

## **The complaint**

Mr C complains that Standard Life Assurance Limited did not tell him about the open market option or the fact he may be entitled to an enhanced annuity when it sold an annuity to him. He says he's experienced financial loss as a result.

## **What happened**

Mr C has an annuity with Standard Life. He took out the annuity in February 2008. He says Standard Life, before he took out the annuity, didn't tell him about the benefits of shopping around (the Open Market Option) and didn't tell him he may be entitled to an enhanced annuity. Mr C has described various medical conditions he had at the time. He complained to Standard Life.

Standard Life looked into his complaint. It said it didn't have telephone recordings from 2008 but it was able to review the notes that were made at the time. It said it had gone through the various options available to Mr C, and provided him with a Retirement Option pack. It said the pack included quotations, a key features document and a retirement guide called "Your Guide to choosing your retirement income from Standard Life" ('the Guide'). It said he was asked to read the Guide before making his decision about which option to choose.

Standard Life said the Guide included various information including:

- it stated that if Mr C was not in good health he may be able to get an annuity that took that into account;
- there were other options available to him if he didn't want to take out an annuity with Standard Life; and
- it described the different types of annuity that were available.

Mr C had contacted Standard Life about a week later. He said he wanted to proceed with Standard Life and selected the options he wanted to pursue. He took out two annuities, both commencing on 7 February 2008. Standard Life said it hadn't done anything wrong. Mr C didn't agree. He referred his complaint to our service.

Our investigator looked into his complaint. She asked Standard Life to confirm that it consented to our service looking into this complaint given that the event complained about had occurred more than six years ago. Standard Life said it didn't consent. It said that because it had provided the Guide at the time, it was also the case that more than three years had passed since the date when Mr C had become aware, or ought reasonably to have become aware, he had cause for complaint.

Our investigator thought we could consider the complaint. She didn't think the issuance of the Guide would have made him aware he had cause for complaint. She thought Mr C had brought his complaint within three years of when he ought reasonably to have become aware he had cause for complaint.

Our investigator then considered the merits of Mr C's complaint. She thought the retirement pack issued to Mr C had included the different options available including information about the open market option and enhanced annuities. Standard Life hadn't provided financial

advice. So, she thought it was Mr C's responsibility to make it aware of any medical conditions that applied or to have taken financial advice if he was unsure. She said she wouldn't ask Standard Life to do anything further to resolve the complaint.

Mr C didn't agree. He said the retirement pack had included non-specific information and was not a regulatory document. He also said there was no evidence the booklet had been sent to him or that he'd read or understood the information in the booklet.

Because Mr C didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

***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.*

***Is this complaint one that our service can consider?***

*The Financial Ombudsman Service isn't permitted to consider every complaint that's brought to us. We're governed by the DISP rules which can be found in the Financial Conduct Authority's (FCA) Handbook (available online).*

*One of those rules, DISP 2.8.2 R states:*

*"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*...*

*more than:*

- six years after the event complained of; or (if later)*
- three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*... Unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2R or DISP 2.8.7R was as a result of exceptional circumstances."*

*There is no dispute that the event complained of occurred in February 2008. Mr C has not brought his complaint within six years of that date. So, I've then considered whether he's brought his complaint within three years of the date when he first became aware or ought reasonably to have become aware he had cause for complaint.*

*Standard Life has not consented to our service considering this complaint. It says it provided the Guide to Mr C at the time when he took out the annuity. It says there was enough information in that booklet to make him aware, or ought reasonably to have made him aware, he had cause for complaint.*

*Mr C's complaint is that he wasn't given enough information at the time about the open market option and the availability of enhanced annuities. He says he only became aware that he should've been given this information after he approached a claims management company. And he says he brought his complaint within three years of that date.*

*I asked Standard Life to provide me with any information it had which might suggest that Mr C had become aware he had cause to complain prior to the date when he approached the claims management company. It said it had no further evidence as to why the complaint should be time-barred.*

*So, having considered everything, I'm satisfied on balance that we can look into this complaint because it was made within three years from the date on which Mr C became aware, or ought reasonably to have become aware, he had cause for complaint.*

*The information provided to Mr C when he took out the annuity*

*Standard Life says it spoke to Mr C on 1 February 2008 after he approached it to enquire about his pension. Having regard to his age at that time, it appears he'd decided to take the benefits from this policy by way of early retirement. So, it's unlikely Standard Life had previously sent him the type of correspondence it would usually have issued to consumers who were approaching normal retirement age.*

*Due to the passage of time, Standard Life doesn't have a copy of the telephone call recording nor has it been able to provide copies of the telephone scripts it would have used at the time. It has provided copies of the notes of this call and a subsequent call on 7 February 2008.*

*Mr C had contacted Standard Life because he wanted to know how much he "could get from this pension". The notes state that Standard Life "went through the options" with Mr C and "explained quotes etc." The notes also record the quotes that were produced by the system at this date. There were ten quotations in total (numbered A1 to A6 and B1 to B4) – although none of these was for an enhanced annuity and they were all for Standard Life products. There's also a reference in the notes to the fact that Mr C wasn't using an independent financial adviser and didn't want to take advice from Standard Life. There's no specific record of any conversation about Mr C's health or that he could shop around.*

*Although the notes do record that a call took place and there was some discussion about the options available, there is insufficient detail for me to be entirely satisfied about what information Mr C was given during the call. In particular I can't be certain what, if any, information was discussed in relation to Mr C's health or the availability of alternative options on the open market.*

*Subsequent to the call Standard Life says it sent Mr C the quotations, the Guide and a Key Features document. Although it has provided details of the quotations it sent to Mr C, it hasn't been able to provide copies of the quotation documents. It has provided a copy of the Key Features Document. This document provided details about the annuity product sold by Standard Life - but there's nothing in the document about enhanced annuities or shopping around.*

*Mr C says there's no evidence he received the quotations or the Guide. However, on balance, I'm persuaded these documents were sent to him. I say that because the records show that he called Standard Life on 7 February 2008 and informed it of the particular quotes he'd selected from the pack. He selected options A6 and B3. I don't think that would've happened if he hadn't received the quotations.*

*I'm also satisfied, on balance, it's likely Mr C received the Guide at the same time as the quotations were sent to him. I say that because the Guide was issued by Standard Life as part of its retirement pack and there are references in the Guide to the fact that quotations would've been sent together with the Guide. So, I think Standard Life's practice and procedure at the time was to issue the Guide with its quotations. And, on balance, I think it's likely Mr C would have been sent the Guide with the quotations.*

*The Guide included important information. It stated that the consumer should read through both the Guide and the quotations that had been sent. It also included contact details for Standard Life - should the consumer want to discuss anything further. So, I think it's fair and reasonable to take the information in the Guide into account when considering how Mr C's complaint should be resolved.*

*I've looked in more detail at the information in the Guide specifically in respect of the Open Market Option and the availability of enhanced annuities. When doing so, I've considered the rules and guidance which applied at the date when Mr C took out the annuity. These rules and guidance covered matters such as the information that needed to be provided to consumers.*

#### *The rules and guidance which applied at the time*

*By way of background, the Financial Services Authority (FSA) became the financial services regulator on 1 December 2001. It introduced (and in November 2007\* further updated) specific rules about explaining the open market option. These rules are found in the FSA's Handbook, in the Conduct of Business Sourcebook (COBS). The FSA's Principles also applied. These included a requirement for a firm to pay due regard to the interest of its customers and treat them fairly (Principle 6) as well as a requirement to pay due regard to the information needs of clients and communicate information to them in a way which is clear, fair and not misleading (Principle 7). I'll comment further about the COBS Rules below.*

*(\*The FSA was replaced by the Financial Conduct Authority (FCA) in 2013).*

*In March 2007 the Association of British Insurers (ABI) updated its "Statement of Good Practice on Pensions Maturities". This document sought to provide documented recommended industry standards for providers to follow when handling pensions on maturity. It stated that providers should mention both enhanced and impaired life annuities in all consumer materials. It also included guidance on how providers should explain the open market option to consumers.*

*In December 2014, the FCA published the results of a thematic review it had carried out into whether consumers obtained a reduced income in retirement because of poor sales practices by providers resulting in either the consumer buying the wrong type of annuity or not shopping around on the open market. It focused on non-advised sales of annuities made by pension providers to their own customers between May 2008 and April 2015. In particular it looked at information provided regarding enhanced annuities.*

*Following this thematic review the FCA asked certain providers, including Standard Life, to conduct a review of their own non-advised annuity sales for the period from 1 July 2008 to 31 May 2016 – sometimes referred to as a past-business review. However, because Mr C purchased his annuity in February 2008, it would not have been included in Standard Life's past-business review.*

*The crux of Mr C's complaint is that Standard Life breached the regulatory requirements which applied at the time (February 2008) by not advising him about the open market option and not making him aware he may be eligible for an enhanced annuity. So, I'll now comment on each of these matters.*

#### *Enhanced Annuity*

*The Guide indicated the options that were available at retirement. These included the option to take a regular income for life. Further details about this option were set out on page 5 of the Guide. At the top of page 5 the following wording appeared:*

*"If you're not in good health*

*Then you may be able to get an annuity that takes this into account. If you have a serious illness then you might qualify [telephone contact details]. We'll ask you some health questions. This is a specialist area of annuities so we've set up an arrangement with a company which provides this type of plan."*

*There is then a section on page 5 about "Other Options". This section provides information about what might be available, should Mr C have decided to shop around. In relation to what might be available from other providers the Guide included the following information:*

*"You'll find there's a variety of annuities available*

- a standard annuity based on your age and sex;*
- an impaired life annuity for people who have a serious illness which will shorten their life;*
- an enhanced annuity for people who have other health issues such as smoking or being overweight"*

*Mr C told us he did have issues with his health at the time – including both serious illness and other health issues.*

*Having considered the information in the Guide, and the specific health conditions Mr C has told us about, I'm satisfied on balance Standard Life did do enough to make him aware he might qualify for an impaired life annuity (through the arrangement it had set up with a company which provided this type of plan). It provided telephone details so that he could make further enquiries about this. The Guide also explained that if he wanted to shop around he might be able to obtain an enhanced or impaired life annuity from another provider.*

*When reaching my view about this I've taken into account that throughout the Guide, Standard Life provided contact details and reminded Mr C that he could contact it if he wanted to discuss anything further. Although there's no indication that this matter was discussed during the first call, there is a reference to the fact that Mr C indicated he hadn't taken independent advice and he didn't want to take advice from Standard Life either. So, I think he would have been aware Standard Life was not providing him with advice. And, in those circumstances, I think he would have realised it was important to read the Guide and the quotations he was subsequently sent and raise any issues about the information in the Guide, when he received it.*

*Having read the Guide, I think it did provide clear information about both enhanced and impaired life annuities. It also provided contact details where more information could be obtained.*

*I'm satisfied that when Mr C called Standard Life on 7 February 2008, to inform it about the choice he'd made there's no evidence he raised any queries about whether he might qualify for an enhanced annuity. If he had done that, I'm persuaded, on balance, it's likely Standard Life would've recorded it in the notes of the call.*

*As I've mentioned above, at that date, I think he would've had the opportunity to read the Guide and consider the information in it. I think it's reasonable to have expected him to have done that and to have brought his health status to the attention of Standard Life. I don't think it's fair and reasonable to say that Standard Life could've been aware of his health issues when he hadn't raised these issues with it – even after he'd been sent the information contained in the Guide.*

*Having considered all of the information that's been provided, I've provisionally decided that Standard Life did do enough to make Mr C aware he may be entitled to an enhanced or impaired life annuity.*

#### Open Market Option

*The Open Market Option allows consumers to "shop around" as they approach retirement to consider alternative annuity options and rates that might be available from a different company to their pension provider. The Rules at the time, found in COBS 19.4 (Open Market Options) required providers to provide consumers with "an open market option statement" when they asked for a retirement quotation. The ABI, in March 2007, also included guidance about how providers should explain the open market option.*

*The meaning of the term "open market option statement" is set out in COBS 19.4.1 R, which at the time, stated as follows:*

*'open market option statement' means:*

- (a) the FSA's "Your pension: it's time to choose" fact sheet, together with a written summary of the retail client's open market option, which is sufficient for the client to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or*
- (b) a written statement that gives materially the same information.*

*Standard Life hasn't been able to confirm whether it did provide the FSA leaflet referred to in COBS. It's referred to page 16 of the Guide which it says signposted the consumer to the FSA website. And, it says that its literature, including the Guide, was reviewed by the FCA during a previous review. It says that the Guide met the FCA's regulatory requirements at that time.*

*In February 2008, it wasn't a requirement to provide the FSA leaflet. However, where that leaflet was not provided it was a requirement to provide a written statement about the open market option which gave materially the same information. So, I've thought about whether the information provided by Standard Life in the Guide contained materially the same information about the open market option as the FSA leaflet and the written summary referred to in COBS 19.4.1R (a). The information needed to be sufficient to enable the client to make an informed decision about whether or not to exercise the open market option.*

*I've reviewed the information that was contained in the FSA leaflet about the open market option. By way of summary, it included the following information:*

- consumers could use the estimate of the value of their pension fund and the lifetime annuity quotation provided by their provider to "shop around";*
- consumers could ask other insurers to provide a personalised quotation – taking care to compare like with like;*
- consumers should consider appointing an adviser to assist – either a "whole of market" adviser or a specialist annuity adviser;*
- the FSA website address where consumers could find comparative tables;*
- consumers might be able to get a higher rate, by shopping around, if their health was poor or other circumstances applied; and*
- Some people had found they could increase the amount of income in retirement by as much as one third by shopping around.*

*I've then compared this to the information in the Guide. Under the heading "Other options" on page 5 of the Guide the following information, by way of summary, was included:*

- consumers didn't have to buy their annuity from Standard Life;*
- consumers could ask other companies for quotes and try to get more income – known as the open market option;*
- there was a variety of annuities available including standard annuities, enhanced life annuities, impaired life annuities and investment linked annuities. Standard Life didn't offer all of these options, but it did offer standard annuities and could help consumers arrange an impaired life annuity;*
- some companies provided all of these options whilst others just offered certain types of annuity;*
- consumers should get advice to make sure they were making the best choice;*
- if the consumer wanted to buy an annuity from another company they should contact Standard Life to arrange this;*
- page 16 of the Guide detailed where consumers could get further information. It provided the website address for 'FSA money made clear' which it said provided further useful information about pensions and retirement income. It also included other website addresses where general information was available; and*
- contact details if the consumer wanted to telephone Standard Life to find out more about their options.*

*Whilst there are some differences in the information provided in the two documents, I've provisionally decided, on balance, that the Guide did contain materially the same information as the FSA leaflet and I'm satisfied there was sufficient information to enable Mr C to make an informed decision about whether or not to exercise the open market option.*

*I say that mainly because the Guide:*

- clearly informed consumers they could shop around;*
- stated that by shopping around consumers might be able to get a wider range of annuity options, including enhanced and impaired life annuities;*
- stated that consumers might be able to get more income by shopping around;*
- encouraged customers to seek advice or to contact Standard Life itself for more information; and*
- provided details of webpages, including the FSA website, where further helpful information was available.*

*I've also noted that the wording in the Guide contained the types of explanations about the Open Market Option, which were set out in the March 2007 ABI Statement.*

*So, on balance, having considered all of the available information, I've provisionally decided that Standard Life acted fairly and reasonably in all the circumstances that applied here. I'm persuaded, on balance, it provided Mr C with sufficient information to enable him to make an informed choice before he took out the annuity. I don't intend to require Standard Life to do anything further to resolve this complaint.*

### **My provisional decision**

*For the reasons given above my provisional decision is that I do not intend to uphold this complaint about Standard Life Assurance Limited.*

Standard Life responded to my provisional decision. It said it had nothing further to add.

Mr C also responded to my provisional decision. He said it wasn't fair to assume he'd been sent the documents - given that he'd told us he hadn't had sight of the quotations or the Guide. He also said the FCA had identified systemic failures in Standard Life's non-advised annuity process at the time. He referred to the FCA's Final Notice dated 23 July 2019.

So, I now need to make my final 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.

In his response to my provisional decision Mr C says it's not fair to assume that he received the Guide or the quotations – especially when he says that he did not receive these documents. When reaching my provisional decision I did take into account what Mr C had told us. Before deciding what I thought, on balance, was most likely to have happened, I also considered all of the other information that was available - bearing in mind that because of the passage of time not all of the information was available,

Having done so, for the reasons set out in my provisional decision, I was satisfied, on balance, that Mr C was sent the quotations. He telephoned Standard Life on 7 February 2008 – just a few days after Standard Life says it issued the quotations to him, and informed it of the particular quotes he'd selected. I haven't seen any new or different evidence which persuades me to change my view which is that I don't think, on balance, this would've happened if he hadn't received the quotations. And, I also remain of the view, for the reasons stated in my provisional decision, it's likely, on balance of probability, that the Guide was issued to him at the same time.

In my provisional decision, I also commented on previous actions taken by the Regulator concerning the sale of non-advised annuities. I have looked again at the Final Notice that Mr C has referred me to. That Final Notice related to action taken by the FCA in respect of breaches of the Principles by Standard Life which occurred between 1 July 2008 and 31 May 2016.

In my provisional decision I also referred to a thematic review carried out by the Regulator which had looked at the sale of non-advised annuities, across the industry, between May 2008 and April 2015.

Mr C took out his annuity in February 2008. That was prior to the period covered by the thematic review and also prior to the period referred to in the Final Notice. So, the Regulator did not carry out a thematic review or issue any Final Notice about the sale of non-advised annuities sold by Standard Life prior to May 2008. In these circumstances, I'm not persuaded it is fair or reasonable to infer that the Regulator would have found the same issues, or breaches of the Principles, if it had investigated Standard Life's processes at the date when Mr C took out his annuity.

Having considered everything again, I haven't been provided with any new information or arguments that persuades me to change my view as set out above and in my provisional decision about how this complaint should be resolved.



**My final decision**

For the reasons given above I do not uphold this complaint about Standard Life Assurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2024.

Irene Martin  
**Ombudsman**