

## The complaint

Mr V is unhappy with the length of time it took Standard Life Assurance Limited (SLA) to identify he wasn't eligible for a Protected Retirement Age (PRA) of 50 on his Flexible Retirement Plan.

Mr V also says that as he was unable to access his pension monies from age 50, he has been unable to repay his loan and reduce his mortgage. He'd now like SLA to cover the interest payments that he says he wouldn't have incurred had SLA originally given him the right information back in 2017/18.

## What happened

Mr V held an occupational pension scheme (OPS) that allowed him the option to retire at age 50 if he chose, five years earlier than normally allowed. On the advice of his Independent Financial Adviser (IFA), Mr V transferred his OPS to his SLA Flexible Retirement Plan in late 2017. Mr V's IFA explained to SLA that the application was part of a 'block transfer', that meant, the objective was to protect his early retirement age of 50 by moving that feature to his existing Flexible Retirement Plan. Before the transfer took place, SLA were asked to confirm the PRA would be carried across to Mr V's existing plan and on 16 October 2017, SLA wrote back to Mr V's IFA, confirming that the transfer of the protected age of 50 had been carried over to the existing Flexible Retirement Plan.

In March 2023, Mr V, who by this time was 51 years old, contacted SLA, asking to take some monies from his pension plan. The following month, SLA informed him his PRA was no longer valid and as such, they'd be unable to release any funds from his pension to him until he reached at least 55 years of age.

Shortly afterwards, Mr V decided to formally complain to SLA. In summary, he said that SLA had given him and his IFA incorrect information in 2017. He went on to say that SLA had specifically told them that the PRA wouldn't be lost by transferring his OPS funds to the existing Flexible Retirement Plan, when that clearly wasn't the case. In addition, Mr V was also upset after having had numerous discussions with SLA over the last several years as well as more recently about the PRA, only to have his expectations mismanaged.

After reviewing Mr V's complaint, SLA concluded that they shouldn't have told him in 2017 that the PRA would be retained by transferring his funds to his existing Flexible Retirement Plan. But, they said, it was his IFA's responsibility to undertake detailed due diligence and had he done, he would have identified that as his existing Flexible Retirement Plan had been in force for more than 12 months, the PRA benefit would be lost on transfer. SLA also said, in summary:

- in recognition of the fact that they had spoken to Mr V on a number of occasions since the transfer in 2017, combined with the fact they'd failed to make him aware that he'd be unable to take his pension as early as 50 years of age, SLA offered him £350 for the trouble they'd caused.

Mr V was unhappy with SLA's response so he referred his complaint to this service. In summary, he repeated the same concerns, principally that SLA gave inaccurate information about the PRA being moved to the existing Flexible Retirement Plan.

The complaint was then considered by one of our Investigators. He concluded that whilst SLA had given Mr V inaccurate information, it was ultimately his responsibility to ensure that the scheme he was moving his OPS funds to, wouldn't result in the loss of the PRA. Our Investigator went on to say that he also didn't believe SLA should be held liable for the wider costs Mr V said he'd incurred because of their mistake.

Mr V, however, disagreed with our Investigator's findings. In summary, he said that SLA should have *warning flags* that go up when a consumer tries to move OPS monies into an existing pension scheme with them that's more than 12 months old, so that this type of issue can be avoided. Mr V felt that SLA compounded the issue by failing to identify the problem, despite him having made several calls to their Helpline after the transfer had taken place.

Our Investigator was not persuaded to change his view as he didn't believe that Mr V had presented any new arguments that he'd not already considered or responded to. Mr V then asked the Investigator to pass the case to an Ombudsman to review that outcome.

### **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 think it's important for me to note that I very much recognise Mr V's strength of feeling about this matter. He has provided submissions to support his complaint, which I've read and considered very carefully. However, I hope that Mr V won't take the fact that my findings focus on what I consider to be the central issues, and not in as much detail as he has outlined, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr V and SLA, in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened.

I can well understand Mr V's disappointment at not being able to access his pension monies when he thought he would be able to. He'd made a number of plans for the funds such as clearing his car loan and reducing his mortgage debt and I can sense the strength of feeling Mr V now has on this issue from the various pieces of correspondence within the file. However, whilst I'm upholding Mr V's complaint, I won't be instructing SLA to take any further action beyond what they've already done. I do appreciate Mr V will likely be disheartened by my decision, but I'll explain why.

I don't think there's any doubt here that SLA gave Mr V incorrect information when they stated in their letter to his IFA of 16 October 2017, that the transfer of the PRA had been carried over to the existing plan. However, whilst SLA have conceded that their letter to Mr V's IFA was factually incorrect, they're of the view that given Mr V was taking professional direction from his adviser, it was the IFA's ultimate responsibility to ensure that the scheme his funds were being transferred into wouldn't invalidate that benefit. Whilst I can also understand Mr V's contention that his IFA had asked the right question to SLA, the ultimate

responsibility for ensuring that the block transfer terms and conditions are met falls with the consumer and their adviser.

Before proceeding with the transfer of his occupational pension scheme to his existing Flexible Retirement Plan, Mr V and his IFA were provided with the terms and conditions that had to be met for the PRA to successfully migrate across pensions. I've looked at the 'Block Transfer Agreement' terms and conditions form that Mr V signed on 4 October 2017 – the document only runs to two pages and I've inserted the section that I feel is most relevant to the complaint point in question:

- *2.3 The protected pension ages(s) will transfer to the Receiving Scheme only if the requirements for a “block transfer” are met. These requirements (the “the Block Transfer Requirements”) which are set out in paragraph 22(6) of Schedule 36 to the Finance Act 2004, are that:*
  - *2.3.1 the transfer involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the Transferring Scheme which relate to the member and at least one other member of the Transferring Scheme, and*
  - *2.3.2 either the member was not a member of the Receiving Scheme before the transfer or he has been a member of the Receiving Scheme for a period of no longer than 12 months ending with the date on which the transfer is made.*

Whilst condition 2.3.1 was met, condition 2.3.2 wasn't because Mr V's existing Flexible Retirement Plan had been in force for well over five years at that point, so the PRA benefit was lost on transfer.

It seems clear to me that Mr V and his IFA were provided with the terms that must be met for the PRA to be moved to another pension scheme *before* the switch went ahead. I also think that given those terms only ran to two pages, they weren't particularly onerous or difficult to read and are set out in plain English. So, whilst SLA may have erroneously informed his IFA that the PRA would migrate across to the existing Flexible Retirement Plan, the terms and conditions which Mr V was provided with and signed to say he understood, prior to the transfer, take precedence over a miscommunication provided by SLA in the course of a transfer process. In addition, I also think it's important to remember that SLA weren't providing Mr V with any advice about the transaction, his IFA was, so it wasn't SLA's responsibility to ensure the appropriateness of the ceding scheme Mr V was moving his funds to. Allied to this, Mr V's plan was part of a block transfer, where five other consumers were also switching their plans away.

Transferring an OPS with a PRA isn't mainstream financial advice. Given the nature of such a transaction, I would expect significant due diligence to be undertaken by the IFA and the consumer, both of whom must be satisfied that the move is both the right course of action, and more specifically, that the receiving scheme is able to house the pension monies without losing that valuable benefit. Having been provided with, and signed the terms that must be satisfied, I don't believe that the consumer, nor their adviser, can absolve themselves of responsibility in such circumstances, particularly as Mr V knew he had been a member of his existing Flexible Retirement Plan for more than 12 months. And, whilst I think it's unfortunate that SLA gave incorrect information to Mr V's IFA, ahead of that, SLA did provide information to them which was technically correct and could be relied upon. Importantly, SLA does state in its literature to Mr V that they hold no liability for ensuring that the plan holder meets the requirements needed in order to transfer their PRA. The agreement states that this is the responsibility of the policyholder or their IFA.

As I've already explained, the conditions that need to be met to continue benefiting from the PRA on a transfer are set out in the Finance Act 2004. These are rules set out in legislation and don't allow any for any degree of flexibility. So, as SLA wasn't acting as Mr V's paid financial adviser in the process, it wasn't their responsibility to ensure he would be entitled to continue benefiting from the PRA once his OPS monies had been switched to the Flexible Retirement Plan.

Once the monies had moved from Mr V's existing OPS to his existing Flexible Retirement Plan, he contacted SLA on a number of occasions in the years that followed to enquire about his pension. From what I've seen, he spoke to SLA in December 2021, April 2022 and March 2023. On the first two occasions, Mr V specifically asked about his PRA. SLA missed the opportunity to explain to Mr V that because the pension he transferred his OPS into had been open for more than 12 months, his PRA had been lost. However, I'm not really surprised by this because on those occasions, Mr V only spoke to SLA's general helpline and I well suspect that the colleagues manning that line didn't have the full set of facts at their disposal to update him, nor would they have looked into his circumstances at any depth. It was only when he decided he wanted to extract some monies from his plan in March 2023, that SLA looked more closely at his affairs, then undertook their due diligence and established that his PRA had been lost.

I can well understand Mr V's frustration at spending nearly an hour on the phone in March and April 2023, and then also having to wait a month with the expectation of drawing funds from his pension to only be told that he wouldn't be able to do so. Mr V has explained that he was planning to use some of the monies from his pension to partially repay his mortgage and pay off a car loan. He wants SLA to cover the interest costs on that lending that would've been met had he been able to access his pension funds and repay those debts - I don't agree though. Because Mr V transferred his OPS into his existing Flexible Retirement Plan, he lost his PRA benefit in 2018. Whilst it would have been beneficial had he found out sooner, I don't believe SLA should be held accountable for the costs that Mr V now says he's incurred because he can't access his pension. That's because, as I've already said earlier, I don't believe the loss of Mr V's PRA is exclusively attributable to SLA.

SLA have offered Mr V £350 in recognition of the trouble they've caused him by having to speak to them several times in March and April 2023 before eventually finding out he couldn't extract his benefits. In addition, the £350 takes account of the fact he was told his PRA had transferred onto his existing Flexible Retirement Plan in 2017 and when he telephoned in 2021 and 2022. I appreciate that Mr V feels that amount doesn't make up for his lost expectations and the incorrect information SLA gave his IFA, but having very carefully considered all the facts in this case, I'm of the view that the £350 offered is fair for the trouble SLA have caused and is consistent with similar awards our service has made.

### **My final decision**

Standard Life Assurance Limited has already made an offer to pay £350 to settle the complaint and I think that this offer is fair in all of the circumstances.

So, my decision is that Standard Life Assurance Limited should pay Mr V £350 if they have not already done so.

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

Simon Fox

**Ombudsman**