complaint

Standard Life Assurance Limited ("Standard Life") miscalculated Mr E's pension, resulting in him being overpaid by more than £20,000 over a ten year period. Mr E says the repayment plan requested by Standard Life to recover this debt is unreasonable and unaffordable.

background

The adjudicator who considered Mr E's complaint concluded it should be upheld. He said:

- Mr E could not have been expected to know that the amount of pension he was receiving was incorrect. It was the responsibility of Standard Life to ensure that Mr E's benefits were calculated correctly.
- If Mr E had been given correct information about the amount of his benefits, it is likely that he would have continued in employment, as the benefits would have been insufficient to allow him to retire early from age 55. He had therefore changed his position as a result of the incorrect information provided by Standard Life.
- Mr E had been receiving the incorrect payment for ten years. During this time, he adapted his lifestyle to this pension income. Mr E would not have planned for changes in his income or being required to repay any money to Standard Life.
- Ultimately, he considered that Mr E lived month to month on his pension income and had minimal savings with which to repay the large debt.
- Mr E had been receiving pension credit and council tax rebate to supplement his income. The increase in his pension from Standard Life since he reached age 65 had meant that these additional benefits had been reduced. The increase was due to Standard Life discovering Mr E was entitled to a higher guaranteed minimum pension ("GMP") from state pension age. Having his other benefits reduced had the effect of off-setting some of the benefit of his higher GMP, meaning that Mr E is only approximately £45 better off than he was before the error was identified.
- Because Mr E required his pension income for his ordinary day to day living, the adjudicator did not believe it would be fair and reasonable to put him in a detrimental position because of Standard Life's error.
- As Mr E has been receiving income he was not entitled to, Mr E should agree to repay an affordable amount. The adjudicator recommended that Mr E pay the debt in instalments of £50 each month until either the debt was paid in full or Mr E died. He concluded that any debt remaining after Mr E's death should be written off.
- As Mr E's annuity includes a spouse's benefit, the adjudicator did not think it was reasonable for Mrs E to suffer a loss because of Standard Life's error.

Standard Life did not agree with the adjudicator's conclusions. In summary, it said:

- Although it was keen to agree a repayment plan with Mr E, it was unable to accept the adjudicator's recommendation of monthly instalments of £50.
- It did not think that the proposal was fair and reasonable for both parties, and said further information was required from Mr E before agreeing a fair repayment plan.
- It could not accept a repayment plan covering a period of over 34 years.
- Its proposed 10 year repayment period is equivalent to the length of time it overpaid Mr E, and is in line with the guidelines provided by The Pensions Advisory Service.
- It noted that Mr E had expected to continue to receive a largely level pension throughout retirement, and was not expecting to receive an uplift to his pension at age 65 (as a result of the higher GMP being identified). It suggested that using the

uplift in Mr E's pension since age 65 to repay part of the debt over a 10 year period would be reasonable (which would pay off approximately half of the total debt due).
- This would mean Mr E would be no worse off than he had expected to be before the correct amount of his pension entitlement was identified.
- It also noted that around £2,000 of Mr E's £5,000 annual pension (using the correct figures) was due to benefit from a 3% increase each year. This equated to an increase of around £60 a year. Standard Life said this should be taken into account when agreeing a repayment plan that is fair to both parties.

Mr E responded to Standard Life's specific enquiries, and said, in summary:

- He had already sent the adjudicator a copy of his bank statement showing savings.
- At the time he took early retirement, he was self-employed, and he could have continued with his business until he was 65. He noted that the business is still being run today by other owners.
- If he was told the correct information by Standard Life he would have continued to work until age 65. He would not have been able to afford to retire on a pension of less than £2,000 a year, compared to the pension of over £4,000 he was offered.

As Standard Life did not accept the adjudicator's conclusions, the case was referred to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusions as the adjudicator, and for broadly the same reasons.

The starting point, as a matter of law, is that Standard Life is entitled to recover the overpayment from Mr E. In other words, he is not entitled to benefit from the overpayment simply because it arose as a result of Standard Life's error. However, in reaching a decision about what is a fair and reasonable outcome in this particular case, it is also appropriate for me to consider whether Mr E relied on the incorrect information he received from Standard Life, and has changed his position as a result.

Given Mr E's circumstances at the time he took early retirement, I find it unlikely that he would have chosen to retire early, if Standard Life had given him correct information about the amount of pension available to him. Had the correct annuity been quoted at the time, I find it more likely than not that he would have continued to run his business until he reached age 65 (or such other time as his situation changed). I therefore conclude that the error by Standard Life resulted in a substantial change to Mr E's personal circumstances.

The annuity had been in payment for ten years when the error was discovered, and both parties agree that Mr E had no reason to suspect during that time that he was receiving any overpayments. As a result, it is reasonable for Mr E to have relied on the information received from Standard Life as being correct.

However, I must also take into consideration that Mr E has benefited from receiving an income for nearly ten years that was more than twice what he was entitled to receive. Since age 65, and the error being identified, Mr E has also benefited from having an uplifted pension. Although he is entitled to that increase, it means that he is currently receiving a higher pension for the rest of his life than he expected to receive when he accepted the annuity offer from Standard Life. For this reason, I do not think it would be appropriate to direct that Standard Life at this time write-off all or part of the debt due. I am therefore concerned with deciding what would be a fair and reasonable repayment plan for Mr E.

I have seen no evidence to indicate that Mr E has significant savings or other investments that would generate the capital required to make the payments Standard Life requests in order to repay the debt. From the bank statements, bills and receipts provided by Mr E, it is evident to me that he lives a modest lifestyle. There is little excess cash from his retirement income after paying his monthly outgoings. In order to repay the debt at the rate suggested by Standard Life, there would need to be a substantial change in Mr E's lifestyle. I do not believe that would be sustainable, or a fair or reasonable outcome in the circumstances.

The main thrust of Standard Life's objection is that it says a period of over 34 years is too long a time for the repayment schedule. It refers to the Pensions Advisory Service's guidelines as supporting its offer of a ten year period. However, that result does not take into consideration affordability of the repayment plan, which is another important factor.

I take on board what Standard Life has said about the increase to Mr E's pension income in absolute terms. However, it does not appear to have considered the overall effect on Mr E's income of being in receipt of higher pension income (such as the reduction to his pension credit and council tax rebate). Mr E says that he is in fact only £45 better off each month overall than he expected to be after age 65. On this basis, I agree with the adjudicator that the monthly repayment rate of £50 (net of tax) is a fair and reasonable outcome.

I note Standard Life's point that Mr E will receive an annual increase to his pension of around £64, rather than the £11 increase originally expected. However, I do not consider an additional increase to his pension of £53 a year to be sufficiently material to justify increasing the monthly repayment figure.

Standard Life offered to reduce the debt owed by Mr E by £1,000, to reflect the distress and inconvenience its error has caused him. I agree that this is appropriate. As a result, the balance of the overpayment should stand at £20,688.16.

It is up to Mr E to decide if he accepts my decision. I set out below the directions I make, which will apply if he chooses to accept it within the deadline specified above.

my final decision

I uphold Mr E's complaint and direct Standard Life Assurance Limited ("Standard Life") to:

1. Reduce the amount of the debt owed by Mr E by £1,000 to reflect the distress and inconvenience caused to him as a result of its error.

2. Set up a repayment plan so that it deducts £50 each month (net of tax) from Mr E's monthly pension instalment until the earlier of Mr E's death or repayment in full of the remaining debt of £20,688.16 (with no interest to be applied to this sum).

3. If Standard Life determines that the overpayment has resulted in an unauthorised payment, pay HM Revenue & Customs any tax charge arising.

4. Write a letter to Mr E confirming that if any debt remains at the time of his death, this debt will be written off, and Standard Life will not seek to enforce any debt against Mr E's estate or through reducing the amount of Mrs E's spouse's pension.

Venetia Trayhurn
ombudsman