DRN-4011341

The complaint

Mr M complains that Standard Life Assurance Limited (Standard Life) mis-sold him a personal pension (PP), as the charges are higher than it led him to believe.

What happened

Mr M had a stakeholder pension with Standard Life and, following a call with it on 9 April 2020, he moved to its PP but remained in the same two funds that his previous pension had been invested in. During this call, Mr M was told the combined charge for the PP would be 0.515% after a 0.5% discount was applied. But his statements dated April 2021 and May 2022 showed respective charges of 0.6% and 0.8%. So, in May 2022, Mr M complained to Standard Life that his PP had been mis-sold, as the charges were higher than it led him to believe.

In response, Standard Life said Mr M's discount is being correctly applied, as are the costs and charges on his statements. It said that the charges include, for example, its management charge and additional expenses, which are explicit charges paid directly from an individual's policy to cover administration, customer support and investment management. And that the statements also now include transaction costs, which are implicit and deducted at fund level, rather than by it. It said transaction costs aren't new and reflect incidental expenses fund managers incur when making changes to underlying investments.

After Mr M responded saying Standard Life hadn't addressed his mis-sale complaint, it wrote to him again in July 2022. It said that it gave him accurate information on 9 April 2020 about the 0.515% charges directly paid from his PP. It said transaction costs are additional and can only be reflected retrospectively, as it can't predict how much buying and selling the fund manager needs to do to account for market conditions. It said the recent inclusion of these in statements represents what has always been accounted for within a funds performance and were also charged as part of Mr M's previous stakeholder plan. And that as his funds remained the same in his PP compared to his previous plan, but the discount was increasing, there was an effective decrease in Mr M's charges.

Mr M brought his complaint to our Service. He added, in summary, that he stayed with Standard Life as its charges were most competitive. And because it told him on 9 April 2020 that he'd pay less with its PP than he'd been paying with his stakeholder plan, which was nearly 0.8%. Mr M said he accepted the contract on that basis. Mr M also said Standard Life told him there weren't any transaction costs. And that if he'd known his overall charges were still going to be around 0.8% he would have gone with another provider.

One of our Investigators looked into Mr M's complaint and said that while Standard Life now needs to disclose transaction costs – which is why the charges on Mr M's statements have gone up – these are different to its direct charges, which have remained the same at 0.515%. He recognised Standard Life told Mr M there aren't any transaction costs and that it could have made it clearer that these are additional, for example in its terms and conditions. But he said that, in any case, Mr M's new PP was still cheaper given he invested in the same funds as he had in the stakeholder plan, but with lower charges. And he said that it's unlikely other providers would have told Mr M about transaction costs either, so he'd be in similar position if he had gone elsewhere.

Mr M didn't agree. He said, in summary, that he's shown he was sold the policy on the basis the charges would be lower when they aren't, and that he was told there wouldn't be any other charges for transactions. So Mr M thinks it's irrelevant whether or not, for example, Standard Life had undisclosed transaction costs, and that he might have incurred similar costs with other providers. Mr M also said his call with Standard Life on 9 April 2020 was a verbal contract that's binding.

As Mr M didn't agree, his complaint's been passed to me for a 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.

While Mr M has said Standard Life entered into a legally binding contract during its call with him on 9 April 2020, I think it's important to clarify that our Service isn't a court. So it's not my role to decide whether or not a binding contract was formed. Whilst I take relevant law into account when making my decision, my role is to consider what's fair and reasonable in all the circumstances. And, having done so, I'm not asking Standard Life to do anything, for largely the same reasons as our Investigator.

I haven't seen anything to suggest Standard Life provided Mr M with advice, but it still needed to communicate information to him in a way that was clear, fair and not mis-leading.

Having listened to the above call Mr M had with Standard Life, including the particular parts he's referenced, I've heard that Mr M was told that after his discount, the combined charge for the PP would be 0.515% and cheaper than his existing stakeholder plan. And that this covers the setting up and servicing of the plan. Mr M then asked about underlying costs of moving plans and was told there was no charge for doing so. However, the call handler went on to say there are no other charges for transactions with the PP, before telling Mr M that it's the same scenario as his current stakeholder pension, but that his charges would be lower.

So I can understand why Mr M thought something had gone wrong upon seeing higher charges on his statements than the 0.515% he was told about. And I recognise Mr M was incorrectly told he wouldn't incur transaction costs during the call, given that all funds incur these. But I don't think Mr M was mis-led that his PP is cheaper than his stakeholder plan. This is because, when also bearing in mind how transaction costs work and how these have previously been treated in the industry, I think Mr M has still made the saving he was led to believe he would in the circumstances. I'll explain why.

I think Standard Life has reasonably explained that while the charges appear to have increased on Mr M's statements compared to what he was told, this is due to changes in the way transaction costs – implicit costs allowed for in the unit price before Standard Life deducts charges – are now treated. Standard Life correctly said it wasn't required to disclose these in advance, or in statements until February 2021 following regulatory changes, nor was it standard industry practice to do so. And that every plan incurs transaction costs and Mr M has always been charged these as part of his previous and new plan.

This means nothing has changed with Mr M's plan other than that the transaction costs he's always been paying now have to be disclosed in his statements. If not for this, they would have otherwise just reflected the explicit charges – those Standard Life directly deducts from his plan – of 0.515% that it was obliged to, and did, tell him about on 9 April 2020.

I can see from Mr M's March 2020 statement for his previous stakeholder plan that he was being charged 0.799%. Given this plan was also provided by Standard Life who has explained it didn't disclose transactions costs in advance, or include these on statements until February 2021, I think it's likely the 0.799% only reflected Standard Life's explicit costs rather than the fund manager's transaction costs. And, given the charge Mr M was told about for his new PP, also not including transaction costs, was lower than this after discount at 0.515%, I think this shows Mr M's explicit charges were decreasing with his new PP.

As Mr M was also investing in the same two funds in his PP as he had in his stakeholder plan, I think it's likely that the transaction costs in his PP remained the same as, or similar to, what he would have incurred in his stakeholder plan. This is supported by Standard Life's explanation that as Mr M's funds remained the same, but his explicit costs were lower due to a bigger discount, there was an effective decrease in his charges.

I think it's also worth adding that it seems unlikely the charges Mr M's said he was quoted by other providers included transaction costs either, given it isn't industry practice to do so in advance – particularly as these vary and are applied retrospectively. And I note Mr M hasn't suggested or provided evidence from the time to show otherwise.

I can't see that at the time Standard Life changed its statements to include transaction costs, it explained to customers like Mr M what the changes were and why it was doing this. I think it would have been better customer service to do so. But I think it's likely Mr M would have been unhappy in any event at the thought he might be paying more for his plan, even though I don't think he is for the above reasons.

So as I think Mr M made the saving he anticipated, I can't fairly conclude he's been mis-led by Standard Life that his PP would be cheaper. Nor do I think he's been financially disadvantaged by it incorrectly telling him there wouldn't be any transaction costs. And this means I'm not asking Standard Life to do anything.

My final decision

For the reasons I've given, my final decision is that I'm not asking Standard Life Assurance Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 August 2023.

Holly Jackson
Ombudsman