

The complaint

The estate of Mr B complains that Phoenix Life Limited failed in its responsibilities when dealing with the request to transfer Mr B's personal pension to an occupational pension scheme ('OPS') in April 2015. Mr B's OPS ended up failing, causing a loss in its fund value.

Mr B originally made his complaint via a legal representative. Mr B sadly passed away before his complaint was resolved and this complaint is now referred, on his behalf, by his estate.

What happened

Mr B had a personal pension with Standard Life. Standard Life are now part of Phoenix Life Ltd. So Phoenix Life are the respondent for this complaint. But for ease of reading I will refer to Standard Life when referencing the relevant acts or omissions in this decision.

In March 2015 Pension Matters Associates ('PMA') sent Standard Life a signed letter of authority from Mr B and requested information for his personal pension. On 11 March 2015 Standard Life wrote directly to Mr B in response. It explained that PMA was "*not a regulated or otherwise legally authorised entity*", It explained that it had not disclosed his plan details with them in order to protect him and his data. It instead sent him information on his pension plan and "*Pension liberation fraud leaflet*".

On 30 March 2015 Mr B's transfer papers were sent to Standard Life, requesting that his personal pension be transferred to the FocusPlay Retirement Benefits Scheme (RBS). This was an OPS.

Mr B's pension was transferred on 1 April 2015. His transfer value was around £13,500. He was 46 years old at the time of the transfer.

Members' funds in the Focusplay RBS appear to have been invested by the scheme administrator in unregulated businesses, in some cases linked to the administrator, which then failed. It is uncertain if those funds will have any value.

In February 2021, Mr B complained to Standard Life. Briefly, his argument is that Standard Life ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: he had been advised by an unregulated business; the request to transfer was from an unregulated business.

Standard Life didn't uphold the complaint. It said it had considered the information provided and concluded that Mr B had a legal right to transfer. It said that the transfer request gave no indication that PMA was involved in the transfer. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I said in my provisional decision:

I issued a provisional decision to explain why I thought Mr B's complaint should be upheld and offered both parties the opportunity to provide further argument or evidence. In summary, the reasons I gave for my provisional outcome were:

- I summarised what I thought the relevant rules, legislation and industry good practice meant for the way that Standard Life should have dealt with Mr B's transfer request.
- I was persuaded that Mr B had, more likely than not, been approached out of the blue and advised to transfer his Standard Life pension to the FocusPlay RBS by PMA, who were not authorised to provide such advice.
- I explained that I thought Standard Life had sent Mr B The Pension Regulator's Scorpion insert (which warned of pension scams) when it wrote to him in March 2015.
- I considered whether Standard Life had carried out due diligence that reflected the industry best practice at the time. And I didn't think that it had.
- I considered what Standard Life would likely have found if it had carried out reasonable due diligence and was persuaded that it would have identified a number of clear scam warning signs. Including that Mr B had been advised by an unregulated party in breach of the general prohibition in the Financial Services and Markets Act 2000.
- I thought that, having identified a realistic scam threat, Standard Life should have warned Mr B about that. And I explained why I thought such warnings would likely have prevented Mr B transferring and suffering the loss he did. So I set out what I considered to be a fair and reasonable way to compensate Mr B for the loss that he was likely to suffer as a result of the loss to his pension fund.

Responses to my provisional decision:

Phoenix Life accepted what I'd said in my decision.

Mr B's representatives informed us that Mr B had sadly passed away prior to me issuing my provisional decision. The executors of Mr B's state still wanted Mr B's complaint to be considered by our service and appointed the same professional representation that had brought Mr B's complaint from the outset.

The impact of Mr B's passing on my provisional decision:

I issued both parties with a follow up to my provisional decision to explain the following:

- Our service was still able to consider Mr B's complaint. But that I would need to consider whether there were financial losses to his estate as a consequence of Standard Life's failings.
- Our service was not able to consider a complaint from potential beneficiaries of the death benefits that would have been paid had Mr B's pension not transferred.
- I didn't think that Mr B had actually suffered any losses before he passed away so there were no longer any losses that I could direct Phoenix Life to pay to the estate.

Phoenix Life responded to accept my updated provisional decision and agreed that there was no loss to Mr B's estate.

The estate of Mr B responded to suggest that he may have taken benefits from his pension before he passed away if it had liquid funds. So I asked for evidence of Mr B's circumstances and financial position to consider, on a balance of probability, whether I thought that would likely have been the case. I was not provided with any supporting evidence to enable me to consider that argument further.

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 would like to express my sympathy to Mr B's family. I am sorry that we were unable to resolve his complaint prior to his passing away.

But I have to consider the circumstances and our jurisdiction now that I am aware that he has. And I'm afraid that it is not simply the case that I can issue a final decision based on the first provisional decision I sent out. The compensation that I proposed in that was based on the original circumstances.

Whilst the fact that Mr B has passed away hasn't changed my mind on whether or not Standard Life treated Mr B fairly, my provisional decision no longer reflects what I think is the correct way to put things right in this case. I will explain why my final decision is that there is no longer any loss that Phoenix Life have to compensate Mr B's estate for.

Prior to issuing any final determination, our service has to consider whether we have jurisdiction to do so. And I have considered the impact on our jurisdiction of Mr B's passing. Specifically with regards to DISP 2.7 which sets out whether a complainant is eligible to complain.

DISP 2.7.2R allows a complaint to be brought on behalf of a deceased person (who would have been an eligible complainant) by a person authorised by law. In this case that means that the executor's of Mr B's estate are the persons authorised to bring this complaint.

This means that our service still has the jurisdiction to give an answer in this case. But the complainant remains Mr B.

Under FSMA s229(2)(a), if a complaint is upheld, the decision may include "an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) **suffered by the complainant** ("a money award)". This means that we do not have the power to order a business to pay compensation (or direct it to do something) unless it is for loss suffered by a complainant. Which covers loss suffered by the complainant's estate.

In my initial provisional decision I was proposing compensation for the prospective loss that Mr B was likely to suffer when he came to use his pension to obtain benefits. Which DISP 3.7.2R allows.

The limitation of this becomes an issue in this complaint because of the type of product that the complaint is about. For a personal pension of the type Mr B had with Standard Life, it was Standard Life as scheme administrators, that would decide who to nominate as beneficiaries of the pension fund in the event that the policy holder dies. I have asked Standard Life about this and it has explained that the rules allow it to pay to any person or persons who fall within the classes of beneficiary in the scheme rules. The funds would not simply be paid to the estate to then be distributed when Mr B passed away. It means that the prospective loss that Mr B would likely have suffered (in future retirement benefits that he

could have taken) is not a prospective loss for his estate (as those benefits would not be paid to it).

I am tasked with considering available evidence to determine on a balance of probability what would, more likely than not, have happened had Phoenix Life treated Mr B more fairly. I think he would likely have retained his personal pension. But I now need to also consider what he would have done with that pension prior to his passing away. That's because any benefits that he would have taken from the personal pension would be losses that the estate could be compensated for.

Mr B was 56 when he passed away. I understand that Mr B's family have argued that he may have taken benefits from his pension as he was unable to work. Whilst I appreciate that he was of an age where benefits could potentially have been taken from a defined contribution personal pension, the Standard Life pension's stated retirement age was 65. I have not been provided with any evidence that Mr B would, more likely than not, have taken any benefits from this pension so early. So, I am not persuaded that Mr B would, more likely than not have accessed the benefits in his Standard Life personal pension if he'd stayed in that pension. Which means that he did not suffer any financial loss in his lifetime. So there is no financial loss that I am able to compensate his estate for.

As I have already said, in the event of Mr B's death any the funds held in the personal pension would be payable to nominated beneficiaries, rather than to his estate. So I've considered whether or not Mr B's family members may be eligible to complain to our service about what they, as potential beneficiaries, may have lost in death benefits from Mr B's pension.

The definition of a consumer is broad, in that it is, "*any natural person acting for purposes outside his trade, business or profession*". But, to bring a complaint against Phoenix Life each of the potential beneficiaries would need to have one of the relationships with Phoenix Life that are set out in DISP 2.7.6R. They aren't (and weren't) customers of Phoenix Life for the issue complained about. That was Mr B. So I have considered whether one of the other relationship types applies, but don't think they do. Most of them are clearly unrelated to these circumstances. But I will give my thoughts on the one that I consider may, at first, appear relevant.

DISP 2.7.6R(4) gives a relevant relationship where, "*the complainant is a beneficiary of, or has a beneficial interest in, a personal pension scheme or stakeholder pension scheme*". For the purposes of this part of DISP 2.7.6R the provision allows actual beneficiaries of a personal pension to complain but does not include potential beneficiaries or someone who might have been a potential beneficiary in the past. So any hypothetical beneficiaries of the Standard Life pension aren't eligible complainants. And the actual beneficiaries of Mr B's OPS are beneficiaries of an occupational scheme, so are also not captured by the DISP rules (relating to regulated activity). So there are no separate beneficiaries who are eligible to complain to our service.

Summary

For the reasons that I gave in my initial provisional decision and that were accepted by both parties, I don't think that Standard Life treated Mr B fairly in the way that it approached his transfer request.

I am afraid that, in this case however, there is no financial loss suffered by Mr B's estate as a consequence of Standard Life's mistakes. So I am not asking Phoenix Life to do anything to put things right.

My final decision

For the above reasons, I am not asking Phoenix Life to do anything to put things right in this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 4 April 2025.

Gary Lane
Ombudsman