

## The complaint

Mr N complains that Standard Life Assurance Limited and its agents didn't pursue the signing of a lease he'd agreed with the tenants of a commercial property held in his SIPP (Self Invested Personal Pension). He says this resulted in the tenant leaving the property on shorter notice than if the lease had been signed, and he's lost out financially in a number of ways as a result.

## What happened

I issued two provisional decisions on this complaint – the first dated 23 November 2022, and the second dated 14 December 2022. I set out the background and circumstances of the complaint as I understood them at the time in my first provisional decision.

In summary, Mr N held a commercial property in his SIPP. Mr N had agreed new terms with his existing tenant. An e-mail from the tenant dated 8 October 2019 said:

*"Many thanks for the above email. Apologies for the delay, everything was just being discussed on the board. We are ok with everything detailed above. If the 1 year break clause could be added into the new agreement that would be great. We look forward to receiving the new documents."*

The new tenancy was due to start on 21 October 2019. The rent was £28,587 per annum for a three-year period. There was a one-year break clause subject to six months' prior written notice. Standard Life (for ease I've referred to Standard Life and its agents as Standard Life) had the new tenancy agreement by 29 October 2019. Standard Life was instructed to complete the new lease on 30 October 2019. My understanding when making my first provisional decision was that the lease wasn't sent to the tenant until 20 January 2020. The tenant didn't sign the lease, and Standard Life didn't chase the tenant for its signing.

The tenant subsequently provided notice to end the tenancy on 24 August 2020. The tenancy was ended on 15 December 2020. The tenant hadn't been paying rent, but it subsequently paid all the rent it owed up to 15 December 2020 (at the old rate) in March 2021.

Mr N complained about the matter to Standard Life. Standard Life accepted that its initial level of service was not to the standard it should have been. It said it was sorry that it hadn't chased the new lease agreement. But it said this was due to the unprecedented situation (the Covid pandemic) at the time. It said it didn't think its lack of service had caused the losses that Mr N had claimed, as it couldn't have forced the tenant to sign the new lease. It said it was clear the tenants weren't wanting to sign the new lease given the situation; the tenant's company was closed for a period during this time, and it had been sent the new lease to sign in January 2020.

Standard Life offered to refund 50% of the yearly administration fee it charged. And reduce the cost of the work it had undertaken on the previous lease and new lease to be put in place for the backdated rent by £200, and capped it at £850 + VAT, in recognition of the level of service received.

In my first provisional decision I said, in summary, that there appeared to have been a three-month period between Standard Life receiving the new lease at the end of October 2019 and it sending it onto the tenant on 20 January 2020. I said that in my view, unless there had been good reason not to, Standard Life should have sent the new lease to the tenant in early November 2019. And if nothing had been returned it should have chased it in a timely manner.

I accepted that the tenant may have required final approval to agree the lease from its office overseas. And that it appeared the impact of Covid on the tenant's business was a major factor in it not renewing the lease. But I said the situation with Covid was different in late 2019. And I didn't think its impact and the significant restrictions imposed in March 2020 would have been reasonably predicted at that point (late 2019).

The evidence that we did have showed the UK arm of the tenant had agreed to the terms of the lease in October 2019. So I thought if the lease had been chased and the tenant had been pressured to make a decision earlier, it was more likely than not, on the balance of probabilities, that it would have accepted the terms sometime before the end of 2019, and before the impact of Covid became clear.

So I thought the complaint should be upheld. And I went on to set out what losses I thought reasonably flowed from Standard Life's error, and how Standard Life should calculate and pay Mr N fair compensation.

I asked Mr N and Standard Life to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr N said, in summary, that Standard Life had failed in two of the most basic aspects of its role in managing his SIPP responsibly and safely:

- 1 – the contract wasn't signed
- 2 – as a consequence no rent was collected.

Mr N said the previous tenant subsequently moved into a smaller property. And the absence of the longer notice period they should have served might have materially changed their mind.

He said the tenant might also have been open to reducing their tenancy from two floors to just one floor – it originally only had the one floor. Mr N said because of Standard Life's failings, the potential opportunity to negotiate wasn't open to him. It would have led to a continuing tenancy income and reduced the empty building costs.

Mr N also said that he'd had a difficult time, and the matter had caused him both distress and taken up a significant amount of his time and energy.

Standard Life said, in summary, that my understanding of the timing of when the lease had been sent to the tenant was incorrect. It said it had received the instruction for the new lease on 30 October 2019. And the renewal lease had been sent to the tenant on 5 November 2019. On 10 December 2019 the tenant had e-mailed it confirming the renewal lease was with its overseas legal department. And the tenant e-mailed it again on 10 January 2020 confirming the lease was still with its overseas legal department. Standard Life provided copies of the e-mails and the investigator sent copies on to Mr N.

Standard Life said this demonstrated the lease was issued to the tenant very quickly. And that the tenant appeared committed to signing the lease up to January 2020; but ultimately

didn't. It said it therefore didn't appear reasonable to hold it responsible for the tenant not signing the lease. It said if the tenant had been intending on signing the lease it would have paid the full amount of the new rent as it knew what it was. It said it thought it was unlikely that the tenant was going to sign the new lease.

I issued a second provisional decision on this complaint on 14 December 2022. I have copied the relevant section outlining my provisional findings below:

***"What I've provisionally 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 am sorry to disappoint Mr N. But having considered the further evidence and arguments provided by the firm and having a different understanding of the facts of the case, I'm now minded to change the compensation I had intended on ordering Standard Life to pay. I am still of the view that Standard Life failed to provide a timely and efficient service to Mr N overall. However I don't think the same losses flow from its failings as I set out in my provisional decision.*

*My original understanding was that Standard Life was informed of the lease renewal details at the end of October 2019, but failed to send them onto the tenant until 20 January 2020. So it appeared that Standard Life had done nothing with the lease for a near three-month period; the tenant hadn't received it until late January 2020, and there was no further chasing of it.*

*I think the fact that Standard Life sent the tenant the lease on 5 November 2019, and in particular that the tenant had in fact been considering but not signing it, is material.*

*It seems that Standard Life did initially send the tenant the lease in a timely manner. And it had updates from the tenant in December 2019 and January 2020 saying it was still considering the lease. As I understand it, Standard Life didn't then chase the tenant or make any follow up enquiries after January 2020. And the tenant didn't provide notice to quit until August 2020. So in my view Standard Life didn't provide an acceptable level of service from January 2020.*

*However a firm making a mistake, or failing to do something, in itself, doesn't necessarily create an entitlement to compensation. It has to be shown that the mistake or failure caused the losses that are being claimed.*

*It now appears that the tenant had been considering the lease from early November 2019 through to January 2020, but hadn't at that point signed it. In my view Standard Life should have chased it – for example in late January 2020, February and or early March 2020. However by the middle of March 2020 the potential impact of Covid was becoming more real, and clearly by the time of the first lockdown - 23 March 2020. So I don't think it's likely the tenant would have signed the new lease from around the middle of March 2020 irrespective of the actions, or lack of, from Standard Life.*

*So I think the key question is whether, had Standard Life chased the tenant in late January through to March 2020, it was more likely than not that it would have signed the new lease. Having given this careful consideration, I don't think, on balance, it's reasonable to conclude that it would.*

*The position is different here to my provisional decision. It is evident that the tenant had had the details of the new lease since early November 2019. But it still hadn't signed it despite it*

*obviously being on its radar given its e-mails to Standard Life about it. It had therefore made a conscious decision not to sign it up until at least 10 January 2020. I accept that it's possible the tenant would have signed the lease if Standard Life had chased it - as it should have. But in my view, based on the balance of the evidence that we do have, I don't think that was more likely than not given it had already been considering it for some time and, for its own reasons, hadn't signed it.*

*Accordingly, my view remains that Standard Life made an error, in that it failed to provide an efficient service and didn't chase the lease from late January 2020. Whilst I think that has caused Mr N material distress and inconvenience, I don't think it caused the loss of the rental income that Mr N has claimed.*

*Mr N said the previous tenant subsequently moved into a smaller property and had it been on a longer notice period it might have materially changed its mind. He also said the tenant might have been open to reducing its tenancy from two floors to just one floor. However, as I said in my provisional decision, if the tenant had signed the new lease it could have still given notice in April 2020. In my view it could still have made the same decisions – moved to a smaller property or rented only one floor – when it didn't sign the tenancy. I don't think it necessarily follows that it's likely it would have made different decisions about those matters because it hadn't signed the tenancy.*

*I realise that my revised findings will be very disappointing to Mr N, in particular given what I said in my provisional decision. However I have to make my decision on the balance of the evidence. And in light of having a different understanding of the circumstances, for the reasons I have set out, although I don't think Standard Life provided an acceptable level of service overall, I don't think the loss of rental income was caused by its failures. Accordingly, I have amended the compensation that I was originally minded to order Standard Life to calculate and pay.*

### ***My provisional decision***

*My provisional decision is that I uphold Mr N's complaint in part.*

*Standard Life offered to refund 50% of the yearly administration fee they charged. And reduce the cost of the work they had undertaken on the previous lease and new lease to be put in place for the backdated rent by £200, and capped it at £850 + VAT, in recognition of the level of service Mr N received. I think that offer is fair for the lack of service, and Standard Life should make arrangements for that offer to be implemented if it hasn't done already.*

*Mr N has said that he's had to put his retirement plans on hold because of the problems associated with his pension. He's said it's put him through very significant amounts of personal stress and taken up a significant amount of his time and energy. I can see the time and effort Mr N has put in when making his complaint. Standard Life Assurance Limited should also pay Mr N £500 for the distress and inconvenience I'm satisfied the matter has caused him."*

*I asked Standard Life and Mr N to provide any further evidence or arguments that they wanted me to consider.*

*Mr N said, in summary, that it was all very well sending the lease, but Standard Life should also have been following it up. He said Standard Life didn't do a fundamental part of its job.*

*Mr N referred back to the e-mail he'd received from the tenant on 8 October 2019 which said, referring to the lease:*

*“Apologies for the delay, everything was just being discussed on the board. We are ok with everything detailed above.”* Mr N said the representative also chased him directly on 16 October 2019.

*“I was just wondering if you have a timeframe on the new documents? Understand its only been 5 days since my last email.. We are just a little concerned on the lease agreement running out on the 20th..”*

Mr C said it was clear that the UK board approved the new lease in the middle of October 2019 and were very keen to get it in place. Mr N also referred to the tenant’s comments in its response to Standard Life dated 20 January 2020:

*“Whilst we finalise the lease with our [overseas] legal department please do let me know if any immediate payments are required, as we can turn this around quickly.”*

He said the tenant was contacting the overseas legal department to finalise the lease, not to consider whether to renew it or not. Mr N said the language was clear and the tenant wasn’t “considering” the lease, but finalising it.

Mr N said Standard Life’s mistakes/failures clearly led directly to the losses. Mr N referred to part of my provisional decision which said:

*“So I think the key question is whether, had Standard Life chased the tenant in late January through to March 2020, it was more likely than not that it would have signed the new lease. Having given this careful consideration, I don’t think, on balance, it’s reasonable to conclude that it would.”*

Mr N said he disagreed with my finding, and for the reasons he’d outlined above he thought on the balance of probabilities it would have signed it if chased. Mr N said instead the tenant remained in the building and wasn’t paying rent. Mr N said Standard Life had confirmed to him in October 2019 that the lease would be sent for signing. And he only realised that something was wrong in August 2020 when he was contacted by the tenant (not Standard Life) to say it wasn’t renewing the lease – a period of 10 months. Mr N said this was negligent behaviour on the part of Standard Life, and to describe it as an error (as I had in my provisional decision) didn’t reflect the severity of the problem.

Mr N also said I had understood the break clause incorrectly, and that the tenant couldn’t implement the break clause until 21 October 2020.

In summary, Mr N didn’t agree with my revised provisional findings. He said in his view, the loss of rental income was caused directly from Standard Life’s repeated errors and failings.

Standard Life said it had nothing further to add about the merits of the complaint. However it said that the £200 reduction was applied to the bill for the lease, and the 50% reduction in fee was paid back into Mr N’s SIPP in June 2021.

### **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’ve seen no reason to depart from the findings in my second provisional decision dated 14 December 2022 as set out above.

As I explained in that decision, it's evident that Standard Life had e-mailed the tenant details of the new lease on 5 November 2019. The tenant's e-mail dated 10 December 2019 said the tenant had submitted the lease to its overseas legal department "...for review". And the e-mail dated 10 January 2020 from the tenant said "*Whilst we finalise the lease*" with its overseas legal department.

Mr N said this e-mail refers to finalising the lease, not to considering whether to renew it or not. However whilst I understand the point Mr N makes, I think the two are mutually dependent. Whilst the tenant may have been minded to renew the lease, it appears this was still subject to agreement of its terms by the overseas legal department. For its own reasons, it hadn't completely agreed to the terms at that stage. And clearly the tenant hadn't actually signed the new lease at that point, despite having it since early November 2019.

I don't wish to downplay the level of poor service provided by Standard Life; after initially sending the tenant the new lease, there was a complete failure to deal with it being left unsigned/not agreed.

However, ultimately, I have to decide the likely consequences of that poor service. And in the particular circumstances, for the reasons I set out in my second provisional decision, I don't think it's more likely than not that the tenant would have signed the lease if Standard Life had chased it - either prior to the 10 January 2020 e-mail or in late January through to March 2020. The overseas legal department had had time to consider the terms of the lease and made a conscious decision not to agree to its signing up until at least 10 January 2020. That was the factual position at that point. And I've seen no persuasive evidence that if Standard Life had chased the tenant either prior to or after receipt of this e-mail, it would more likely than not have agreed to the new tenancy.

Mr N has said that I misunderstood the terms of the break clause in the lease. I have taken the terms from the draft lease itself – section 48.1. However given that I'm no longer persuaded that the tenant would have signed the lease had Standard Life chased it, I don't think its material in any event.

### **Putting things right**

Standard Life offered to refund 50% of the yearly administration fee they charged. And reduce the cost of the work they had undertaken on the previous lease and new lease to be put in place for the backdated rent by £200, and capped it at £850 + VAT, in recognition of the level of service Mr N received. I think that offer is fair for the lack of service, and Standard Life should make arrangements for that offer to be implemented if it hasn't done already.

Mr N has said that he's had to put his retirement plans on hold because of the problems associated with his pension. He's said it's put him through very significant amounts of personal stress and taken up a significant amount of his time and energy. I can see the time and effort Mr N has put in when making his complaint. Standard Life Assurance Limited should also pay Mr N £500 for the distress and inconvenience I'm satisfied the matter has caused him.

### **My final decision**

My final decision is that I uphold Mr N's complaint in part.

I order Standard Life Assurance Limited to pay compensation to Mr N as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 2 February 2023.

David Ashley  
**Ombudsman**