

## **The complaint**

Mr S complains that Wren Sterling Financial Planning Limited (Wren Sterling) mis-sold a product that was not suitable to his situation or needs or clearly defined when he set up the product. Mr S says he paid set up and management fees for an investment that is now unmanaged. He will also incur more costs to find a new financial adviser.

## **What happened**

I set out the background to this complaint in my earlier provisional decision, for clarity I repeat it here.

In 2019, Mr S took retirement advice from Wren Sterling. It recommended that he set up a new pension plan with Standard Life and make a one-off lump sum contribution to it from his UK limited company to begin saving for his retirement, which Mr S thought would be at age 60.

In 2020, Mr S was advised to make a further lump sum contribution for the same purpose, but this time with a personal contribution.

The payments made to Standard Life were invested in funds managed by HSBC and Vanguard.

It was agreed Wren Sterling would also provide ongoing advice/servicing for the new plan.

In June 2020, Mr S moved to Spain. At first, he thought this would be a temporary move, but his circumstances changed, and he didn't leave and is now a Spanish resident.

On 16 December 2020, Mr S sent his adviser an email advising that he had decided to move to Spain and applications for residency were in process. This email was acknowledged by Wren Sterling, and it was confirmed that if he moved to Spain "it won't impact the account". During this time Mr S still held a UK address and this was the address Wren Sterling had on file for him.

In March 2022, Mr S was contacted by Wren Sterling to arrange his annual review. During this call Mr S explained he had now secured permanent residency in Spain in the last 12 months. He explained he would not be returning to the UK. Mr S said he couldn't remember having an annual review the previous year. The representative said a letter was sent in May 2021 to his UK address. Mr S confirmed mail sent to his UK address did reach him eventually, but he was now looking to purchase a property in Spain and would update Wren Sterling with his new address when he had done so – he explained he hadn't done so before as he had been renting and thought it better to inform them when he had a permanent address. He was advised that it would no longer be possible for Wren Sterling to provide financial advice as he was no longer resident in the UK.

Mr S then contacted Wren Sterling to discuss his concerns about his investment in June and August but had no response. In December 2022 he complained about the poor service and Wren Sterling's failure to respond to his concerns.

On 6 January Wren issued its final response. It explained the rules set out by the Financial Conduct Authority (FCA) govern its advice process and as Mr S was no longer a UK resident it couldn't provide him with financial advice. But it acknowledged it had provided poor service in failing to respond to Mr S's concerns and recognised it could and should have asked his

permission to terminate the advice relationship which would have ensured Mr S paid no further ongoing advice charges from his plan. It offered to pay Mr S £200 for the poor service and to refund the fees already deducted since March 2022 which amounted to £280.88.

Mr S was disappointed with this outcome. He said he didn't believe the Client Agreement and Terms of Business were transparent. He said whilst it was not documents in the suitability report he had several discussions with his adviser around the likelihood of him moving abroad due to the nature of his occupation and so he brought his complaint to this service.

An investigator looked into things for Mr S. In his telephone call to Mr S, he said he wasn't upholding the complaint. He didn't agree that Wren Sterling had mis-sold the pension plan based on Mr S's circumstances at the time and felt the offer made by Wren Sterling for the poor service and refund of advice fees was fair and reasonable.

Mr S didn't agree. He said although he had no further evidence to provide, he had not said at any point that he would remain in the UK for the duration of the term of the pension plan nor was he aware of the requirement to do so in order to retain their services. He feels that Brexit has left him at a disadvantage and that he should have been made aware of the potential impact on the suitability of this product for his retirement.

In my provisional decision I said I was upholding Mr S's complaint in part.

I said the fact find showed, at the time of the advice, that Mr S was a Dutch citizen resident in the UK, worked through a UK registered limited company, paid UK tax and was looking to purchase a home in the UK. The Financial Review Form from May 2019 does not record any discussions about any intention or likelihood of Mr S moving abroad at the time he received the advice with regard to his pension planning.

Mr S has said he did have some discussion about the possibility that he may move abroad and as he is a Dutch national working with overseas clients, it may have been reasonable to expect that at some point in the future his situation may change. I said it's important to note that financial advice can only be given in the moment. Personal circumstances can and do change especially over the term of a retirement plan which could be 20-40 years in duration but at the time of the advice I haven't seen anything to suggest Mr S was likely to relocate to another country in the near future.

So, at the time of the advice, Mr S was a UK resident/taxpayer and the owner of a UK limited company. As saving for retirement was one of his objectives, I said I was persuaded the recommended contribution/product was likely suitable based on his circumstances at the time, as it was the most tax efficient way to achieve his aims for retirement.

I explained it's also important to say that at the time of the advice and up until March 2021 Wren Sterling had the appropriate permissions to provide reviews to non-UK residents, providing they returned to the UK for the review. I don't think that Wren Sterling or Mr S could have foreseen the changes to the landscape following Brexit but as Wren Sterling points out post-Brexit transitional arrangements ended in 2021 without an agreement on the provision of financial services, and this made it more difficult for UK companies to provide services to European Union residents. It updated its policy on overseas clients in March 2021.

I said I could appreciate that Mr S thought there should have been some information around this within the Terms of Business or the Client Agreement, but I don't agree. Wren Sterling's Client Agreement outlines the services provided to clients and the charges for those services. The Agreement doesn't make any reference to limitations on advising non-UK

residents because at the time (2019) Wren Sterling was able to advise UK residents, but also non-residents if they were in the UK at the time that advice was given.

Mr S moved to Spain in June 2020, but this was supposed to be a temporary situation that ultimately became a permanent move and he didn't tell Wren Sterling of this until March 2022, for perfectly plausible reasons as he wanted a permanent home before updating everyone with addresses. But I said, even if he had told his adviser that he had a definite intention to apply for permanent residence in Spain from late 2020, this would not render the advice to make the pension contributions to Standard Life unsuitable. As I have already said this was still a suitable way for Mr S to make savings towards retirement at age 60, with the tax advantages a pension plan can offer.

So, I said I was satisfied the recommendation was suitable at the time of the advice. Mr S has said he has been left with "unmanaged" funds. It's probably useful to say that the contributions were paid to a pension plan administered by Standard Life. Although they were invested into funds recommended by Wren Sterling, the funds are managed by HSBC and Vanguard. So, the fund is being managed and will continue to be so.

I explained I had listened to the call between Wren Sterling and Mr S, and it seemed to me he was aware of that and had already spoken to his adviser about leaving the funds there for 20-30 years. So, I'm not sure at what point he became concerned about being left with "unmanaged" funds, hopefully he is reassured that his investment is proactively managed. Mr S also has online access to the Standard Life plan, and if can choose to vary the investments at any time. He has the option to appoint a suitably authorised financial adviser to provide an ongoing service if he wants to. He can seek either a UK-based adviser with passporting permissions to advise Spanish residents, or a Spain-based adviser with permission to advise on UK pensions. So, I said whilst I appreciated his disappointment that Wren Sterling can no longer provide this, I cannot direct a business to offer services it has chosen to withdraw.

I said that although I am satisfied the recommendation was suitable at the time of the advice, I am in agreement that Wren Sterling failed to provide Mr S with good customer service and also failed to act when it was aware it could no longer advise Mr S. That meant it took ongoing advice charges for a service it couldn't and didn't provide.

I said In terms of the failure to respond to Mr S's emails regarding his concerns I can see how this added to Mr S's frustration and caused him unnecessary distress and inconvenience. I find the offer of £200 to be fair and reasonable and in line with what this service would award in the circumstances of this complaint.

With regard to the deduction of ongoing charges for advice. It seems reasonable to me that any fees or charges from the point Wren Sterling where aware Mr S was permanently resident in Spain should be refunded. Wren Sterling has calculated this already to be £280.88.

In terms of how redress should be calculated there are two options as our investigator has already said and Mr S should indicate which he prefers depending on which can be facilitated.

1. The charges are paid back to the Standard Life plan. The charges were deducted from the Standard Life plan by cancelling units. So, I would direct that Wren Sterling liaise with Standard Life to recreate the cancelled units so that the current value of the fund would be the same as it would have been had the charges not been paid. In this way, there would not be a cash payment made to Mr S for these charges.

There may be some logistical issues in that firstly it requires that Standard Life can facilitate this, and if they cannot it might instead require that any payment from Wren Sterling is treated as a third-party pension contribution. This could present further issues as Mr S is no longer a UK resident and he should seek advice on his circumstance.

2. If a cash payment was to be made to Mr S I would direct Wren Sterling to calculate the difference between the current value of the fund and what the notional value would be if the charges had not been deducted. The gross amount of this difference would be the amount of the payment we would expect them to make to you. However, any payments made from a UK pension are taxable; 25% is paid tax-free but any further payments are assessed for Income Tax. To reflect this, we would recommend that the payment is reduced by a notional amount of 15%.

With this option, the deduction of a notional amount of tax may mean the net payment you receive would be lower than the offer that has already been made by Wren Sterling. Both parties responded to my provisional decision.

Wren Sterling had attempted to contact Standard Life to establish if a payment can be made into Mr S's plan. To date it had had no response and maintained its position that making the payment of £280.88 would actually be more beneficial to Mr S.

Mr S did not accept my provisional findings. He said he had not authorised Wren Sterling to contact Standard Life to discuss any option of making a payment into his SIPP. He pointed out they are not his advisers and as he has rejected the offer made by Wren Sterling, he does not accept authorise any payment into his account.

Mr S also feels very strongly that this is not about Wren Sterling refunding any advisor charges, rather the advice in the first place, which he maintains was incorrect. He remains of the view Wren Sterling sold him an inappropriate and non-functional investment product and that's why he feels his investment is tied up and unmanaged and he now needs to find and pay for a Spanish financial advisor with UK passporting rights.

### **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 have not received any additional information to persuade me to alter my provisional findings and so it follows that I am upholding this complaint in part. There has, however, been further submissions regarding any redress and so I have considered how best to resolve this complaint.

I have summarised this complaint in less detail than Mr S has done and, I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here which is that Mr S feels very strongly that his retirement plan was mis-sold because Wren Sterling did not make it clear at the time of the advice that a change in circumstance such as Mr S permanently living outside of the UK would mean he would no longer be able to retain Wren Sterling as

his advisers and he would effectively be left with an unmanaged plan for the remaining duration of the investment.

In deciding this complaint, I have taken account of the submissions that have been made by Mr S and by Wren Sterling including those provided after I issued my provisional decision. There are some differences in those recollections. So, where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to have happened.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead, this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I appreciate Mr S feels strongly about the advice he received. I haven't received any new information regarding the advice process to alter my provisional findings. I've explained that where there are conflicts around what was said, I have to reach a decision on a balance of probabilities. I wasn't able to see any evidence to suggest Mr S wasn't UK resident nor that he intended to move abroad in the near future following the advice he received for his pension planning. For the purpose of the advice, he was UK resident, provided a UK address and was a company director of a UK limited firm. Even if I'm wrong about that, Brexit happened after he received his advice and there were a number of issues, as Wren Sterling has explained with regard to the rules and regulations or passporting rights for firms in the financial advice sector. The advice given at the time, so far as I am able to see, was suitable and appropriate for Mr S's needs. Following that advice both Mr S's personal circumstances and the business requirements for Wren Sterling changed – but that cannot be applied retrospectively to the advice provided.

So, whilst I appreciate Mr S will be disappointed, I'm not able to uphold this aspect of his complaint.

I have upheld the poor customer service and the ongoing charges made by Wren Sterling to Mr S's pension which it didn't provide. Wren Sterling has not challenged my findings and has looked to see if it could pay the redress directly into Mr S's pension. Mr S has objected to this, he does not want nor to authorise Standard Life to provide any information to Wren Sterling regarding his pension, as he has removed them as advisers, this somewhat limits the way in which redress can be calculated and it seems the fairest method would then be the cash proposal from Wren Sterling.

I should say that Mr S does not have to accept my financial decision. He is perfectly within his rights to seek legal advice and/or any further action he wishes to pursue.

### **My final decision**

For the reasons I have given, I uphold this complaint in part, and I direct Wren Sterling Financial Planning Limited to:

- Refund Mr S £280.88 charges it charged for ongoing advice
- Pay £200 for the trouble and upset this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 October 2023.

Wendy Steele  
**Ombudsman**