

The complaint

Mr T complains that Standard Life Assurance Limited (SL) treated him unfairly in denying him access to his self-invested personal pension (SIPP).

What happened

Mr T has a pension with SL. He messaged SL in 2020 requesting a withdrawal from his pension. SL declined to process his withdrawal request.

SL explains that it was concerned that Mr T didn't have the mental capacity to make decisions regarding his finances. It explained the reasons for its concern and what it asked of Mr T in order for him to satisfy it that he had mental capacity.

Mr T brought his complaint to our service in April 2022 as he was unhappy with SL's ongoing failure to accept that he had mental capacity.

Our investigator looked into what happened and didn't uphold Mr T's complaint. She understood his concerns but explained why she didn't think that what SL had done had been unfair or unreasonable. So this complaint has been referred for an ombudsman's decision.

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 my decision is to reject Mr T's complaint for the same reasons that our investigator explained. Having read all of the evidence and correspondence I'm aware of the difficulties Mr T has experienced and am sorry for that. But I have had to weigh up the actions of SL in the context of its regulatory responsibilities and whether what it did was fair. And make that decision based on what I think is fair and reasonable.

The Financial Conduct Authority (FCA) publish rules in its Conduct of Business Sourcebook (COBS). It includes COBS 2.1.1R, which is the '*client's best interest rule*'. This meant that SL had to act honestly, fairly and in accordance with Mr T's best interests. The FCA also publish high level principles that govern businesses. These are set out in the handbook under PRIN. Within PRIN 2.1 are those principles. Principle 6 says that a firm must pay due regard to the interests of its customers and treat them fairly.

I recognise that SL weren't able to obtain a full picture of Mr T's circumstances and neither am I. So SL couldn't say with certainty whether Mr T had mental capacity to make financial decisions or not. And it isn't my role to determine whether he had mental capacity at any specific point in time in this decision. What I need to determine is whether the course of action that SL took was fair and reasonable, given its obligation to act in Mr T's best interests.

I have seen that SL was first made aware that Mr T may lack mental capacity in 2020 following contact from a family member who had a Lasting Power of Attorney (LPA) for Mr T.

It highlighted concerns that I think it was only reasonable for SL to consider in the way that it handled future requests from Mr T. It caused SL to have concerns about Mr T's mental wellbeing and risk of being exposed to financial abuse.

I understand that Mr T successfully challenged the LPA and it was revoked by court. So at that stage it was likely he had mental capacity. But I think it was fair for SL to seek clarification of that, which it did in late 2020. I have seen the enquiries that SL were making in order to better understand Mr T's circumstances. SL explain that the things it found out led it to have increased concerns about Mr T's mental wellbeing. And having seen that evidence, I'm satisfied that the conclusion SL reached wasn't unreasonable.

The type of correspondence SL was receiving from Mr T along with the information it had found out about Mr T was enough for SL to reasonably conclude that Mr T may not have mental capacity. So, to fulfil its responsibilities, it wasn't unreasonable for it to ask for clarification or evidence of his ability to make the request that he suggested that he wanted.

I should also point out that I don't think it was particularly clear at any stage what Mr T wanted from this pension. At an early stage he asked for a single withdrawal in an email, although didn't complete any application to take that income. And in April 2021 it appears he was asking to encash the whole of his pension fund in an email. But again, no application was processed. And more latterly I've seen Mr T indicate that he has no specific plans for his pension but just wants SL to agree that he has mental capacity and that he can make his own decisions about his pension.

There have been periods where the evidence that SL had caused it to have ongoing concerns that Mr T may be vulnerable and may not have mental capacity. Again, I've seen that evidence and Mr T's correspondence and I think that the conclusion SL came to was fair. And was reached out of concern for Mr T's best interests.

SL explain that they have asked for evidence from Mr T that he has mental capacity so that it could process any request he makes to access his pension benefits. I've seen the correspondence and think that it was clear and reasonable. It ought to have been achievable for Mr T with minimum inconvenience and no additional cost. I think that Mr T likely understood, as he responded with his opinions on SL's request. He has refused to do this which has caused this impasse.

I wouldn't expect SL to put hurdles in Mr T's way unnecessarily. But I think that the specific circumstances here will have given SL reasonable grounds to be concerned about Mr T's vulnerability. And the request it has made, which wouldn't be made in all cases, doesn't, on balance, seem unreasonable.

I can see that SL have made attempts to engage with other agencies in an attempt to better understand Mr T's circumstances. Which I think was fair. And it has highlighted to Mr T avenues of potential support available to him. Taking everything into consideration I think that SL have done what I would expect to try to help move this forward for Mr T. Accepting that it didn't think it was able to process an application for Mr T whilst it had reasonably held concerns about Mr T's ability to make that application.

My final decision

My final decision is that I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 October 2023.

Gary Lane
Ombudsman