

complaint

Mr W says Standard Life Assurance Limited unfairly decided not to grant him an enhanced annuity after reviewing how it had sold him a standard annuity in 2014.

background

In March 2019 Standard Life contacted Mr W to let him know that following an FCA review of annuity sales, it was going to look at what had happened in 2014 when he'd bought his.

After examining the available information, Standard Life acknowledged failings in its sales process. For example, it didn't tell Mr W about the possibility of getting a better annuity by shopping around – the open market option (OMO).

But Standard Life said because of the preferences and requirements Mr W informed it of at the time, the problems with the sale didn't affect the annuity he ended up with. It said there was no financial loss as a result of the things it got wrong.

Mr W doesn't think this is fair. He thinks he should've been given better information about the possibility of receiving an enhancement because of his medical conditions. And during his complaint journey with us he's raised other issues, for example about the impact of his mental health status at the time of the sale.

The investigator didn't uphold this case. Mr W disagreed and so his complaint has come to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. I'm not upholding Mr W's complaint. I know this will come as a disappointment to him. I'll explain why I've arrived at my conclusions.

I've thought carefully about relevant extracts of the FCA's Conduct of Business Sourcebook and the Association of British Insurers Code of Conduct on Retirement Choices applicable at the time of the sale of Mr W's annuity.

Standard Life has given us its case file which includes available documentation and phone call recordings related to the sale of Mr W's annuity. Mr W has provided testimony and supporting documentation. I was grateful for the time he took to explain to me his situation around the time of the sale. It's clear he's been through a struggle and is still experiencing difficulties in his life.

Additional important context for this case is the FCA's publication *Review of annuity sales practices* published in October 2016. This highlighted concerns about non-advised annuity sale practices across the industry between 2008 and 2015. As a result, companies involved contacted the customers who were potentially affected to examine if there'd been any adverse impact on them.

Standard Life contacted Mr W in March 2019. To aid its review it asked him to complete a health and lifestyle questionnaire, which he did. Mr W told us he was about to contact Standard Life anyway because a pensioner he knew had recently suggested that he should've been offered an enhanced annuity in 2014.

the annuity sale in 2014

Mr W had two pension plans with Standard Life. He was a member of a group pension plan and he had a smaller executive pension plan. From 2013 he began to explore taking cash from his pensions. He wrote to Standard Life noting his intention to emigrate and to seek treatment for his chronic condition.

Mr W followed up with Standard Life, writing two further letters in January 2014. He made clear his wish to redeem his pension plans. And he wanted to explore ill-health terms. Whereas previously he'd said he wanted the funds by July that year, now he wanted monies by February.

I think it's fair to say the tone and content of Mr W's communications made it clear he wanted to move at pace and keep things as simple as possible. He said he didn't want to involve other parties like brokers and solicitors – he wanted to deal with Standard Life directly.

Following completion of a health questionnaire by Mr W's doctor, Standard Life accepted he wouldn't be able to work again given his condition. So, it agreed ill health retirement terms would be available. This enabled him to take retirement benefits before the age of 55.

Standard Life's business expert contacted Mr W on 6 February 2014 to discuss some of his pension plan options. There were two substantive calls on the day, which together constitute the main part of the sales process.

I've listened carefully to both calls, which together last about 1 hour. There was a lot being covered in the calls. They ranged across the status of both pension plans; aspects of Mr W's circumstances; options for taking lump sums; the features and types of annuities available; drawdown options; the provision of illustrative quotes; through to administrative matters such as when and how payments would be made.

In terms of the conversation, Standard Life checked at times to make sure Mr W understood what was being said. He seemed to be actively listening, asking and responding to questions. He appeared to follow the conversation and had a clear idea of what he wanted.

That said, given the ground being covered by Standard Life, I think there was scope to have given Mr W more space for reflection throughout the process. It could've probed some of his responses a little further. And it could've led and structured the conversation better to ensure all critical matters were covered.

The following elements of the sale calls had an important bearing on my findings about this case:

- Standard Life made clear at the outset it wasn't giving financial advice. It asked Mr W how comfortable he was taking the responsibility for ensuring any product set-up would be suitable for his needs. He said he was very confident about that.
- Mr W made clear his priority was getting access to lump sum payments. He initially thought any residual funds wouldn't be substantial or enough to live on – so it would be difficult to make a mistake about his decisions on that.

- Mr W was content with the outcome regarding maximising his access to the tax-free lump sums available.
- Standard Life asked about the situation with Mr W's health because he might be able to get an increased income. He was aware of the possibility but didn't think he'd qualify. He described his condition and thought it wouldn't affect his life expectancy. Although he did say his medication was dangerous and could affect his mortality.
- After considering the merits of an annuity or drawdown options, Mr W then said even though an annuity was likely to be small it could come in handy. And when he was given an income illustration, he was pleasantly surprised.
- Standard Life asked again about life-style and health issues. Mr W described his chronic condition and again said he didn't think it would qualify for an enhancement. Standard Life said it could check because it wanted to get him the best income it could.
- After getting details of Mr W's medications Standard Life couldn't confirm if this would qualify him for an enhanced annuity. It would need to go through some more detailed health questions. The aim being to increase the income he was going to get.
- Mr W asked what the impact of an enhanced annuity would be on his lump sum and income. Standard Life said his tax-free lump sum wouldn't be affected. And it explained why an enhancement could increase his income.
- Mr W said he'd rather skip the questionnaire and keep it simple. Standard Life made sure he understood that would mean any annuity payments wouldn't include an enhancement. He said he understood and appreciated it letting him know. He said if his circumstances were different, he would want to explore that.
- Mr W said he wanted to go with the annuity quote he'd been given as an illustration.
- Standard Life checked whether Mr W had dependents, his choice of a level or rising annuity; frequency of payments; payment of income in advance or arrears; and it established he wanted to put in place a 10-year death benefit guarantee.
- Standard Life asked Mr W if he was feeling comfortable for it to go ahead and to give it authorisation to get payments set up and commenced. Mr W played back his understanding of the key outcomes. His bank details were taken to enable payments to be made.
- Standard Life said it would send Mr W relevant documentation. This included key facts; the illustration which would reflect he'd decided not to investigate the possibility of an enhanced annuity; and the 30-day cancellation terms. It confirmed the money would be in his account in the next 3-5 days.
- Mr W ends the call by asking if Standard Life needed anything else from him. Did he now just have to wait for the money? Standard Life said it didn't need anything else. It was all done.

The main outcomes from the sales discussions were that Mr W closed the smaller of his pension plans and took all the funds as a tax-free lump sum. He also elected to take a tax-free lump sum of 25% of the value of his larger personal pension plan. And with the balance of that pot he decided to buy a standard annuity, worth around £138 per month.

about the sale – the enhanced annuity

Based on what I've heard I can't agree with Mr W that Standard Life withheld important information about the availability of an enhanced annuity option when he was discussing what to do about his pension arrangements.

That's because I'm satisfied during the sale calls, he was made aware of what an enhanced annuity was and when it might apply. He was informed it could increase his income. And he was given the opportunity to explore whether he'd be able to get one by providing more details about his health and the medications he was on.

There was no guarantee that Mr W would've qualified for an enhanced annuity based on the conditions and medications he'd declared at the time. But I think he was given adequate opportunity to explore whether he might. It seems at the time he was sceptical if he would qualify. And he decided not to provide more detailed information about his health.

I've thought about what Mr W told us about his health. And I've read the health declaration he made earlier this year (about his status in 2014). In addition to his chronic condition, Mr W said he had high blood pressure, chest pains and that he was a stroke risk. He noted shortness of breath. He said he'd been diagnosed with hypertension. He suffered with psychosis. He was a smoker. And he was significantly overweight.

The problem with this testimony is that it's substantially different to what he said in 2014 during the sales call. For example, then he told Standard Life about his chronic health condition. But he also said that everything else about his health was ok and he wasn't going to qualify for any health concessions. He confirmed that he wasn't a smoker and that he was a little overweight.

I appreciate memories can fade and if you're suffering different and complex conditions recalling everything isn't straightforward. I also recognise Mr W is currently struggling with his health. But having reviewed what he told Standard Life in 2014, this is consistent with the ill health retirement questionnaire his GP completed the same year. I think his submissions in 2019 also reflect more recent developments with his health.

Mr W has raised concerns about the way he was treated during the sale because of his mental health status at the time. He's mentioned two important areas of law. The Mental Health Act and the Equality Act 2010. He says Standard Life was aware of his situation and should've put more support in place for him.

Although we provide an informal dispute resolution service, as an ombudsman I must still *have regard to* relevant legislation and regulation.

I note the law in Northern Ireland is different to that applied in the rest of the UK. For example, the Mental Health (Northern Ireland) Order 1986 covers the care, treatment and protection of people who experience mental disorder. And the Disability and Discrimination Act 1995 applies instead of the Equalities Act 2010. I've borne the relevant provisions in mind when thinking about Mr W's case.

Mr W has referred specifically to two documents which he says Standard Life had on file and which should've alerted them to his needs. The first is a routine referral request from his doctor to a specialist in 2010. This was in relation to his chronic condition and the management of his pain which at the time he and his GP believed had a psychological basis.

The second was a letter from a department of psychiatry to a doctor about an apparently drug induced episode in 2011 when Mr W had to be detained and treated. The letter suggests Mr W made a recovery, was released after a couple of weeks and remained well after a follow-up assessment.

I've thought carefully about what Mr W has said about his situation and I've read the documents he provided. Having done so I don't think Standard Life could've been expected to deduce from the available information in 2014 that he required special support during the sales process. The events recorded weren't proximate to the period of the sale.

I can see there are more recent records from 2019 which show Mr W has been put on a referral pathway for a mental health support programme. And I don't doubt he's had to cope with issues over the years. But when he spoke to Standard Life in 2014, he didn't disclose any special needs. Indeed, he said he was very confident about being able to deal with matters. There was nothing to suggest he didn't have capacity to take decisions in 2014.

Ultimately if Mr W wanted to pursue a case for discrimination or any other breach of law he thinks has been committed by Standard Life, he would need to resort to the courts.

about the sale – significant failings

Standard Life itself recognises the sale calls where Mr W was sold his annuity weren't without problems. I think there were significant failings. I'll explain why.

One of the regulatory objectives of the Financial Services and Markets Act 2000 is the protection of consumers. This objective permeates the statutory framework within which Standard Life must operate. The FCA's handbook identifies eleven *principles* that a business must adhere to. This includes:

Customers' interests – a firm must pay due regard to the interests of its customers and treat them fairly

The relevant requirement in the Conduct of Business Sourcebook for the relevant period of the sale (COBS 2.1.1R) said:

A firm must act honestly, fairly and professionally in accordance with the best interests of its clients (the clients best interests rule)

Standard Life wrote to Mr W in April this year with the outcome of its review of the sale of his annuity. The key excerpts said:

"We have reviewed the sale of your annuity along with relevant communications from the time you bought your annuity.

Whilst we did not provide you with sufficient information, we have determined that in your case you would have made the same decision and chosen the same annuity."

An observation I'd make here is that the letter was far from helpful. I can't see how it assisted Mr W in understanding the position. It seemed to acknowledge a problem but didn't go on to explain what this was, and why it hadn't had an impact on him. So, I'm not surprised Mr W complained about the outcome.

In May this year Standard Life issued its final response to Mr W's complaint. It said:

“The outcome of our review determined that we do not believe you would have considered an enhanced annuity, even if we had been fully compliant in explaining enhanced annuities and the open market option (OMO) to you.

This provided a little more information about what went wrong in the sale. But again, it could've been a lot more helpful.

Aside from the basic communication issues here it's clear Standard Life had found a big failing in the sale it made to Mr W. Section 6, paragraph 4 of the Association of British Insurers Code of Conduct on Retirement Choices (2012) said in relation to purchasing annuities (my emphasis):

*The provider **must** also highlight to their customers the benefits of shopping around.*

Standard Life didn't tell Mr W about the benefits of shopping around for a standard annuity. This was a significant failing in the sale calls.

I've thought about the information Standard Life sent Mr W after the sale. There was a 'wake-up' pack, which did set out key information about his right to shop around for an annuity. This was sent out the day after the sale calls. And a day later it sent him a settlement pack about what had been agreed and his 30-day cancellation rights.

The information contained in these two packs covered what we'd have expected. The problem is usually the information, particularly the wake-up pack, would've been sent out several weeks before a customer was about to take a decision. There's usually plenty of time to think things through and ask questions about such a big life decision.

Here the key element of the sale was done over the phone. And given those exchanges, I don't think Mr W would've engaged much with the information that was sent to him later. As far as he was concerned, it was a done deal by then. So, I'm not putting too much weight on the information provided after the point of sale.

The onus was on Standard Life to comply with best practice and regulation. It agrees it didn't do this. So, I need to consider what the impact of its failings were on Mr W.

Standard Life says it doesn't think the things it got wrong made a difference to Mr W. That's because he didn't want to explore whether he'd be entitled to an enhanced annuity. So, it asserts he wouldn't have wanted to shop around either. I think Standard Life jumps a step too far in its rationale here.

I say this because I think one of the main reasons Mr W didn't want to explore whether he'd be entitled to an enhanced annuity at the time of the sale was that he was reasonably sure in his own mind (rightly or wrongly) his situation wouldn't qualify.

I don't think it's safe to extrapolate from his decisions about an enhanced annuity to say he wouldn't have been interested in understanding he could shop around for a basic annuity.

I think more important was the priority Mr W put on securing his lump sum payments as quickly as possible. And while he could've taken these through Standard Life and looked elsewhere for his annuity, it would've taken time to do the market research. He would've had to have sorted this out before getting access to his funds. And I don't think he would've wanted to hold things up.

We also know from Mr W's initial communications with Standard Life he didn't want to deal with other parties. So, it seems likely there were other reasons that would've contributed to a reticence about shopping around.

I think Mr W was weighing other matters as well. For example, in searching for another provider, he would've needed to have been accepted for an annuity and bearing in mind he was taking ill health retirement there *could've* been extra checks required. This is something Mr W would've been wary about.

I've spoken to Mr W about his recollections from the time of the sale. Of course, events happened a few years ago and I don't expect perfect recall. But when I asked him if he knew at the time he could've shopped around for an annuity, he said he was aware. He said the reason he didn't was because uppermost in his mind would've been speed and simplicity.

Mr W asked me to take a step back and think about his circumstances at the time. He was dealing with issues around his general and mental health, family relationships and the repossession of his home. He was in financial crisis. I can see his situation would've been an important driver of the decisions he was taking about his pension plans in 2014.

It's not for me to say with the benefit of hindsight whether the decisions Mr W took about his pension plans in 2014 were the right ones or not. But I can say from the information I've seen and listened to that it wouldn't be reasonable for me to uphold his complaint against Standard Life – that it didn't give him enough information about the possibility of an enhanced annuity. As I've said, I think it's clear it did.

There were significant failings with Standard Life's sale of the standard annuity to Mr W. But given the evidence about Mr W's priorities at the time, together with his most recent testimony, I think it's more likely than not even if Standard Life had got everything right Mr W would still have made the same decisions he did. So, the things Standard Life got wrong didn't have a financial impact on him.

There was a lot going on in Mr W's life in 2014. But he didn't disclose everything during the sales process. Of course, I recognise why that might have been the case. But I can't fairly hold Standard Life responsible for not considering matters it wasn't aware of.

my final decision

For the reasons I've already set out, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 January 2020.

Kevin Williamson
ombudsman