DRN-5153364

The complaint

Mr I's complaint is about how Standard Life (now part of Phoenix Life Limited) handled the investments in his pension plan. He says he made a conscious decision to de-risk his pension, reducing the risk factor from 5 to 3 in February 2022. However the fund he moved to was then suspended, and the fund Standard Life subsequently switched him to has fallen significantly in value.

What happened

I issued my provisional decision on this complaint on 18 September 2024. The background and circumstances to the complaint and the reasons why I wasn't provisionally minded to uphold it were set out in that decision. I've copied the relevant part of it below and it forms part of this final decision.

Copy of Provisional Decision

Mr I's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties on 6 March 2024. The background and circumstances to the complaint and the reasons why he didn't recommend that the complaint should be upheld were set out in that assessment. It has been seen both parties, so I won't repeat it all again here.

However in brief, Mr I had a Standard Life Flexible Retirement Plan. He called Standard Life on 25 February 2022 to discuss his pension given he'd seen its value had been falling. His plan was invested in the Standard Life Managed Fund, which had a volatility rating of 5. The call handler provided information about different funds with lower volatility ratings and their performance. Ultimately, Mr I decided to invest in the SL Janus Henderson Property Fund – which had a volatility rating of 3. Just two days after the switch had taken place the fund's manager - Janus Henderson - announced it was suspending the fund. Standard Life added a warning about the suspension of the fund to Mr I's online account on 8 March 2022. However it didn't separately tell Mr I of the suspension, and he said he only discovered it four weeks after the switch.

Standard Life subsequently wrote to Mr I on 29 June 2022, saying that the fund was closing, and that once the closure had taken place Mr I's investments would be moved to a fund with a similar investment objective - the Standard Life Property Pension Fund. Standard Life provided a profile of the new fund and its risks, and also a link to the alternative funds that were available.

My understanding is that the fund switch took place on 17 June 2022. Mr I contacted Standard Life again in March 2023, as the fund value had fallen by around 19% since the switch. He subsequently complained to Standard Life. Standard Life, ultimately, didn't uphold the complaint, and Mr I referred it to us.

Our investigator didn't recommend that the complaint should be upheld. He said Standard Life's volatility ratings were on a scale of 1 to 7, where 1 was the lowest risk and 7 the highest. Mr I had originally been invested in the Managed Fund which had a volatility rating of 5. The investigator said typically, someone investing over the longer term in a property fund would have enjoyed less ups and downs (i.e. less volatility) than a managed fund investor due to the differing nature of the assets invested into by the different funds.

However he said volatility/risk ratings were for guidance only, and were based on the expected returns from any particular investment over the longer term. He said there would be short term fluctuations with any investment along the way, and that one fund having a volatility rating of 3 and another 5 didn't mean that the fund with a lower rating couldn't fall by more than the other. Likewise, he said a fund with a lower rating could deliver higher returns than a more volatile fund. The investigator said Standard Life had provided evidence to show that the fall in commercial property fund values was market wide, and wasn't something particular to Standard Life's fund.

The investigator said in his call to Standard Life on 25 February 2022 Mr I had asked if there were any funds with a volatility rating of 1. The call-handler had explained there were four funds, and provided the returns from those funds for the year to date that ranged from -0.07% to -0.11%. He thought this would have shown that even with a volatility rating of 1, investments could still fall in value.

The investigator said Mr I had selected the SL Janus Henderson Property Fund after the call handler had provided particular information that he'd requested about fund performance. He said he didn't see any reason why Mr I would have chosen a different fund had it been mentioned that the SL Janus Henderson Property Fund was externally managed. He said the call handler had made it clear that the fund had a volatility rating 3, and had also explicitly said that potentially any investment could fall in value. The investigator said although the SL Janus Henderson Property Fund had lower volatility/lower risk, it still had some volatility/ risk and could go down in value by more than the fund rated at 5.

The investigator said the decision to suspend and then close the Janus Henderson fund would have been a commercially sensitive decision taken by Janus Henderson. He said Standard Life would have had no advance warning of this. And he said after Mr I's funds were moved to the Standard Life Property Pension Fund on 17 June 2022, the fund wasn't suspended and there were no restrictions on moving money out of it. He noted Mr I had referred to losses in the fund suffered from July 2022 to January 2023. But he said Mr I could have switched out of that fund at any time should he have chosen to do so.

The investigator said he thought the fall in the value of the investment was caused by wider market conditions rather than mismanagement by Standard Life. He said Standard Life didn't give Mr I any advice about his investment or suggest any course of action. The investigator said he thought Mr I had chosen to switch from the Managed Fund to the SL Janus Henderson Property Fund, and Standard Life wasn't responsible for the choice he'd made.

Mr I didn't accept the investigator's findings. He referred to MIFID II financial regulations that he said were consolidated into the Financial Conduct Authority's Handbook under the Conduct of Business Sourcebook (COBS) rule - 16A.4.3. He said this compelled Standard Life to issue a warning letter to retail clients where they had suffered a 10% loss in the value of their investment. He said the Standard Life Property Pension Fund had fallen in value by 20.9% between 3 July 2022 and 3 January 2023. However Standard Life had made no effort to contact him during this period to alert him to the depreciation in the value of his investment.

The investigator responded to Mr I explaining why he didn't think the obligations in COBS 16A.4.3 applied in his case. Mr I said he didn't agree with the investigator's interpretation of the rules. And he thought that even if the MIFID rules didn't apply, Standard Life were at the very least in breach of Principles 6 and 7 by failing to inform him about the state of his fund which cost him £13,000. He said had he been alerted to the losses he would have taken action to move his funds and protect his investment.

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 do understand Mr I's frustration – he made a conscious decision to de-risk his pension, took steps in good faith that he thought would achieve that aim, and in fact ended up in the position he was trying to avoid. However I have to decide whether Mr I's losses were caused by failures on the part of Standard Life.

As explained by the investigator, Janus Henderson's decision to suspend the fund was commercially sensitive information. If investors have prior notice of an intention to suspend, that could cause a run on the fund as investors rush to attempt to withdraw their money from it. That could result in significant problems for the fund and its value. So that's why that information would have been sensitive and prior notice of suspension not given.

I appreciate that Mr I may have understood by moving to a fund with a lower volatility rating (which was also reflected in the Standard Life Property Fund) he was protecting its value in all situations. However fund performance reflects the changing value of the underlying assets. And those asset prices are determined by factors that are outside the control of fund managers.

Whilst volatility or risk ratings provide a general indication how fund's values are generally expected to behave, there are no guarantees, and there might be instances where they perform differently to what's expected over the longer term. There were no set limits given as to increases or decreases in value, and so on some occasions funds with a lower volatility rating might suffer bigger falls than those with a higher volatility rating, or alternatively provide higher returns. Whilst I recognise that might not be how Mr I understood the matter, I don't think that was as a result of what he was told in his conversation with Standard Life on 25 February 2022 prior to making his investment decision, or information that Standard Life had otherwise provided.

The performance of the Standard Life Property Pension Fund was consistent with the benchmark used for comparative purposes. A number of fund managers invested in commercial property suffered similar falls over the period in question. I think that is indicative of a fall in the price of that particular asset market wide, rather than that there was mismanagement by the managers of Standard Life's fund.

Mr I has said that Standard Life had regulatory obligations to notify him when the value of his fund had fallen by 10%, but failed to do so. The investigator explained that COBS 16A.4.3 didn't apply as this wasn't MIFID business. As the heading to COBS 16A.4.3 explains, it is additional reporting obligations for portfolio management or contingent liability transactions. Portfolio management is where a portfolio is managed in accordance with a specific mandate given by clients on a discretionary client-by-client basis. And contingent liability is where a transaction involves a liability that exceeds the initial cost of acquisition. These aren't the services/type of transaction Standard Life was providing to Mr I, and COBS 16A.4.3 didn't apply.

I'm not aware of any specific regulatory obligation for Standard Life to have alerted Mr I that the value of his fund had fallen by 10%. The COBS rules covered how often firms were required to provide reporting information, and the 10% requirement was only required for certain types of services/transactions as explained above. I don't think Principle 6 or 7 separately obligated it to alert Mr I that the value of his investment had fallen at a certain limit – there were already specific rules surrounding reporting requirements. I've also currently seen no persuasive evidence that Standard Life provided misleading information to Mr I. On the balance of the evidence presented, I'm not persuaded that Standard Life failed to meet its obligations under Principles 6 and 7.

I appreciate that Mr I will be disappointed with my findings. However as I've said, I have to decide whether Mr I's losses were caused by failures on the part of Standard Life. And having carefully considered the matter, for the reasons given above and set out by the investigator, I don't think in the particular circumstances that was the case here.

My provisional decision

Accordingly, my provisional decision is that I don't uphold Mr I's complaint.

Responses to Provisional Decision

I asked Mr I and Phoenix Life Limited to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr I didn't agree with my provisional decision. He said, in summary, that he'd set out the losses he'd suffered within the Standard Life JH Property Fund and Standard Life Property Pension Fund in his original complaint. He said the figures had been taken from the online portal supplied by Standard Life and hadn't been disputed throughout his complaint. He said vital correspondence that had been claimed to have been sent to him through the portal and by post hadn't been received.

Mr I said in his telephone conversation Standard Life's call handler had said the volatility rating for the managed pension fund *"was 5, recently moved upwards from 4."* However he said all the factsheets as far back as Quarter 2 of 2021 maintained a volatility rating of 5. He thought this was significant to his complaint. He said more recent documents provided by Standard Life on 5 April 2023 showed the fund had a volatility rating of 4 – albeit the fact sheet data for the whole of 2023 showed it had a rating of 5. Mr I said *"The decision to de-risk my fund <u>would not have occurred</u> had I been aware of the lower delta between the ratings of both funds."* He said misunderstandings were due to misleading and error prone information provided by Standard Life in relation to volatility ratings. He said his evidence proved Standard Life had breached the FCA Principle of providing clear and accurate information in relation to the ratings.

Mr I referred to his original letter of complaint dated 3 October 2022 where he said he'd complained about losses of £3,685 within the Standard Life JH Property Pension Fund, and losses of £11,038 within the Standard Life Property Pension Fund. He said these figures were obtained from the online portal supplied by Standard Life and provided a screenshot of it.

The screenshot was of a graph which he says showed the pensions value in the Standard Life JH Property Fund when it opened - £53,788, and when it was switched into the Standard Life Property Fund its value was £51,240. Mr I said the graph showed his loss of £2,548, which was confirmed in his complaint, and hadn't been disputed or challenged by either the firm or ourselves. However Mr I said information provided to him by the firm in a SAR request had located a telephone conversation he'd had with the firm on 17 June 2022. In the conversation the complaint handler had said the Standard Life JH Property Fund had actually enjoyed growth of £11.35. And a letter dated 30 June 2022 also showed the portal which he had put trust if for years gave a false representation of fund information which led users to make poor choices. He said all this showed Standard Life had breached the FCA principle of providing clear and accurate information, and he had based his decisions on information that had been provided by Standard Life which was inaccurate.

Phoenix Life Limited said it had no further comments to make.

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 Mr I's conversation with Standard Life on 25 February 2022 he said he'd seen a 'massive' drop in his fund's value overnight, but the fund's risk level was still 5. And he said Standard Life's website said it would automatically review risk levels. The call handler explained that risk levels were reviewed but taking a longer-term view and not on a daily basis, and that the fund's volatility rating was 5 having recently been moved upwards from 4.

Mr I initially went onto discuss the returns provided by funds with a lot lower volatility ratings of 1 and 2, before deciding to invest in the Standard Life JH Property Fund with a volatility rating of 3. It's clear that Mr I was very concerned about the losses his fund was experiencing and could potentially continue to experience going forward and he wanted to reduce his exposure to risk. The call handler had explained that the volatility ratings were reviewed, and that the fund's rating had recently moved from 4 to 5. So Mr I was clearly alerted to this *at the time he was actually making his decision* to switch funds.

I don't think looking back at what factsheets said either before February 2022 or after take Mr I further forward in his complaint. Given his concerns about the 'massive' drop in the value of his fund, that he said he was going to have to make a reduction to the risk level and that he was initially asking about funds with a volatility of 1 and 2, I'm satisfied he was always very likely to have switched funds at that time whether the volatility rating was 4 or 5.

Mr I has said he relied on the figures on the pension portal which he said provided a false representation of the fund's value. And he said the loss figures he'd provided hadn't been challenged.

I hadn't previously checked the accuracy of the loss figures provided by Mr I as it was clear that *overall* the value of his fund had fallen. However having looked at the values Mr I has provided in making his complaint I don't think that some were correct.

In his recent letter Mr I has said the value of his fund when the Standard Life JH Property Fund opened was £53,788. He also referred to a figure of £51,240 as being the value when it was switched into the Standard Life Property fund. But I don't think these are accurate.

Mr I has superimposed lines on the recent graph he sent to us to help illustrate the figures referred to above. However there is a lot of data behind that graph. The dates on the horizontal access are in years. And the vertical axis provides fund values every £5,000. A month's worth of fund values was represented by only a few millimetres, so a seemingly small error in alignment could provide an incorrect figure when prices can change materially each day. I don't think the line on the graph is sensitive enough in itself to provide a totally accurate visual indicator of the fund's value at specific date.

I understand however that hovering over or clicking on the line on the graph did provide the actual fund value at a specific date. In Mr I's recent letter only one actual specific value was shown on the screenshot - £52,794.74 as at 3 July 2022. This is consistent with the value of Mr I's fund as at that date.

In Mr I's complaint letter dated 3 October 2022 he also provided a screenshot of another graph. This provided an actual value of £41,756 as at 3 January 2023. I haven't got details of the specific value of Mr I's fund on that date, however on 6 January 2023 it was £41,780. So only a £24 difference, and I think it's consistent with the 3 January 2023 figure. So in both cases where an actual figure was obtained, the values appear to be accurate.

In Mr I's complaint letter dated 3 October 2022 he said his fund had reduced in value between December 2021 and February 2022 from £54,093 to £53,788. So this suggests the £53,788 figure was the figure it had fallen to in February. And that is consistent with the £53,788 figure which was the actual value of Mr I's fund on 3 February 2022. Mr I also referred to losses of £3,685 for the period 3 February 2022 to 3 March 2022 which is broadly consistent with the fund's actual value at that time- closing at £50,109 on 2 March 2023.

Standard Life's letter to Mr I dated 1 March 2022 stated that the amount disinvested from the Managed Fund on 1 March 2022 was £52,593, and this was invested in the Standard Life JH Property Pension Fund as at that date. This is consistent (slightly higher but a few days later) with the £52,395 figure mentioned by Mr I as the value as at 27 February 2022 in his 29 October 2023 letter (which was the correct value at that date). And Standard Life's letter dated 17 June 2022 said £52,604 had been invested in the Standard Life Property Pension fund (the correct value as at that date). So in actual fact there was a small gain of £11.

The two letters I've referred to above both appear to be correctly addressed and so would more likely than not have been sent and delivered. I accept, however, that letters can be lost in the post. But in this case Mr I was specifically alerted that there had been a small gain in his telephone conversation with Standard Life on 17 June 2022. So Mr I should reasonably have been aware of this as from that date.

When Mr I called Standard Life on 25 February 2022 he mentioned over the previous three months he'd lost about 7.5% of his money. Given it had risen in value to just under £55,000 at one point, this would suggest he was aware at the time that he switched funds that its value was lower than the £53,788 he has referred to (in writing and on the graph). Its actual value had dropped to just under £51,000 on 25 February 2022 which is broadly consistent with the loss percentage he referred to of 7.5% at the time.

Clearly I can't say with any reasonable degree of certainty exactly what figures were seen by Mr I when he actually used the tool. But what's key is what they were when he made his decisions to switch (or subsequently not switch), rather than when he was subsequently making his complaint

Mr I's complaint letter to the firm was dated 3 October 2023 – so sometime after the switches. And the graph included information that went into 2023 – so clearly this was copied sometime after he made his decision to switch from the Managed Fund and subsequently stay invested in the Standard Life Property Fund.

I've considered the evidence that Mr I has provided to show that he was misled by the values on the graph in making his decisions. But as I've said above, I think using the line on the graph in the way Mr I has attempted is a fairly blunt tool and won't necessarily provide accurate values; the two actual figures generated by the tool were correct, which suggests that other values would also likely have been correct; some other values Mr I has referred to in his correspondence were consistent with the correct actual values at the time; and the content of the telephone call on 25 February 2022 suggests Mr I was aware of the approximate value of his fund at the time that he switched into the SL Janus Henderson Property Fund.

Taking all this into account, I'm not persuaded, on the balance of the evidence, that the information on the online portal was incorrect, or that Mr I was misled into switching into the SL Janus Henderson Property Fund by it.

The SL Janus Henderson Property Fund was then suspended a few days later. So Mr I was invested in it until it was closed in June 2022. Standard Life sent Mr I a letter showing how much money had been switched into the Standard Life Property Pension Fund. However even if Mr I hadn't received this letter, he was specifically told he'd made £11 in the telephone call on 17 June 2022. Mr I then remained in that fund for some time. And the line representing the fund on the graph shows a clear trend downwards and a falling value over a period of time. So I don't think it follows that it would likely have misled Mr I to remain in that fund.

As I said in my provisional decision, I do understand Mr I's frustration here because he realised his original fund was exposed to more risk than he was willing to take, and he took steps which he thought would reduce that risk. However as I explained, volatility or risk ratings provide a general indication of how fund's values are generally expected to behave. However there are no guarantees or set limits against which fund's performance can't go above or below. In some instances funds with a lower volatility rating might suffer bigger falls than those with a higher volatility rating or alternatively provide higher returns. There are generally no set limits to performance.

Ultimately, I have to decide whether Mr I's losses were caused by failures on the part of Standard Life. And having carefully considered the matter, I'm not persuaded that they were in the particular circumstances of this case.

My final decision

Accordingly, my final decision is that I don't uphold Mr I's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 27 January 2025.

David Ashley
Ombudsman