DRN-4674075

Financial Ombudsman Service

The complaint

Mr F complains that his Standard Life Assurance Company Limited (Standard Life) Stakeholder Pension Plan (the plan) has performed poorly, that it mis-advised him to remove the financial adviser from the plan and that it mis-handled his complaint.

Standard Life is now part of Phoenix Life Limited group, but as it responded to Mr L's complaint, I'll refer to Standard Life in this decision.

What happened

Mr F joined his employers' Group Stakeholder Pension Plan with Standard Life in March 2004. The group scheme had been set up by a financial adviser. He says he was advised to invest in the Property fund and to transfer another pension he had into this plan. Mr F subsequently left the employer and contributions to the plan stopped. He contacted Standard Life in 2015 about restarting contributions. It arranged this and also removed the financial adviser from involvement with the plan.

Mr F received his annual statement in April 2023 and was concerned about a sharp reduction in the value of his investment compared to the previous year. He called Standard Life and said it should have contacted him about this and he complained about the performance. He also said he was concerned about the removal of the adviser in 2015.

Standard Life issued a final response letter, which was incorrectly dated a month earlier. It didn't uphold the complaint. It said the price of the Property fund was around 17% lower than it had been seven months earlier. It said a downturn in the commercial property market had led to many investors selling. So, the fund was currently priced to reflect the costs of selling assets to make redemptions. It said disposal costs on commercial property were high. It sent Mr F a brochure explaining the pricing of its funds.

Standard Life said it couldn't provide advice and investments could only be changed if Mr F provided instructions. It said the financial adviser was responsible for selling the plan and it should have explained the basis of the sale to Mr F and he should contact it if he had queries. It said it wouldn't have removed the adviser from the plan unless Mr P had instructed it.

Mr F wasn't satisfied and raised further points. He said the letter indicated it wasn't currently possible to sell the Property fund, which wasn't the case and was misleading. He said Standard Life had said it held records about the advice the adviser had provided and then subsequently said it didn't. He said he didn't think it had considered his complaint properly.

Standard Life sent a further final response letter on 8 June 2023. It said the reference to a waiting time to sell the fund was part of a general explanation. And it had also said that if Mr F wished to sell this would be subject to the normal two day forward pricing as set out in the terms and conditions. It provided details of the performance of the fund over various time periods, which until recently was typical of the sector of similar funds.

Standard Life said property funds weren't valued every day, so price fluctuations when applied could be significant. It said the pricing of the fund had also been changed on 1 November 2022 to a "*cancellation basis*" where the price had reduced by 6.9% to reflect the high costs of disposing of commercial property to fund withdrawal requests. It said it wasn't known when the pricing of the fund would revert back to the typical *"creation"* price basis. And that it didn't alert customers about this, so they would need to check the price themselves.

Standard Life said the adviser had been appointed by Mr F's employer at the time, rather than by it. So, it hadn't agreed what commission would be charged or what service the adviser would provide to members of the pension scheme. It said queries about this would need to be raised with the employer and the adviser. But it said it could have been clearer in its previous final response and it offered Mr F £200 in compensation for the inconvenience this had caused.

Mr F said Standard Life had said it held a file on the adviser's recommendations but now said it didn't. And that it couldn't back up its claims with evidence. He said the performance was poor considering the charges. And it had incorrectly told him to remove the adviser in 2015, meaning he couldn't access free advice.

Mr F referred his complaints to our service and our investigator looked into them, but he didn't uphold them.

Our investigator said Standard Life hadn't sold the plan and wasn't responsible for any advice when Mr F joined or subsequently. He said it had provided a call recording from July 2015 when Mr F had wanted to restart contributions. He said during this call it made it clear it didn't offer financial advice and that it recommended he take independent advice. And it confirmed there was an adviser attached to the plan with Mr F asking if the adviser received commission. Standard Life said a small payment might be made and he asked for the adviser to be removed. It then arranged for the monthly contribution he wanted to pay to be set up. With Mr F confirming he wanted to invest this in the property fund, but that he would take advice about this and call back to change funds if needed.

Our investigator said any commission paid to the adviser by Standard Life was for the introduction of the business to it. He said whether there was any obligation on the financial adviser to provide any ongoing service wasn't to do with Standard Life. And Mr F should contact the employer and the adviser about this.

Our investigator said Standard Life had explained Mr F's plan was invested in line with his instructions and it had already provided a detailed explanation about factors influencing the performance of the fund and the pricing of it. And that the fund had generally performed in line with similar funds from other providers. He said it wasn't responsible if the fund hadn't performed as Mr F had hoped. He said making information about the charges and pricing available online and on the telephone wasn't unreasonable.

Our investigator said our service couldn't consider complaints about how a complaint had been dealt with because this wasn't a regulated activity. So, he couldn't consider Mr F's further comments in respect of this. He said the £200 compensation offered by Standard Life was fair.

Mr F didn't agree and made a number of points. He said our investigator had said Standard Life had paid the adviser for introducing the business, but it had said it *"hadn't played any part in agreeing the level of commission or the service level agreed."* He said its initial final response letter was poorly written, incorrectly dated, and generic. And it had said it held information about the adviser's actions in selling the plan but then said it didn't when he asked for it. He said Standard life had misdirected him to make complaints to our service about the performance of his plan which we couldn't consider, and he was now out of time to refer his complaint about this elsewhere.

Our investigator said he didn't think Standard Life had misdirected Mr F or treated him unfairly. He said there had been sudden downward price movements in the property fund which naturally concerned Mr F, but it was clear the performance of the fund wasn't guaranteed. Mr F still didn't agree and said he was trying to find out what the charges were to get out of the Property fund but despite ringing Standard Life and speaking to different departments it couldn't tell him. He made further points about how the complaint had been investigated by Standard life.

As Mr F doesn't agree it has come to me to decide.

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 am not upholding the complaint.

Mr F has made many complaint points, some clearly about complaint handling and some possibly in addition to the original complaint he referred to our service. I have considered all the points he has made. But in this decision, I will focus on what I consider to be the key issues and will hopefully clarify what I think are some misunderstandings.

I'm also aware that Mr F has continued to raise points about the pricing of the Property fund with Standard Life which it has endeavoured to answer. He has requested recordings of the calls he made in respect of these queries. Our service can only consider the original complaint referred to us, rather than subsequent complaints raised. But here I think Mr F is effectively continuing to complain about the same issues and hopefully the explanation I've set out below will address these for him.

Clarification of our role and misdirection

Mr F has said that Standard Life has sought to misdirect him over referring his complaint, but I don't think it did and there is merely a misunderstanding here.

Standard Life did incorrectly date the final response letter, but Mr F has referred his complaint to us, and we have considered it. We are an impartial financial dispute resolution service. That means we can look into what has happened, require evidence to be provided and if someone hasn't been treated fairly, we tell the business to put things right. But we aren't a regulator, so we can't punish Standard Life or any other business if we think it has made errors or tell it to change how it does things.

Our service doesn't have the power to specifically consider how a complaint has been handled by a business. Because the rules under which we operate say we can only consider complaints relating to regulated activities. And complaint handling isn't a regulated activity.

When Mr F referred his complaint to our service, he made a number of points about how he felt Standard Life had mis-handled his complaint and provided inadequate explanations it couldn't back up. Our investigator said issues like this were outside our remit, but that Mr F could raise those concerns with the Financial Conduct Authority (FCA), which does regulate Standard Life. And that he would go on to consider the underlying complaint.

But in his response to our investigator's findings, Mr F said his original complaint had been about fund performance and Standard Life had said he had six months to refer it to our service *"as the regulator".* But our investigator had now said it should have been referred to another regulator and he was now out of time to do this, so Standard Life had misled him.

That isn't the case. Standard Life correctly provided referral rights to our service about the complaints he'd raised. We have considered his complaint and if he wants to refer his separate concerns about how it has dealt with the complaint process itself to the FCA, he can still do so.

But I don't think Mr F has been treated unfairly. Standard Life has attempted to explain some complex issues around fund pricing as simply as possible. Our service can't provide Mr F with advice about what to do, and he may wish to consider speaking to a financial adviser if he is still uncertain about his plan.

Standard Life's role

Standard Life wasn't providing Mr F with advice and could only act on his instructions. It provides and administers the pension scheme.

I can see some confusion was caused by its comments that it paid commission to the adviser. But historically that's how the market worked. The adviser introduced the business, and the provider paid a commission in return. This was an agreement between the adviser and the provider. The amount of the commission should have been disclosed to Mr F at the time by the adviser. After 2012 the rules changed, and any adviser payments had to be specifically agreed by the consumer.

Mr F's plan is a stakeholder arrangement where the charges were capped at a relatively low 1% per annum. So, this didn't result in him having a high-cost plan.

I agree that Standard Life's first final response letter does suggest it holds records about the services the adviser had provided. So, I understand the point Mr F makes here. The letter said.

> *"we held on to file for you and their motivation for selling you this product"*

This is very strangely worded. Sufficiently so, that I think it is just a typing error. The adviser was totally unconnected to Standard Life other than having an agency to arrange products. There was no requirement for the adviser to provide details of any recommendations (if any) made to Mr F to Standard Life.

The adviser's role

There is limited information about this. The adviser set the scheme up. It may have provided advice to members like Mr F. But from the application form provided to Standard Life it appears the plan was established on what was known as a *"direct offer"* basis.

Under direct offer information about the arrangement was provided by the adviser/employer and the employee was invited to join the plan. But no actual recommendation made for them to do so. Although it's a common complaint from employees that they thought advice was being provided. Mr F says he also transferred another pension into this plan, and this may have been dealt with differently. But this isn't a matter for Standard Life and if Mr F has concerns here, he should raise these with the adviser directly.

Mr F said he'd had no contact from the adviser and as the plan was a Stakeholder plan, with relatively low fixed charges, any ongoing commission payments to the adviser were likely to be quite small. They would have been paid from the product charges made by Standard Life. It maybe that the adviser would have offered advice to Mr F had he contacted it. But I think it is more likely than not it would have wanted to charge additionally for this.

And Mr F very clearly instructed Standard Life to remove the adviser from the plan and said that he would take advice elsewhere in 2015. So, I don't think Standard Life made any error here.

Investment performance and fund pricing

Property funds in general haven't performed as well as investors hoped in recent years as market conditions have been very challenging for commercial property. Overall Standard Life's fund has performed similarly to the sector, more recently it has outperformed its peers. And it's important to note returns weren't guaranteed and fluctuations in the value are entirely to be expected with this type of investment. Standard Life derives no benefit from a falling fund value. Its charges are percentage based, so reduce in monetary terms if the value declines.

It isn't possible to complain about investment losses caused by market conditions as these are outside the control of the investment provider. Standard Life didn't advise Mr F to invest in property, which he confirmed he wished to hold in 2015. And there's no evidence that it has mismanaged the fund or not invested in line with the stated objectives. So, I can't uphold this aspect of his complaint.

The pricing of unit linked funds like Mr F's is complicated and it lies at the heart of his compliant. Fund pricing is also highly regulated to ensure fairness for investors.

Most funds are valued, and a unit price calculated, each working day. As the assets held, like shares have a readily known price which are "set" by the stock market, independently of the fund provider. For illiquid investments like property that isn't the case. Instead, property assets are valued (by independent surveyors) from time to time in order to reflect fair value. The unit price will also be affected by things like rents being paid into the fund on an ongoing basis. So, when any updated property revaluations are reflected in the price, the movement can be pronounced. The unit price set also reflects the costs of either buying or selling underlying investments as required due to investors either buying or selling the fund itself, unless the inflows and outflows are equally matched, which will be relatively rare.

As Standard Life has explained it may need to reduce the fund price if more investors wish to sell the fund than buy into it. This is to cover the costs involved in realising assets and is called the *"cancellation price."* And with commercial property these costs can be significant, including legal fees, agent fees and so on. Standard Life says they can be potentially up to 7% for the property fund. The idea is that any holders of the fund wishing to sell pay the costs of doing so rather than these being carried by the remaining investors in the fund, which is fairer. It can also help to avoid a fire sale scenario which might result in withdrawals from the fund being suspended for a period of time.

So, as Standard Life has also explained a switch to or from the cancellation basis can result in a sudden move in the fund price. Mr F has expressed concern about this and not knowing what the charges will be if he sells his units in the fund. But, subject to the caveat below, the daily price quoted by Standard Life does show the current value of his units as it already reflects the current pricing basis. There isn't any additional charge applied on top of this.

However, when unit linked funds are sold or switched this is usually done on a forward pricing basis. Which means that the sale will usually take place either one or two days after the instruction has been placed. So, at an unknown price. A risk therefore is that a fund might switch to a cancellation basis after an instruction has been placed, or after a negative property revaluation has been reflected, potentially reducing the proceeds. A perhaps less likely scenario is a fund already priced on a cancellation basis might revert to the normal creation price basis and suddenly increase in value.

Where a fund is already priced on a cancellation basis an investor might decide to sit it out and wait for an uptick in the price, as it seems Mr F hopes to do. So, I understand his curiosity at what the reduction is. But the price quoted is the fairly calculated value available on that day, which is effectively all that matters. But as property funds are valued relatively infrequently any move away from a cancellation basis might result in marked change in price. So, monitoring the daily prices over a period of time will give an indication of what is happening. And because this is a complex area Mr F might want to take advice about this going forward.

It isn't unreasonable that Standard Life doesn't provide updates to customers about the specific pricing basis in operation at any given time. This would only be historical information, which could be out of date the same day as the pricing position, by definition, must be fluid, even though the provider will generally seek to take a longer-term view of whether it needs to acquire or dispose of assets. And as Standard Life explains in its guide to fund pricing it sent Mr F,

> *"If significant transactions occur, we may change the basis on that day to make sure that we treat all investors fairly."*

It publishes the daily prices of its funds on its website and can provide these over the phone, which is entirely reasonable.

In conclusion

So, whilst I understand the frustration Mr F feels at the poor returns, I think these are due to market conditions, which isn't something he can complain about particularly as Standard Life didn't advise him to invest in the Property fund.

It isn't treating him unfairly in how it is pricing the Property fund, which applies to all investors in the fund. I think the information it has provided about this is reasonable.

And whilst it might have explained some points more clearly, regarding the adviser's role, I don't think it has tried to mislead Mr F, and it did clarify those issues subsequently.

As I don't think Standard Life has treated Mr F unfairly it isn't reasonable for me to uphold his complaints and it needn't do anything further.

But I note Standard Life has offered Mr F £200 in view of his concerns about its initial response to the complaint, and I understand this offer is still available if he wants to accept it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 24 April 2024.

Nigel Bracken
Ombudsman