phone call. The booklet would have narrowed down the funds for Mr G's IFA to review, and I think Mr G would have been prepared to wait a few days for SL to clarify his concerns about the fund and find out when the booklet would become available.

By 1 July 2022, Mr G was calling for an update on when the booklet would be released. I think this indicates Mr G was keen to update his fund choice. SL has provided no indication that the booklet was expected to come out imminently. So, by 1 July 2022, I think SL should have advised Mr G that all the information he and his IFA needed was available online.

I accept SL had previously explained this in its email to Mr G's IFA on 13 May 2022. But this was sent to Mr G's IFA, not Mr G. And here, SL was dealing with Mr G directly, so I think it was obliged to advise Mr G of the up-to-date process. Instead of directing Mr G online, SL continued to provide Mr G with updates about the availability of the fund booklet instead of explaining it was not necessary and redirecting Mr G to the information available online. I think the SL's subsequent actions, which I will outline below, indicate SL left Mr G under the impression the up-to-date fund booklet was necessary to complete a fund switch, as he explained in Mr G's email to SL dated 18 July 2022.

I've listened to Mr G's call with SL on 15 August 2022. On this call, Mr G told SL's complaints handler he wanted a new fund booklet. The complaints handler said he was not sure when the booklet would be available and proceeded to tell Mr G that it appeared the assets invested in the SL VT Seneca Diversified Growth Pension Fund had remained unchanged, it was only the fund's name that changed when it became the Seneca Momentum Diversified Growth Pension fund. Mr G responded that if he had been given this information when he rang in July, they would not now be having this conversation. SL said the person Mr G spoke to would not have had that level of detail. Mr G said he just wanted a list of up-to-date available funds available to him. The complaints handler said he would:

"hopefully get an answer tomorrow as to when that fund guide is going to be available for you and then you'll be able to make a decision from there."

The complaints handler went on to say:

"All I can find out, is get you access to the most up to date one so you can use that to make your decision".

Mr G queried who would pay his IFA to advise him again. The complaints handler responded, saying *"let's get the fund guide first to understand when it's gonna be available so that you can get that"*. Mr G responded *"first get the fund guide, then everything follows, I'm with you"*. Having listened to the call, I think it's clear the staff member Mr G was dealing with was under the impression the fund guide was necessary in order to proceed with the fund switch.

It was only on 17 August 2022 that SL explained the booklet was not necessary. At this point, SL said it would arrange to cover the costs of Mr G obtaining additional advice and consider compensating him had the switch gone ahead on 23 June 2022. As soon as SL did this, Mr G made arrangements to switch into a new fund based on the information available online.

I accept that in August 2022, SL said it would consider whether Mr G suffered any financial loss from 23 June 2022, and I am conscious Mr G relied on this and was not, therefore, under a time pressure to then arrange a meeting with his IFA.

I am conscious that SL indicated to Mr G on several times it would process his switch as if it had gone ahead on 23 June 2022. I do not think it reflects positively that SL set this expectation for Mr G that it has not followed through. However, I cannot see that SL made a binding guarantee to compensate Mr G and it has since said the offer was a mistake.

As our Investigator has explained, my role here is to decide whether an error occurred and, if it has, whether SL should do anything to put Mr G back in the position he would have been in had the error not occurred. As I have explained above, I do not think that SL should be responsible for the switch of funds going ahead on 23 June 2022. But by 1 July 2022, I think SL should have redirected Mr G online and he would therefore have recommenced work with his IFA to review the available funds and make a new recommendation. I do not think it would be reasonable to require SL to honour its original offer, and I do not think the original offer would put Mr G back in the position he would have been in had no error occurred. Instead, I have set out below how I think SL should put things right and I have considered the upset caused by SL's withdrawal of its offer below.

Putting things right

My aim in awarding fair compensation is to put Mr G back into the position they would likely have been in, had it not been for SL's error.

By 1 July 2022, I think SL should have redirected Mr G online. So, I have looked at the timescales involved in the first attempt to switch. The IFA provided Mr G with his recommendation on 18 May 2022. Mr G felt he was ready to request the switch by 23 June 2022 – 25 working days after the recommendation Mr G's emails say he thought he would put the new recommendation through another IFA, which took some time. Mr G's IFA would have had to narrow down the funds available and make a recommendation, which Mr G would then have put this to his other adviser. I must then allow time for the other adviser to review the recommendation and come back to the IFA, for the IFA to review things afresh and for Mr G to then contact SL to make the switch. I do not think it is reasonable to speculate Mr G would have been able to significantly expedite this process a second time and I do not think it would be fair to apply a different timescale when deciding when I think Mr G would have been in a position to attempt a switch a second time. So, if Mr G had taken 25 working days from 1 July 2022, he would have instructed SL to invest in the SL ABRDN Sustainable Index World Equity Pension Fund by 5 August 2022. It would have taken a few days for the switch to be implemented.

Any loss Mr G has suffered should be determined by obtaining the notional value of the pension on the basis that he had instructed a switch into the SL ABRDN Sustainable Index World Equity Pension Fund from 5 August 2022 and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

The compensation amount should if possible be paid into Mr G's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr G has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. If either party disagrees with this assumption, they should explain their reasons for doing so in response to this provisional decision. So, making a notional reduction of 15% overall from the loss adequately reflects this.

SL has already compensated Mr G for the cost of obtaining additional advice, so I do not need to consider this further.

I accept Mr G has been caused a great deal of frustration and inconvenience over several months as a result of SL's delays. I also accept he was caused considerable disappointment after SL indicated it would compensate him for any potential loss from 23 June 2022. I think SL's offer of £1,000 is reasonable and more than I would have awarded had it not already made this offer."

Neither party to this complaint accepted my provisional decision. In summary, Mr G said:

- The original booklet given to Mr G's IFA was out of date, and SL should be accountable for that. If SL had provided an up to date booklet, the fund switch would have gone ahead on 23 June 2022.
- SL had originally offered to calculate what position Mr G's fund would have been in had the fund switch gone ahead on 23 June 2022, and Mr G thinks this offer became binding on SL once Mr G accepted its offer.
- SL thought I was wrong to speculate on how long a fund switch would have taken – once the IFA reviewed the funds available on 12 September 2022, the fund switch happened within 25 minutes.
- Mr G accepted SL's offered redress methodology, which used a notional switch date of 27 June 2022. Mr G requested *"the form of payment of any Redress Amount is agreed between the parties so that the Redress Amount is paid in the most financially efficient manner."*

In summary, SL said:

- The booklet sent to Mr G was clear it was not the only source of information and up to date fund information was available online.
- The online option was highlighted in various places, including Mr G's annual statements sent by post, and he had access to his account online. SL offered to talk Mr G through how to do the fund switch online on 23 June 2022 but he declined.
- It was not fair or reasonable to disregard the online information readily available to Mr G and his IFA and only hold SL responsible for the delayed fund switch.

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.

Having done so, I have not departed from my provisional decision. I will explain why.

Mr G says the original booklet given to Mr G's IFA was out of date, and SL should be accountable for that. But as I explained in my provisional decision, page five of the fund booklet says the funds listed in the document were correct when it was published. SL said it cannot guarantee that all funds will be available when you make the investment. So, I remain of the view that SL was not responsible for ensuring the booklet was up to date when Mr G wanted to make the switch on 23 June 2022.

I know Mr G remains of the view the switch should have gone ahead by 23 June 2022. But I have explained why I disagree in my provisional decision. By 1 July 2022, I think SL should have redirected Mr G online. So, I have looked at the timescales involved in the first attempt to switch. The IFA provided Mr G with his recommendation on 18 May 2022. Mr G felt he was ready to request the switch by 23 June 2022 – 25 working days after the recommendation Mr G's emails say he thought he would put the new recommendation through another IFA, which took some time. Mr G's IFA would have had to narrow down the funds available and make a recommendation, which Mr G would then have put this to his other adviser. I must then allow time for the other adviser to review the recommendation and come back to the IFA, for the IFA to review things afresh and for Mr G to then contact SL to make the switch. In response to my provisional decision, Mr G clarified the second IFA did not do a full review. But I have simply taken the time taken from the first switch and applied it had the switch process started again on 1 July 2022. I remain of the view it would be unreasonable to apply a significantly different timescale when deciding when I think Mr G would have been in a position to attempt a switch a second time.

Mr G remains of the view SL's offer to calculate whether he suffered a financial loss had the switch been instructed on 23 June 2022 created a "legal obligation" and is therefore binding. We are an informal dispute resolution service; Only the courts can decide whether SL's offer was legally binding. To reiterate, my role is to decide whether an error occurred and, if it has, whether SL should do anything to put Mr G back in the position he would have been in had the error not occurred. I remain of the view that SL should not be responsible for the switch of funds going ahead on 23 June 2022. But by 1 July 2022, I think SL should have redirected Mr G online and he would therefore have recommenced work with his IFA to review the available funds and make a new recommendation. I recognise my decision will disappoint Mr G, but I remain of the view it would be unreasonable to require SL to honour its original offer. In my provisional decision, I set out what I think SL should do to put Mr G back in the position he would have been had the error not occurred – and here, I think the error was in SL not being sufficiently clear that Mr G, and his IFA, could review the funds available to Mr G online without the fund booklet by 1 July 2022.

So, if Mr G had taken 25 working days from 1 July 2022, he would have instructed SL to invest in the SL ABRDN Sustainable Index World Equity Pension Fund by 5 August 2022. So, I will set out how I think SL should put things right.

Putting things right

Mr G accepted SL's suggested redress methodology from 23 June 2022. I have already addressed why I do not propose to hold SL to that offer and why I have used 5 August 2022 as the date the switch should have occurred in my proposed redress methodology. I remain of the view that the redress methodology set out in my provisional decision is a fair and

reasonable recommendation to put things right for Mr G.

So, for completeness, any loss Mr G has suffered should be determined by obtaining the notional value of the pension on the basis that he had instructed a switch into the SL ABRDN Sustainable Index World Equity Pension Fund from 5 August 2022 and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

The compensation amount should, if possible, be paid into Mr G's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

Mr G requested SL agree the form of payment with Mr G so it is "financially efficient". As I said in my provisional decision, if a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr G has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. If either party disagrees with this assumption, they should explain their reasons for doing so in response to this provisional decision. So, making a notional reduction of 15% overall from the loss adequately reflects this.

SL has already compensated Mr G for the cost of obtaining additional advice, so I do not need to consider this further. I accept Mr G has been caused a great deal of frustration and inconvenience over several months as a result of SL's delays. I also accept he was caused considerable disappointment after SL indicated it would compensate him for any potential loss from 23 June 2022. I think SL's offer of £1,000 is reasonable and more than I would have awarded had it not already made this offer.

My final decision

For the reasons set above, I uphold this complaint and require Phoenix Life Limited to do what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 April 2024.

Victoria Blackwood
Ombudsman