

The complaint

Mr K, as a representative of the estate of Mrs K, complains that Standard Life Assurance Limited (Standard Life) used the date that his wife died to calculate the value of her pension fund instead of a more appropriate later date. He's also complained about Standard Life paying 100% of the fund to him and not allocating some to his children – he says it would cause tax problems if he had to gift the money to the children himself. In addition, Mr K says Standard Life has lost some documentation during the process, so it couldn't speak to him to begin with and couldn't allocate the funds in line with his late wife's wishes.

What happened

The late Mrs K took out a stakeholder pension plan with Standard Life in 2001.

The plan was invested between the with-profits fund and the stock exchange fund. The annual statement for the period ending 29 July 2018 noted the value of the plan as being £31,422.45.

Unfortunately, Mrs K passed away in December 2018. So in January 2019 Mr K contacted Standard Life to find out if he had authorisation to discuss the plan and if there were any beneficiaries noted. Standard Life said it couldn't find either a nomination of beneficiary form or a letter of authority (LOA) for it to deal with Mr K on the file.

In March 2019 Mr K contacted Standard Life again to discuss the options for his late wife's pension plan. It was at this point he made it aware of her death. Standard Life confirmed the value of the plan it was going to pay out was £28,615.89 and that it would pay the benefits at its discretion as the trustee – but would take into consideration any previous 'expression of wishes' as well as Mrs K's family situation. It said there were four options available to Mr K regarding the pension fund.

Standard Life subsequently decided that it would pay the benefit to Mr K as the primary dependent/beneficiary.

Following a number of phone conversations, it was confirmed that Standard Life had calculated the value of the plan as at the date of Mrs K's death. However, the value of the plan when Mr K made Standard Life aware of her death was £29,984. So Mr K complained that he should have been paid the fund value from either when he informed Standard Life of his wife's death or when it transferred the money to him. He wanted the units in the fund to be passed over to him directly whereas Standard Life had simply encashed them.

He also complained about the overall service he'd received from Standard Life as he didn't think it had answered his questions and he was still concerned as to why the benefits couldn't be paid directly to his children. He also raised concerns about the missing nomination form and LOA.

Standard Life upheld part of Mr K's complaint. It said that, while it thought it had acted correctly and according to its provisions by using the date of death to calculate the value of Mrs K's plan, it had made a number of service related errors.

- It's telephone notes from March 2019 didn't reflect Mr K's concerns about the plan benefits not being able to be paid directly to his children.
- It didn't call Mr K back on 27 March and when it did call back on 28 March 2019 it didn't answer Mr K's specific questions.
- When Mr K called Standard Life on 3 April 2019, he requested a call back or asked to speak to the person he'd recently spoken to from another department. Mr K was very frustrated with the lack of answers at this point, but this wasn't logged as a complaint.
- The call in which Mr K was expected to decide how he wanted to take the benefits wasn't relevant because he still hadn't been given the answer to his questions about beneficiaries.

Standard Life said it would be willing to speak to Mr K again, explaining its decision to pay the benefits to him, and to ask if he would rather not be a beneficiary of the money. It said it would pay Mr K £300 in respect of the distress and inconvenience its service had caused him at what was clearly a difficult time.

However, Standard Life said there was no record of a nomination of beneficiary form being provided to it or being held on file.

But Mr K remained unhappy with that outcome, so he brought his complaint to us. He said Standard Life had refused to transfer his late wife's pension fund directly to him but had instead encashed the plan on the date of her death.

One of our investigators looked into the matter and said the complaint shouldn't be upheld. He made the following points:

- Standard Life had asked Mr K to contact its bereavement team to discuss the subject of who to pay the funds to. But to date Mr K hadn't taken up that invitation or given Standard Life permission to contact some of his children to ask if they would like to be considered as beneficiaries.
 - He was unable to confirm where the missing nomination and LOA forms might have gone. He said he was unable to conclude if they could have gone astray in the post or had been misplaced by Standard Life.
 - Standard Life's policy provisions made it clear from the outset that, in the event of Mrs K's death, it would calculate the value of the plan on the date of death and keep the money in cash until it could be transferred to a new plan in the beneficiaries' name. He thought that Standard Life had acted according to how it said it would.
 - Standard Life was the trustee of the plan and had discretion on how it should pay out the funds. It said it would take the family circumstances into consideration, but it wasn't for Mr K or any other possible beneficiaries to decide how the funds would be allocated.
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- The sentence from the 2018 annual pension statement which said, "*if you die before retirement we'll pay out a lump sum or a pension or both. The value would at least equal the current value on the date of death*", wasn't as clear as it could have been. It could have been seen to suggest the value was guaranteed until the next statement although the statement did also say the plan value wasn't guaranteed.
 - In any case the statement didn't constitute a contract, unlike the policy provisions, which did set out that it formed a contract between Standard Life and the late Mrs K.

- He thought Standard Life's offer for £300 in respect of the distress and inconvenience Mr K was caused, at a difficult time, was fair and reasonable. He thought that if Mr K had been given a single point of contact most of his questions could have been resolved.

Mr K didn't agree and made the following points in response:

- Standard Life's final response letter said that it was only prepared to pay the proceeds of the policy to Mr K. It hadn't remedied that situation or completed the transfer to the children in all the time since – so he didn't accept that Standard Life would be prepared to revise its discretion over who to pay the pension benefits.
- Whilst he didn't expect Standard Life to pay the full value of the plan as stated on 29 July 2018, he did expect Standard Life to immediately pay the value of the plan on the day he notified it of his wife's death. With Standard Life continuing to hold the cash, the beneficiaries have lost out on investment opportunities.
- Standard Life are benefitting from the increase in the value of the units within the pension. He thought that increase – over the amount it said it would pay him on the date of his wife's death, was around £5,500. He thought it was unfair for Standard Life to benefit from the increase.
- He was satisfied with the payment of £300 for the distress and inconvenience he'd suffered. But he thought this didn't take into account the approximate £5,500 he'd lost because of the dates Standard Life used to calculate the fund value and its refusal to pay the proceeds straight away.

Standard Life made the following points in response:

- It said that it had last communicated with Mr K in November 2019 when it made it clear that his claim was still outstanding. It said it couldn't pay the claim until it received instructions from Mr K.
- It's final response letter stated that, *"I noticed that the discretionary decision was made without taking into account your concerns about the death benefits not being paid to your children. If you would like to discuss this further or want the scheme administrators to review their decision – taking into account your children as potential beneficiaries – please contact our bereavement team..."* It thought this was a clear message that it would revisit its original decision if requested.
- It didn't think it had caused any delay in settling the claim. It said it calculated the value of the fund as of the date of Mrs K's death as its T&Cs said it would. It was in communication with Mr K thereafter and reminded him in July and November 2019 that his claim hadn't been settled. It said the money could have been available to Mr K shortly after his wife died – if it had been advised of that date when he contacted it in January 2019.
- It sold the funds on 2 April 2019, so it hasn't benefitted from continuing to hold them. This was because the funds could equally have fallen in value and therefore it would have had to make up any shortfall – so its general approach was to avoid being exposed to any fluctuations in the value after the date of calculation.
- It didn't believe it had caused Mr K to suffer any *"financial loss"*.

The investigator wasn't persuaded to change his original opinion, but Mr K made a number of further points.

- He said there was no reason for Standard Life to have to revisit its original discretionary payment as it should have filed the nomination of beneficiary form that had been sent to it. And it hadn't communicated further to say it had paid the other beneficiaries instead. He also didn't think that we'd considered Standard Life's email of 22 November 2019 which said, *"you are the chosen beneficiary of your wife's pension plan."*

- He had subsequently asked Standard Life to send cheques to each of the beneficiaries.
- He didn't agree with the statement about paying a value "*at least equal to the current value on the date of death*." He said the value on notification was higher, so in effect Standard Life, having not sold the units at that time, had made a 'profit' on the claim.
- There would have been no loss to Standard Life if it had sold the units on the date of notification which would also be the case if it adopted that approach more generally.
- We hadn't addressed the lack of response from Standard Life to his email of 22 November 2019.
- It was unreasonable to think that notifying Standard Life of his wife's death was a priority in January 2019 – only a month after she'd passed away.

So as the complaint remained unresolved it was passed to me to review.

My provisional decision

In my provisional decision I said that I thought Standard Life's offer of compensation for its overall service in addressing Mr K's complaint and for the delays in deciding which beneficiaries to pay was fair and reasonable. I made the following points in support of my findings:

- Standard Life's policy provisions said that, in the event of death, it would calculate the value of a policyholder's pension on the date of that death and then pay either a lump sum or an annuity to the dependants. So I thought it had paid the proceeds of the late Mrs K's pension according to how it said it would.
- It also said it would pay the proceeds according to an expression of wishes form but subject to its discretion.
- I did expect Standard Life to have made Mr and Mrs K aware of its provisions – which I think it did, and I wouldn't therefore interfere in what I thought was a legitimate commercial decision by Standard Life – even if Mr K held alternative views on how best it should have paid the pension proceeds.
- Mr K thought Standard Life had benefitted from the fall in the value of the plan but Standard Life had argued that it might have had to make up a shortfall in the value if it had conversely increased – which was also possible. So it adopted an approach which it thought meant the value paid out was guaranteed on a certain date and cancelled out possible market fluctuations.
- The previous annual pension statement seemed to suggest that Standard Life would pay the value of the plan at that time, in the event of Mrs K's death. I did accept the wording of the statement could have been clearer, but I thought as the statement also said the value wasn't guaranteed, that allowed for the use of a different fund valuation after the statement date in any later calculation.
- Standard Life was the trustee of the pension fund so it was responsible for deciding how the fund should be allocated.
- But it had a responsibility to take into account any other potential beneficiaries, so I thought it should have listened to Mr K's concerns regarding his children not benefitting from the fund. It seemed that Standard Life only offered to discuss that possibility in its final response letter of 27 May 2019.
- However, there was no evidence to show that Mr K had then contacted Standard Life to pursue the matter – so Standard Life hadn't been able to reconsider its initial decision of how to allocate the pension fund proceeds and complete the claim.
- This matter had been resolved during our investigation and Standard Life had paid the beneficiaries in March 2021. It did however offer £250 for the delays in finalising the claim.

- I thought that offer was fair and reasonable as Standard Life had made the payment as soon as was practical following its approach to the beneficiaries when it was provided with their contact details. I noted that it had paid simple interest at 8% pa on each payment to ensure the payments were in line with what they would have been if they had been paid at the earliest opportunity.
- But I didn't accept that the money could simply have been transferred to the beneficiaries from the plan when Standard Life was made aware of Mrs K's death. The policy provisions also said Standard Life would cancel all the units on death and this meant the plan would always have been encashed and then paid out to the beneficiaries according to the two options set out when the matter was resolved.
- I couldn't uphold Mr K's complaint about the poor investment performance of the plan as we wouldn't usually uphold such complaints about performance alone due to the very nature of investments. And there was no evidence to show that Standard Life had promised a guaranteed return on the plan in any case.
- It was difficult to say what had happened to the nomination of beneficiary form Mr K said his wife had sent to Standard Life before her death. Standard Life simply doesn't have a record of receiving it or adding it to the records. But I thought that Mr K was made aware it wasn't held when he spoke with Standard Life in January 2019. I thought he could have taken the opportunity to either make Standard Life aware of her wishes at that time or shortly afterwards. I was aware that would have been a difficult time for Mr K and may not have been a priority for him but he was aware at that time that payment might not be made in line with what he and his late wife had agreed.
- I thought the offer of £300 that Standard Life had made regarding its poor overall level of service was fair and reasonable. It had caused Mr S some degree of distress by not answering his questions fully and not giving him one point of contact. I also took into consideration that Mr K himself had accepted the offer was reasonable – but only in respect of the distress and inconvenience he suffered.

Responses to my provisional decision

Standard Life didn't have anything further to add, but Mr K didn't agree. He made the following points in response:

- The letter of authority had been sent to Standard Life in 2008, along with investment cheques which were received. And the wills had been changed as a result of his mother's death – not Mrs K's illness.
- This meant that he had to send the death certificate and will to Standard Life to cover the absent letter of authority. Had this already been on file it would have been easier for him to deal with the process as it was a very difficult time for him and hard for him to deal with the claim.
- Standard Life wanted to pay contrary to information contained in the nomination of beneficiary form – which had been provided along with the other document and cheques many years earlier.
However, even allowing for Standard Life mislaying the form, it should still have taken their conversation in March 2019 as the basis on which to ensure all the beneficiary options were taken into account.
- Standard Life didn't pay out the value of the units on the date it sold them. It took until March 2021 to pay the 'correct' beneficiaries.
- He didn't think I'd dealt with his second complaint about Standard Life taking 24 months to finally pay the claim, nor his escalation of that complaint which covered a period of December 2020 to March 2021. He thought this complaint should have been dealt with separately and found my findings to be "*hard to follow*." His view was that Standard Life had acted unfairly over the delay in making payment and he hadn't

received any compensation for that fact. He had already contacted the Pensions Ombudsman about the long delays and noted we had responded to the issue without receiving his submissions on the matter.

- These delays meant that his children had missed the opportunity to invest the funds they should have received in May 2019. He calculated that this had led to a consequential financial loss of over £11,000.
- The issue of the beneficiaries had been raised by him as early as 2019 and Standard Life should have asked him the necessary questions to ensure the matter was addressed at that time – not in March 2021.
- He wanted confirmation that I'd seen the 10 emails he sent to Standard Life between December 2020 and March 2021 about the payment to his children.
- He didn't think £250 was sufficient compensation for the long delays in Standard Life correctly meeting the claim.
- Standard Life had caused confusion by involving numerous different employees in his claim and had provided lots of unnecessary correspondence which all looked like a planned attempt to delay payment. He noted payment was eventually made just before the two years passed which, if exceeded, would have meant there were tax implications to paying the lump sums to the correct beneficiaries.

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.

I've carefully considered Mr K's further submissions and additional points at great length but having done so I see no reason to depart from my provisional findings. Mr K's response to my provisional decision as well as his original correspondence demonstrated how strongly he felt about this matter. And I don't take lightly how important this is to him following a difficult time for him. I note his frustrations at having to deal with a number of institutions following his wife's death and the difficulties he encountered, so I know he'll be disappointed with the outcome here – I'll therefore explain my final reasons.

The date used to determine the value of the claim to be paid

Mr K's position was always that Standard Life should have used either the date he informed it of his wife's death or the date it encashed the units in the pension plan in order to calculate the value of his claim. He says Standard Life wouldn't have suffered any loss in that situation as it would have paid out the actual value of the plan at the appropriate time.

I can understand Mr K's position here and his frustration that Standard Life's existing approach to this situation caused the beneficiaries to receive a lower amount than they would have done under his alternative. But Standard Life did have a longstanding approach to this as was set out in the pension policy provisions at the time the late Mrs K took out her plan.

Provision 12 was about "*Benefits on death before your vesting date*" and stated that "*if you die before the vesting date, we will cancel all your units and use the policy proceeds in accordance with the rules to : (a) pay a lump sum: (b) buy an annuity payable to a dependent or dependents: but only up to the limits allowed by the rules.*"

And "*for the purposes of provisions 12, 13 and 14, the unit prices are the ones set for the appropriate date. For: (a) Provision 12, the appropriate date is the day that you (or your ex-spouse) dies.*"

The provisions were clear and confirmed that Standard Life would always have used the date of Mrs K's death to value the plan – regardless of when Mr K made it aware of her death. And it was also clear that the units within the plan would be encashed and used to pay a lump sum or annuity to the beneficiaries – so there was no possibility that the plan would simply be passed over to the beneficiaries in the form it had existed.

Standard Life has explained that its reason for this approach is to ensure there are no market fluctuations that might apply to a plan after a policyholder dies. It said claimants would be unhappy if the value fell after that date, so it thought the fairest approach was to ensure there were no fluctuations. I wouldn't normally interfere with a business' legitimate commercial decision – which is what Standard Life has decided here, but I would expect its approach to be made known to the policyholder at the time the policy was taken out, which I believe it was, and the provisions were still available for consideration at the time of the claim.

Standard Life made its approach known in the policy provisions which is what I would have expected it to do. I know Mr K believes a different approach should be adopted – but that doesn't mean Standard Life's approach is wrong. I think Standard Life ultimately paid the claim according to the date it said it would use in its provisions.

Mr K has pointed to some confusion in Standard Life's annual pension statement for 2018 which seemed to suggest that *"if you die before retirement we'll pay out a lump sum or a pension or both. The value would at least equal the current value on the date of death."* The value at that time was £31,422.45 so Mr K says that ought to have been the amount to be paid out. But, while I agree the statement could have been clearer, I'm satisfied that a reasonable interpretation of this is that the full current value at the date of death would be paid without any penalties or charges.

But even if a different interpretation was reasonably possible, the same section also stated that *"this current value is not guaranteed"*, which I think confirms that the £31,422.45 wasn't a guaranteed value and would fluctuate so that in the event of Mrs K's death a different value would most likely apply – calculated on that date of her death.

Payment of the claim to the correct beneficiaries

When Mr K began communications with Standard Life over the claim in March 2019, he raised the issue of who the claim should be paid to as beneficiaries. He suggested that, in order to avoid "gifting" the funds to his children if they were paid to him, it might be better for the payment to be made to his children. Mr K said this was noted in a nomination of beneficiary form that had previously been sent to Standard Life – which is an issue I'll address later.

But it would seem Standard Life took no further action in the consideration of Mr K's children as sole beneficiaries and the matter was only picked up again in Standard Life's response to Mr K's complaint in May 2019. At that point Standard Life asked Mr K to contact a separate team to discuss the matter of it exercising discretion over who to pay the claim to.

As the sole trustee of the fund it was for Standard Life to decide to which beneficiary it should make payment. I think that Standard Life should have given more consideration to Mr K's request of March 2019 and it's accepted that it made an error here. Its offer of £300 was primarily for the error in not taking that into consideration which I think was fair and reasonable.

But in the response of May 2019 I think Standard Life gave Mr K the opportunity to approach it and discuss the matter further – I think it would have reversed its decision, as it later did, if Mr K had made his case at that time. But Standard Life couldn't reverse its decision without

that discussion and the provision of further information it required about the beneficiaries – so I don't think it did anything wrong after May 2019 because it needed Mr K's input and authorisation, and the available evidence doesn't support the position that the matter was discussed further after that time. I know Mr K says it took Standard Life nearly two years to pay the claim correctly, but I don't think it was in a position to do so from May 2019 until the matter was raised again in December 2020.

The question of the delay in making the payment correctly wasn't a complaint that Mr K made when he first came to us. It only unfolded during our investigation process and the investigator thought he had resolved the matter when he told Mr K that payment had been made to the children – in line with the original request, with the addition of interest backdated to the date the claim should have been paid. There was also another payment of £250 for the distress and inconvenience caused by that particular matter.

In my provisional decision I said that, *"Standard Life has answered this complaint point (about the delay in paying the children) but I note our investigator didn't do so, so I've provided some provisional findings on that matter so that both parties can make comments if necessary"*. I said that, having considered the timeline of events from December 2020 to March 2021 – when the payment was completed, I thought the offer of £250 for the inconvenience caused and the fact that payment had been made with interest added, was a fair and reasonable resolution and I didn't think Standard Life needed to do more.

Mr K thought the offer wasn't sufficient, but he also thought I shouldn't have tried to answer the subsequent complaint without further submissions from him, and that my decision on this matter was *"hard to follow and confusing"*. I did ask both parties to provide any further evidence they had regarding this point but nothing further was submitted. However, I've now checked with Mr K whether he would like me to issue my final findings on this part of his complaint or if he would like to take his complaint to the other dispute resolution service that he had previously approached.

Mr K provided some further submissions about the poor service and delays he said Standard Life caused during this period. He also said it had paid the final claim net of basic rate tax which meant he now had to engage with HMRC to get a refund of the tax that was paid by the non-tax paying beneficiaries. Mr K confirmed that he wanted me to answer this part of the complaint as he felt it would cost him more time and money to have it looked at again elsewhere.

So, I've carefully reviewed all the evidence of the communications between Mr K and Standard Life from December 2020 and I remain satisfied with the timeline of events I'd been given and of my findings at that time – which were that the matter had been resolved fairly and the additional offer of compensation was reasonable in the circumstances. I've seen nothing further to persuade me that my conclusion was incorrect. I think Standard Life was consistent in trying to contact Mr K for the details of the other beneficiaries and when it was provided with such information it paid the claim, correctly, in a timely manner.

I note that Standard Life also backdated the payment as if it had been made following a claim after Mrs K's death, adding interest at 8% pa simple – higher than the rate of interest it would usually apply.

So I think Standard Life has been fair and reasonable in meeting the claim. And I think it's important to confirm that it has also acted in line with normal procedures to pay the claim net of basic rate tax – which is what its required to do, so that individual claimants can adjust their tax position with HMRC according to their individual tax status.

The missing nomination form

One of the main problems here was that when Mr K first contacted Standard Life in January 2018, he asked about the beneficiaries as named in a nomination of beneficiary form he said was lodged with Standard Life before his wife's death. He said the form was sent to Standard Life many years before and should have been on file. He thought not having this information led to him having to process further duplicitous information and caused the funds not to be paid according to his late wife's wishes, which has subsequently also led to a lost investment opportunity because of the delay in making payment.

As I said previously, I'm unable to determine what happened to the form in question. I don't dispute what Mr K says about it being sent but at the same time I also understand that Standard Life simply doesn't have a record of the form on file.

The form may have been lost in the post or been mislaid by Standard Life – although it might also reasonably be argued that, had it been submitted earlier, Mr and Mrs K would have expected confirmation of its receipt. But either way when Mr K contacted Standard Life in January 2018, he was told the form wasn't on the file and he would have been aware at that time that payment wouldn't be made in line with those wishes as they hadn't previously been received.

I can understand Mr K's frustration at learning that he would have to go through the claim process providing evidence and information that he felt should have already been available to Standard Life. Especially as this was a difficult time for him, and he couldn't simply provide another nomination form in the circumstances. But as I've already said Standard Life was responsible for not properly dealing with his consideration from March to May 2019 – for which I think its offer of compensation is sufficient for that mistake. However, I think it was for Mr K to contact Standard Life's separate team in May 2019 to explain why it should reverse its decision to pay him and to instead make payment to his children.

So, although the missing form was crucial in adding to the confusion and delay here, I can't reasonably say it was Standard Life's fault that the form wasn't held as a record and I think it explained that situation to Mr K at the first opportunity when he contacted it in January 2019.

Summary

Ultimately, I'm satisfied that Standard Life made a payment for a claim to the appropriate beneficiaries, calculated using the value of the fund based on the date of the late Mrs K's death as it said it would in its policy provisions. I'm satisfied appropriate payment with interest has been made. But by its own admissions Standard Life's overall service wasn't without errors and I can see how the lack of information Mr K was given when he contacted Standard Life in March 2019 meant he was unable to finalise a decision about the beneficiaries. Placing this alongside a lack of returning phone calls and an inability to allow the same person to deal with his claim this would have had an impact on Mr K, particularly at what was undoubtedly a difficult time for him.

So I think Standard Life's offer of £300 for the impact of those errors is fair and reasonable in all the circumstances.

And I also note the trouble and upset Mr K suffered during his attempt to get the claim paid to his children – and while I remain of the view that Standard Life wasn't responsible for the whole two year period it took to make payment, I think a further offer of £250 for its part in the delay is fair and reasonable.

My final decision

I uphold Mr K's complaint against Standard Life Assurance Limited in part. Standard Life should pay Mr K the total of £550 for the trouble and upset caused to him during this process if it hasn't already made either partial or full payment to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs K to accept or reject my decision before 17 June 2022.

Keith Lawrence
Ombudsman