

## **The complaint**

Mr O has complained that Standard Life Assurance Limited (Standard Life) acted inappropriately when dealing with the pension of his late partner, Mr B.

Upon being notified of Mr B's death Standard Life sold the investments held within his pension before transferring these to a beneficiary pension opened by Mr O. This was against Mr O's instructions who had asked for the funds to remain invested.

Due to investment price movements over the time the funds were held in cash, Mr O has estimated that the pension lost around £190,000 of growth that would have been added to the pension but for Standard Life's decision to encash the funds.

Mr O has stated that he does not believe Standard Life took reasonable steps to minimise or eliminate the need for the funds to be out of the market.

## **What happened**

On 27 July 2022 Mr O informed Standard Life that his partner, Mr B, had passed away.

On 29 July 2022 Standard Life contacted Mr O to provide the current death benefit value of the policy and state that the exact value of the policy would be confirmed once all the underlying investments were sold. This email also asked Mr O to provide various documents that Standard Life needed to make their decision as to who would benefit from the policy proceeds.

All the underlying investments within the pension were sold the same day.

Later on 29 July 2022 Mr O replied to Standard Life and asked them not to sell the investments. The documentation and information requested by Standard Life was also provided at this time.

Mr O contacted Standard Life over the phone on 1 August 2022 to restate the point that he did not want the investments to be sold.

Standard Life called Mr O the following day to explain the process that needed to be followed and stated that the funds could not be moved in-specie and had to be sold.

On 3 August 2022 Standard Life contacted Mr O to confirm that their discretionary decision as to who would receive the pension funds had been completed, and that they had concluded Mr O would receive the entirety of the funds. The email sent also confirmed the death benefit value and provided Mr O with his options for the monies. As Mr O had previously confirmed a desire for a beneficiary drawdown plan an application form was attached to this email alongside a leaflet with further instructions. Mr O's financial adviser was copied into the email.

The application form was received back by Standard Life on 9 August 2022.

The beneficiary pension was opened on 11 August 2022 and monies were paid in on the

following day. Introductory paperwork was then issued on 15 August 2022.

Standard Life issued their response to Mr O's complaint on 12 September 2022. This response rejected the complaint.

Standard Life noted that Mr B's pension had been invested in Standard Life Insured Funds and the terms and conditions of the policy stated that these funds could not be transferred in-specie. Additionally, they believed that they had minimised the time the funds were out of the market by setting the new beneficiary drawdown plan up on 11 August 2022 – 2 days after the application form had been received.

Unhappy with the response provided Mr O referred his complaint to this service on 9 March 2023.

Our investigator looked into things but did not believe Standard Life had acted unreasonably.

Our investigator noted that Mr B's pension policy had been set up under a discretionary trust and as such Mr O did not have control over the funds until the trustees (Standard Life) had made their decision regarding who should receive the pension monies. Following receipt of the requested information on 29 July 2022 this was completed on 3 August 2022, a timescale which was considered reasonable.

From receipt of the new beneficiary drawdown account documentation on 9 August 2022 our investigator noted the new plan was set up by 11 August 2022 – again a timescale considered reasonable.

The investigator also noted the policy terms and conditions section 12.1 stated:

*“After we're notified of your death we'll normally:*

*a) sell all of the assets held for you under the scheme; and*

*b) pay the cash proceeds into the trustee cash account;*

*before distributing them to your beneficiaries or using them to provide a pension for your beneficiaries.”*

The fact the above states assets would “normally” be sold was considered further with the investigator concluding that this was to allow for circumstances where investments could not be sold (illiquid investments for example) rather than circumstances where a potential beneficiary did not want investments to be sold.

Overall, our investigator concluded that Standard Life had acted in line with the policy terms and conditions and completed their steps in the process in a timely manner.

Mr O did not agree and raised further questions.

Firstly, Mr O queried why it took Standard Life until 3 August 2022 to make their decision as to the beneficiary of the policy. Secondly it was questioned why it took Standard Life so long to reinvest the funds in the beneficiary pension after this decision had been made. Mr O also questioned the use of the word “normally” within the pension's terms and conditions, noting that this was open to interpretation leaving the possibility that Standard Life did have the option to use discretion and facilitate the in-specie transfer of the investment funds. Mr O also noted that it was clear in these specific circumstances that he would be the beneficiary of Mr B's policy and as such the decision could have been made immediately with his wishes

to remain the market respected.

Finally, Mr O stated that he felt the overall conclusion reached was unfair and that Standard Life should have done more in circumstances such as his, where the widow was the sole beneficiary. Mr O felt he had been clear about what he wanted to happen, and the outcome reached suggested he should not have notified Standard Life about his partners death until a beneficiary pension form had been completed to minimise investment market risk.

Our investigator responded to each of these comments in turn.

Regarding the length of time taken by Standard Life to make their decision as to the beneficiary of the pension, our investigator stated this timescale was considered reasonable.

It was noted the information Standard Life had requested had been provided at 17:57 on 29 July 2022. The decision was made on 3 August 2022, three working days later. Whilst Mr O had made his complaint on 1 August 2022; the three-day timeframe was still considered reasonable.

On the point regarding the time taken to open the beneficiary pension after the decision had been made on 3 August 2022, our investigator noted that the email confirmation issued to Mr O (and his financial adviser) on that date had included the relevant application form. This was received back by Standard Life on 9 August 2022. The investigator stated it was not reasonable to hold Standard Life responsible for the time between 3 and 9 August 2022, with the time taken in processing the application form (once received) considered reasonable.

Once the application form was received the new plan was set up on 11 August 2022 – 2 working days later.

When considering the use of the word “normally” within the policy terms and conditions our investigator stated that the email sent by Standard Life on 29 July 2022 was clear that the investments would be sold. Whilst the investigator accepted that Mr O did not want the monies to be out of the investment markets, Standard Life’s approach protected the value of the pension fund until a decision as to the beneficiary had been made. Whilst in this instance investment markets rose during the interim period, our investigator concluded that Standard Life did act reasonably and in line with the terms and conditions of the policy.

In response to the final point made by Mr O, our investigator stated that the Financial Ombudsman Service is an informal complaint resolution service and not the financial services regulator (The Financial Conduct Authority) and as such it was not our role to tell a business how to administer their policies or conduct their business. In this case the investigator concluded there were no unreasonable delays or errors in the way Standard Life had dealt with Mr O’s claim.

Mr O did not agree with the additional commentary provided by our investigator and asked further questions. Firstly, given Standard Life’s actions had been considered reasonable Mr O queried who got to decide what was reasonable, and secondly, why there were differences in the available investments between the original and new pensions.

In response to these queries our investigator stated that when assessing the merits of a case various factors are considered when determining what is reasonable including the type of transaction, any relevant regulatory guidance, good industry practice, business service standards, and the particular circumstances of any given case. In this instance, whilst there are no specific rules covering time limits a business must adhere to, it had been concluded that there were no unreasonable delays on Standard Life’s part.

Regarding the question about the differing investments between the late Mr B's pension and the new beneficiary pension it was confirmed that one was a group self-invested personal pension (SIPP) whilst the new beneficiary pension was a personal SIPP.

Following this, Mr O asked what common practice among other providers in similar circumstances was, especially given other investments (taxable investments and ISAs) were left invested and passed to Mr O after probate. Additionally, Mr O questioned whether Standard Life had followed the "best execution" rule and acted in his best interests. Finally, Mr O questioned the terms and conditions of the pension policy. This related to the use or "normally" as discussed above and clause 15.9 of the terms and conditions which stated:

*"Instead of us selling investments under section 15.3 or 15.7, you (or a beneficiary or successor) can ask us to transfer the ownership of selected investments from the trustee to the trustees of the receiving scheme. This does not apply to any Standard Life investment policy funds or your holding in the trustee cash account"*

Mr O noted the above but stated that given most of the investment codes between Mr B's pension and his subsequent beneficiary pension were the same, Standard Life's use of this clause with their complaint response did not make sense, with Mr O confirming his interpretation of this clause was that it applied to external transfers away from Standard Life and not a transfer to another Standard Life pension as was the case here.

Our investigator confirmed these additional points had been added to the file for consideration by me.

I issued a provisional decision which said:

*"I would like to start by passing my sincere condolences to Mr O.*

*To reach a decision in this case I have looked at each stage of the process outlined above and assessed whether Standard Life's actions were reasonable and in line with the policy terms and conditions.*

*Upon being informed that Mr B had passed away Standard Life proceeded to encash the investments held within his pension. I appreciate that Mr O had made Standard Life aware of his intention to keep the investments and had requested they not be encashed, however as explained by our investigator the pension policy was set up under a discretionary trust.*

*Upon being informed of Mr B's death, it fell to the trustees (Standard Life) to decide who would benefit from the pension monies. The structure of such pensions mean they fall outside of the policyholder's estate and as such are not covered by any instructions that may have been left in a will.*

*To try and ensure that the proceeds are distributed fairly upon the death of a policyholder, providers / trustees do ask policyholders to complete an expression of wish form detailing who they would like funds to be paid to in the event of their death. However, the trustees retain the right to use their discretion with any expression of wish not legally binding.*

*Given this, Mr O only had effective ownership of the policy proceeds after Standard Life had made their decision regarding who the beneficiary of the policy was going to be.*

*This decision was finalised on 3 August 2022.*

*I have noted Mr O's point that given the relevant paperwork was provided on 29 July 2022 and that he was Mr B's civil partner, a dependant, the named beneficiary on the nomination*

*form and the sole beneficiary of his will, this decision should have been made sooner if not immediately.*

*However, I do not consider the three working day timeframe unreasonable. After receipt of the paperwork, this would then have to be checked, assessed and then a decision made.*

*Whilst I appreciate the decision in this case seems relatively straightforward, I consider it reasonable to allow a business time to ensure the accuracy of their work whilst maintaining service standards to all their other customers.*

*In addition, selling the investments upon Mr B's death is consistent with the terms and conditions of the policy.*

*I note that section 12.1 does include the word "normally" which indicates there may be specific circumstances where investments would not be sold in the event of the policyholder's death. However, there is no evidence that such circumstances were present in this case. As per the rationale provided by our investigator, I consider the most likely set of circumstances which may result in investments not being sold in the event of death to involve complex underlying investments which may not be easily sold.*

*Additionally, with regard to section 15.9, this clearly states that investments in Standard Life Investment policy funds cannot be transferred in-specie. Whilst Mr O's reading of this has led him to conclude that this relates only to transfers outside of Standard Life, the terms and conditions themselves simply state that in-specie transfers of those funds is not possible.*

*Overall, the terms and conditions of the policy show that the overwhelming likelihood in the event of a policyholder's death would be that investments would be sold, with this course of action being communicated to Mr O in Standard Life's email of 29 July 2022.*

*I agree with the investigators conclusions that Mr O only had effective ownership of the funds once Standard Life reached its decision about the beneficiary of the policy, that the decision itself was completed in a reasonable time, and that the terms and conditions of the late Mr B's policy have been adhered to.*

*I have gone on to consider the time taken to set up and subsequently re-invest the proceeds in Mr O's individual beneficiary pension.*

*The application form and instruction leaflet were provided on 3 August 2022, the same day as the decision itself was communicated with the completed forms being received back on 9 August 2022. As per the investigators findings I do not believe it is reasonable to hold Standard Life accountable for the time between 3 and 9 August 2022.*

*It took two working days from receipt of the paperwork on 9 August 2022 to open Mr O's beneficiary pension on 11 August 2022 – I do not consider this to be an unreasonable timeframe.*

*I have noted Mr O's commentary stating that the paperwork was received early on 9 August 2022 and as such could – in theory - have been processed that same day, however I do not think it would be fair to expect Standard Life to have done so. The paperwork would have to be directed to the correct business area, checked for accuracy and completeness, and then actioned.*

*Whilst it may be possible for a business to action a specific set of paperwork on the same day it has been received, consideration must be given to a business's work volumes and the overall customer service levels that must be provided to that business's wider customer*

base.

*I have considered Mr O's point that a business must act in the best interests of its customers and that he believes Standard Life were trying to protect themselves in the event any retained investments fell in value before being passed to the beneficiaries.*

*I however believe Standard Life's processes are in keeping with the best interests' principle.*

*Standard Life were not in a position to know whether the investments within Mr B's pension would rise or fall in value. Similarly, when notified of Mr B's death on 27 July 2022, they were not in a position to know for certain who the eventual beneficiaries of the pension would be.*

*The process followed by Standard Life protects the value of the pension from any potential investment loss that may be incurred whilst the decision as to the eventual beneficiary is made, with the beneficiary then being able to make subsequent investment decisions as they see fit.*

*It is unfortunate that the chain of events above took place at a time when the underlying investments which were held by Mr B performed particularly well, however as above, this was not guaranteed, and Standard Life could not have known this at the time.*

*I have finally gone on to consider Mr O's question regarding what other businesses would have done in similar circumstances, especially given other investments held by Mr B (taxable investments and ISAs) had remained invested and passed to Mr O once probate had been completed.*

*I have considered the specific circumstances of this case, based on Standard Life products and their terms and conditions. Alternative businesses will have their own products and own terms and conditions which may have resulted in a different outcome. As such what specific other businesses may or may not have done is of limited use to my investigation. What I would say here is that I do not consider the chain of events above, and Standard Life's actions throughout, as unusual or unreasonable.*

*I also cannot say for sure why other investment products held by Mr B remained invested until probate was finalised. However, I would note that the types of products mentioned by Mr O were not set up under trust (unlike the pension). As such, responsibility for these investments would fall to the executor of Mr B's estate (Mr O) upon Mr B's death, whereas the pension remained the responsibility of the pension trustees (Standard Life).*

*In summary, whilst I have issued a provisional decision and covered some points not previously commented on by our investigator, I have reached the same conclusion. I do not believe Standard Life did anything wrong and as such am not proposing to uphold this complaint."*

In addition, I asked all parties to provide any further commentary or evidence they wanted me to consider before 13 September 2023, after which I would issue a final 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.

Standard Life did not provide any further evidence or commentary in response to the provisional decision above.

Mr O, through his legal representatives, did provide significant additional commentary. In order to ensure I have covered all the additional points made, I have covered them section by section below.

### *Section one*

In section one of the response Mr O has noted that the investments held within the late Mr B's pension had been made after much thought, research and after taking professional investment advice. Standard Life had sold these without taking any advice to ensure the suitability of the subsequent cash holding, and against the wishes of Mr O – the beneficiary named on the expression of wish form.

It was also noted that cash itself could not be considered suitable given its value would be eroded by inflation.

It was additionally questioned whether Standard Life had met its obligations under the FCA handbook (covered below in section four) and stated that Standard Life's "one size fits all" approach had not worked. Mr O stated each case should be considered individually, especially when the pension in question is unusually large.

In considering Standard Life's decision to encash the investments I remain of the opinion that this was appropriate. Whilst there is no evidence that specific financial advice was taken before the investments were sold, I do not believe it would be reasonable to expect Standard Life to do so.

At the time the investments were sold Standard Life did not know who the eventual beneficiaries would be. As such, trying to ascertain what investments may be suitable for unknown beneficiaries would be an impossible task.

In such circumstances, where there are unknown beneficiaries with unknown circumstances and objectives, I consider the process of encashing the investments to protect their value entirely reasonable. Whilst the returns on the cash could potentially be eroded by inflation over time, cash is widely considered appropriate for short term savings. In this case, the pension was held in cash for less than one month, limiting the impact of inflation on its value. I do not believe Standard Life's actions could be seen to suggest that holding monies in cash is a better investment option than its investment funds, rather it is more suitable for a very short period of time, until decisions around the eventual beneficiaries can be made.

I appreciate that in this instance, leaving the funds invested would have resulted in a financial gain for Mr O. However, as above, Standard Life were not in a position to know this at the time the investments were sold. As such expecting Standard Life, or any business to provide "best" outcomes is not a standard I can reasonably hold them to – as this is only available with the benefit of hindsight. Whilst Mr O has challenged a "one size fits all approach" I consider it appropriate for a business to have a standard process for circumstances such as this. A standard process can be assessed to ensure its fairness and be communicated to policyholders, so they know what to expect in future, this also allows all consumers, wherever possible, to be treated equally.

Mr O has commented that Standard Life should have acted differently or taken "extra special" care given the £5.5m value of the pension in this case, I however disagree. The pension in question was a generic pension with there being no bespoke or individual services being offered or paid for. Whilst the pension had a value far more than the average, I consider it entirely reasonable for Standard Life to treat this pension the same as they would any other in the same circumstances.

## Section two

In this section the decision to encash the investments was again questioned by Mr O.

Here again the decision to encash without financial advice being sought by Standard Life was questioned, both in terms of the suitability of holding the funds in cash for the eventual beneficiaries, and in trying to better time the sale of the underlying investments based on expectations of their future performance.

As above I do not consider Standard Life not taking financial advice before encashing the investments to be an issue. At that time the eventual beneficiaries and their objectives were unknown and as such any advice would have been of limited value.

Similarly, financial advice would not have been able to better inform the timing of the investment sale. How investments are going to perform in future is not information a financial adviser would have been able to provide.

I appreciate that with the benefit of hindsight it can now be confirmed that had Standard Life held the existing investments for longer the pension would have increased in value, however that is not something Standard Life were in a position to know at that time, with or without financial advice.

## Section three

Here 13.1 of the terms and conditions of the policy have been questioned, specifically the interpretation of the term “normally”.

Mr O has stated that Standard Life have an obligation to provide information that is clear, fair and not misleading, that the “normally” exemption is intended to cover a number of scenarios and not just where there are illiquid investments, that the trustees (Standard Life) have a duty to act in the beneficiaries best interests, that a more appropriate interpretation of the word normally would be to *“interpret “normally” as being subject to it being in the beneficiaries best financial interests”*, and that in exercising their duties a prudent pension trustee would take advice on the most appropriate time to sell the existing investments and advice on any new investments.

Taking these points in term, I remain of the opinion that Standard Life met their requirement to communicate in a clear, fair, and not misleading way. The policy terms and conditions confirm that the underlying investments within a pension will “normally” be sold in the event of a policyholder’s death. Whilst a complete list of what would clarify as an exemption to “normally” was not included, I consider it clear that the investments will usually be sold.

Whilst I gave the example of illiquid investments as being one of the possible exemptions to the “usual” process, I appreciate that there may be a number of other circumstances that may require the normal process to be changed.

In interpreting “normally” I do not agree that this should be based on it *“being subject to it being in the beneficiaries best financial interests”*. As above, at the time the investments were sold, Standard Life had not made their decision as to who the beneficiaries would be, additionally, as already explained what would be in a beneficiaries best financial interests is impossible to know without the benefit of hindsight.

In further consideration of the term “normally” I would note that there are no exceptional circumstances within this case that would require Standard Life to move away from their normal process. The pension was a generic SIPP, the underlying investments were standard



investment funds and there were no other complicating factors regarding the SIPP. I accept that the pension value itself was significantly larger than average I do not consider this is isolation enough to require Standard Life to move away from their normal process.

#### *Section 4*

Within this section Mr O questioned Standard Life's actions and failure to:

- Take appropriate investment advice.
- Consider diversification of assets.
- Consider the best asset allocation for the beneficiary in these specific circumstances.
- Consider the best timing of the investment switch to minimise out of market risk.

I consider these points to be materially similar to those covered in the sections above and as such have not commented on these in detail again. However, as above, I consider Standard Life's approach in selling the investments and protecting their value as soon as being informed of Mr B's death as reasonable given the beneficiaries were unknown at the time of the sale.

Mr O additionally questioned whether Standard Life's actions were in keeping with the principles for business contained within the FCA handbook.

The four principles below were noted as being contrary to Standard Life's actions in not taking financial advice before the pension investments were sold.

*Prin 2.1.1 (1) - A firm must conduct its business with due skill, care and diligence.*

*Prin 2.1.1 (6) - A firm must pay due regard to the interests of its customers and treat them fairly.*

*Prin 2.1.1 (9) - A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.*

*Prin 2.1.1 (12) - A firm must act to deliver good outcomes for retail customers.*

In consideration of the principles detailed above I would repeat here that I do not consider Standard Life's actions to be unsuitable or unreasonable. I do not consider the lack of financial advice to be a concern. Whilst I note that a different course of action would have resulted in investment gains being made, this does not make Standard Life's actions unsuitable. Better (or best) outcomes can only be established with the benefit of hindsight with what Standard Life did protecting the value of the pension for beneficiaries' benefit. The decision as to the beneficiary of the pension was made quickly, with the pension proceeds transferred and re-invested in a timely manner. I consider this to be in keeping with the principles above.

*Prin 2.1.1 (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 –* was also noted in relation to the terms and conditions of the policy, specifically in relation to the word "normally".

I have not repeated my arguments included in section three above here and would simply note that I remain of the opinion that Standard Life met their requirement to communicate in

a clear and fair way.

Overall, in line with the provisional decision issued, and the additional rationale above I have concluded Standard Life did not act unfairly and am not upholding this complaint.

### **My final decision**

As per the rationale above I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 28 December 2023.

John Rogowski  
**Ombudsman**