Financial Ombudsman Service

complaint

Mr S complained about Standard Life Assurance Limited. He said after his pension plans were moved to a self-invested pension plan (SIPP) his fund has been wrongly left in cash and hadn't been properly managed.

background to decision

On 27 May 2016 I issued a provisional decision about Mr S's complaint. Both parties were given the opportunity to comment. Mr S provided some clarifications and raised some questions on redress. Standard Life didn't respond. I have addressed some of Mr S's queries about redress but the rest of this final decision largely reflects my provisional version which both parties have seen.

background to transfer

Mr S transferred his three personal pension plans to a SIPP in June 2008 following advice from Standard Life. At the time he was 65. He immediately took 25% tax free cash worth about £41,000. The rest of his funds, about £121,000, were placed in the SIPP in cash.

Prior to transferring, Mr S plans were as follows:

	Approximate fund value at transfer	Guaranteed Annuity Rate (GAR)?
Provider A	£37,500	Yes (between 10-13% depending on retirement age, based on single life, payable monthly in advance and guaranteed 5 years)
Provider B	£123,600	Yes (between 6-10% depending on retirement age and type of annuity taken)
Provider C	£4,300	No

Standard Life provided with Mr S with a suitability report in May 2008 following earlier meetings. The report said Mr S's first objective was to take the maximum tax free cash from all of his pensions.

Standard Life recommended Mr S take 25% tax free cash and use full income drawdown as the most efficient way to achieve his objectives. It recommended Mr S transfer his plans to a SIPP to achieve this. The report explained that Mr S didn't want to take any risk with his money and he wanted to invest in cash. Finally, Standard Life recommended that Mr S recycle his pension income back into the SIPP each year up to the maximum allowable.

The report said the recommendations were suitable for Mr S because:

- He wanted the tax free cash to fund one of his children's education.
- His highest priority was to release capital immediately.
- He didn't favour an annuity as he wanted to make sure his fund was passed to his family if he died.
- He didn't require income at the time, though would like the flexibility of having it in the future if he decided to semi-retire.

- He wanted to place his funds in cash at the present time due to his feelings on current market conditions.
- He'd been made aware of the GARs he would lose on transfer but didn't want to proceed with these as he didn't like the restrictive death benefits provided by an annuity.
- He wishes to maintain investment control of his funds through Standard Life's portfolio management service (PMS). He'd been made aware of the service and was aware it was his responsibility to contact his advisor if he wanted to move his funds from cash.

The PMS was described within the suitability report as offering:

- *"a holistic financial planning advice service with one point of contact to manage your portfolio of assets."*
- *"regular reviews and reports – on rebalancing every 6 months and on full annual review of your financial goals."*
- *"regular face to face meetings to review and rebalance of your holdings."*
- *"provide a more proactive approach to the funds within your pension."*
- a 0.9% annual ongoing advice charge.

Finally, the report finished with details of Standard Life's ongoing service. It said *"we will arrange to rebalance your portfolio twice a year and fully review your circumstances every year."*

The report largely reflected the details recorded in the Fact Find. The details in the Fact Find were more specific. Amongst other things, it said:

- Mr S had three children; their exact ages were set out in the report.
- The youngest was financially dependent until the age of 24.
- He wished to take the maximum tax free cash to fund his son's further education.
- Two of Mr S's three pensions had GARs. These were discussed with him. Mr S decided he did not want any annuity and had a very low opinion of annuities.
- Mr S liked the PMS and the range of investments available to him and the option of having regular meetings and a more proactive service.
- Mr S was nervous about the volatility of the current market conditions. He will come back to the advisor early next year to review where he invests his funds.

In investigating this complaint, Mr S was provided with a copy of the fact find. He said he hadn't seen this document before. He noted a number of errors in it. These included the amount of income he received from his profession and the value of his house.

One noticeable error was the fact that Mr S had four children - not three. He said the youngest in 2008 was his daughter, in her late twenties – not an 18 year old son. And their age ranges were significantly different and older. None of the children were financially dependent on him and all had been through university already.

background after transfer

Mr S began his drawdown in August 2008. In 2008 and 2009 he recycled his annual drawdown of approximately £11,150 back into his SIPP. This meant that, after tax relief had been applied to his contribution, no net withdrawals were made to his SIPP in these two years (other than the SIPP charges). Mr S proceeded to then take 25% tax free cash of about £5,600 on those recycled payments in December 2009.

From August 2010 onwards Mr S simply withdrew funds from the SIPP at a figure of around £10,200 per year in 2010, 2011 and 2012. This appears to coincide with starting around the time Mr S's business closed down in December 2010 and him retiring from his profession. In proportion to his fund size, the annual drawdown reduced to around £6,700 in 2013 and 2014. Mr S was informed in August 2014 that the cash account would cease to pay interest from January 2015. By April 2015, Mr S's fund was worth about £73,000.

Mr S did receive some correspondence from Standard Life between 2008 and 2012. Though by Standard Life's own admission, there appears to be no record of any reviews offered in that period. In May 2011 the PMS changed from a 'face-to-face' to a telephone only service. Standard Life wrote to Mr S to inform of this.

Standard Life's internal records indicated a review was offered by letter to Mr S around July 2012. The notes also indicated that Mr S failed to respond. No copy of that letter has been provided. In July 2013 a review was offered to Mr S. This was shortly after he was notified of a change in his Private Client Manager (PCM). A telephone review did take place on 18 September 2013. A letter was then sent to Mr S by his new PCM enclosing information about two managed funds he could move his cash into.

I've had the opportunity to listen to the call between Mr S and Standard Life in September 2013. The review lasted just over 30 minutes. Within the review a number of important things took place:

- Standard Life apologised for the failure to review Mr S's funds previously.
- Standard Life explained the impact of leaving his funds in cash and the effect this was having on the value of his SIPP.
- Standard Life asked why Mr S's funds were still in cash. He explained *"inactivity at his end"* but Standard Life hadn't reviewed it.
- Mr S suggested moving his funds to be managed by his relative – an investment manager within an investment house.
- Standard Life explained that the fund depreciated by 0.21% in the previous year.
- It was agreed by Mr S and Standard Life that something needed to be done to stop the fund depleting further.
- It was agreed by Mr S and Standard Life that the fund needed growth.
- Standard Life suggested possible managed funds Mr S's money could be moved into. This included the MyFolio Managed Funds.
- Mr S answered attitude to risk (ATR) questions. He said he thought he had done this before – possibly with the investment house where he had other funds invested.

- As a result of his answers he was rated as two out of five; low-medium risk. Mr S felt he was more like a three.
- Mr S said he was a three as he wished to see more income and greater capital growth.
- Mr S agreed that he would consider investing in the MyFolio fund for one year. After which he said he would look to review and decide if he wanted to move his pension to his relative's investment house to manage.
- It was agreed that Standard Life would send Mr S the details of the proposed fund.
- At the end of the call Standard Life reminded Mr S that he needed to move his funds soon to ensure the fund started to grow.

background to complaint to Standard Life

Mr S complained to Standard Life in April 2014. His complaint principally related to Standard Life's failure to carry out regular reviews with him under the PMS and the fact that his money had been left in cash. As a result, after charges, it had failed to make any returns and was simply reducing after each withdrawal. At the end of his complaint Mr S said *"this has caused distress and concern, especially in the event of my wife surviving me."* Mr S asked Standard Life to refund the PMS charges and return his lost capital to him; soon after he moved his funds to his relative's investment house.

Mr S said after 2008 he didn't receive any contact from Standard Life until July 2011. He said the only pro-active action taken was a telephone call to him around June 2013.

Mr S also said he filled in paperwork in 2008 indicating he was a medium risk investor – a "3 out of 5;" which was inconsistent with leaving his money in cash.

Standard Life didn't uphold his complaint. Through a number of exchanges with Mr S, it said, in summary, he chose to invest in cash; he was told to contact Standard Life when he wanted to invest; reviews were offered and Mr S didn't take them up. Standard Life explained that it couldn't make investments on Mr S's behalf; it needed him to choose where he wanted the money. Standard Life said it had offered reviews to Mr S in 2012 - but he didn't respond - and in 2013, which was carried out over the phone. It said any reviews before then would have been carried out in person but it didn't have any records.

One of our adjudicators considered the complaint. She thought Mr S hadn't been offered annual reviews as he should have been and his fund had been left in cash as a result. The adjudicator also looked at the initial advice to transfer into the SIPP. She thought that advice wasn't suitable and Mr S should have been advised to hold on to his GARs in 2008 and taken an annuity when he had finally retired from the business. The adjudicator proposed Standard Life calculate the loss Mr S had suffered based on the assumption he would've have taken two annuities with Providers A and B in 2010. She thought the small sum in Provider C would have been transferred and incorporated into the Provider B fund.

Standard Life didn't agree. It said Mr S's complaint was about the management of his funds and not the suitability of the advice. In relation to suitability, it said the GARs would have been explained to Mr S and that Mr S was adamant he didn't want an annuity. Given his objectives the advice wasn't unsuitable. Standard Life also said his subsequent action of re-investing his funds with a different discretionary fund manager showed that he had no intention of taking an annuity.

In relation to the error regarding Mr S's children and the objective of providing for their education; Standard Life couldn't explain this. It said Mr S would have been aware of the error in the suitability letter and he could have raised it at the time. If he didn't require the tax free cash, again he could have raised it within the cancellation period.

Standard Life said it accepted there was no evidence of annual reviews taking place before 2012 and proposed to refund Mr S's management fees between 2008 and 2012. It explained that it was not a fund manager. It said Mr S's perception of the PMS was wrong and it required his instructions to carry out any changes in his investments.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This complaint can now largely be split into two halves. There is the original issue raised by Mr S regarding the failure of Standard Life's PMS to invest his funds. And there is the second issue, raised by the adjudicator, that Mr S shouldn't have been advised to put his funds in the SIPP in the first place and the conclusion that with suitable advice he wouldn't have done so.

suitability of the advice to transfer

The advice to transfer Mr S's three plans appears to have been partly based on a key factual error about why Mr S needed to release the maximum tax free cash. I've struggled to reconcile this error about Mr S's children and neither party has been able to explain it. The fact find was completed in a detailed manner. The rest of the details broadly reflect Mr S's circumstances – including his profession and his retirement plans. Yet for some reason it recorded he had three children and not four and with incorrect ages; and that he wanted money to fund the education of his youngest son. This is despite the fact that his youngest child was his much older daughter.

The suitability letter reinforced this error. It said *"you wish to take the maximum amount of tax free cash from your pension to use towards some education fee's for one of your children."* Mr S didn't receive a copy of the fact find, but did receive a copy of the suitability report. He signed on 24 June 2008 to confirm that he accepted the advice in full. Mr S was a partner in his own law firm. He was continuing to work at this time. I agree with Standard Life that it's surprising that he didn't notice this error and rectify it. During the course of his correspondence with this service he has brought other errors within the fact find to our attention.

The error was significant. It provided the motivation behind the timing of the transfer. In the absence of any real requirement for the tax free cash it's difficult to see why it was needed at that moment. Mr S has confirmed he didn't use the £41,000 tax free cash for any specific purpose. It was offered to him as something he could take, so he took it. He said he may have just used it to supplement his income from his firm which had dropped off slightly.

This error undoubtedly reduces the suitability of the advice provided. There was no need to rush that decision. In relation to the GARs, Mr S accepted that the concept was discussed, but not the detail. He said he wasn't given the numbers. The suitability report said:

> *"I made you aware of the GARs that apply to the [Provider A] and [Provider B] policies. After discussing this with you, you do not wish to proceed with these or any other annuity in anyway. This is mainly due to the restrictive death benefits annuities provide."*

I think that it's likely that this broadly reflected the conversation Mr S had with Standard Life. He was aware of the GARs, though not necessarily what that really meant in terms of the rates and possible income it could provide. While it's difficult to know what was discussed at that meeting, I believe Mr S on that point. The report could have explained in more detail what Mr S was tangibly giving up.

The other two key reasons supporting the suitability of the transfer seem to be, firstly preserving Mr S's fund to provide for his wife and family should he die early. And secondly, that Mr S wasn't planning on retiring at 65, he didn't need to take income at this stage and he could retain some flexibility if he wished to draw an income in the future without having to buy an annuity and lose the money from his estate.

The adjudicator's view was that Mr S should have been advised to retain his existing pensions until he was ready to retire. He could then have made a decision to take an annuity or not. She said he would likely have taken the annuities in 2010 when his business closed. I have some reservations that this conclusion was reached with the benefit of hindsight.

In 2008, Mr S's firm was expecting to continue to operate. What happened in 2010 that led to the firm closing was then unknown. Mr S said he had no plans to retire at 65 and was planning on working until he was at least 70. He didn't require the additional income of an annuity at that point. It's also relevant to note that in 2016 he has income from other sources and doesn't draw on the SIPP funds. These are in the process of being reinvested by a fund manager. I think the circumstances support the notes in the fact find and the content of the suitability report that an annuity wasn't so important to Mr S.

In looking at Mr S's original complaint to Standard Life in 2014, he expressed concern over the size of the fund and the effect that would have on his wife if she survived him. That original complaint echoes Mr S's objectives recorded in 2008 that he wanted to ensure his money passed to his wife on his death. It reinforces the decision to move the money into the SIPP and not take the annuities. Mr S has been asked by this service a number of times what he would have done if he had been informed in more detail about the GARs. This has included providing Mr S with an estimate of what annual income he would have received. In response he has always said he doesn't know. It's extremely difficult to know what one would have done eight years ago when presented with different information and advice. But I think it's noticeable that Mr S's complaint has never been that he doesn't have the income he requires – even now – but has primarily always been about the size of the fund and the failure of Standard Life to invest it properly.

In conclusion, I do have some concerns about the suitability of aspects of Standard Life's advice, in particular the motivation for releasing the tax free cash and whether the benefits of the GARs were properly explained. The inclusion of an entirely different person's name in part of the suitability report raises further alarms. Especially as that error was contained in the document held by Mr S and not the copy provided to this service by Standard Life.

However, I don't think there is sufficient evidence to show Mr S wouldn't have transferred his funds to the SIPP anyway.

I think the decision was a balanced one with merits in both courses of action. The attractiveness of an annuity was reduced by the fact that he didn't require an income at this time, and wouldn't for a number of years. When combined with Mr S's objective of providing for his wife, I think, on the balance of probabilities, he still would have taken this course of action. I think one of the motivations for this, as reflected in the suitability report and fact find, was that the fund size could be improved in the SIPP, while still allowing Mr S to take further tax free cash through recycling drawdown. Importantly, and linked to this, was the attraction of the PMS offered by Standard Life; which leads me to the second half of Mr S's complaint.

failure to provide reviews and invest the funds in the SIPP

The description of Standard Life's PMS within the suitability report logically assumes a pro-active approach will be taken: *"regular reviews", "enable us to manage your pension and investment portfolio", "holistic financial planning service", "regular rebalancing", "proactive approach"* are just some of the terms used. It certainly doesn't suggest that if Mr S doesn't tell it what to do, it won't do anything.

In 2011 when the PMS moved to a telephone only service, the overall message remained the same:

- *"The new service still offers you access to a highly qualified and experienced Private Client Manager (PCM). Together with a dedicated paraplanner and administrator, they are looking after your investment…"*
- *"You'll also benefit from more regular tailored updates on your investment and its performance."*
- *"This not only makes the new service more accessible, it also allows the team more time to focus on your investment goals and respond even faster to your needs."*

The suitability report told Mr S that he was to contact Standard Life when he wanted to move his funds out of cash, but I don't think that detracted from the overall message he was being given. He was told he would get two reviews a year and that Standard Life would be managing his funds. There's no evidence Standard Life did this at all. Standard Life accepts there is no record of any review being offered before 2012.

While it was Mr S's initial decision to place his funds in cash, owing to concerns over the stock market in 2008, he was under the impression that Standard Life were providing a service whereby they would pro-actively look after his funds for him. That was a reasonable assumption for him to make. He was paying for this service.

While Mr S appears to have done nothing himself to check on his money or ask for it to be invested, that I think is perhaps partly indicative of Mr S's overall approach to these funds. From his discussions with this service he referred to them as being effectively a surprise having been set up in the 1980s and largely forgotten about until 2008. Equally, from 2010 Mr S would naturally have been focused on his business and the issues surrounding this. Whatever the reason, he rightly thought Standard Life were managing his funds.

Leaving the funds in cash for six years has been detrimental to the value of Mr S's SIPP. He has paid charges for the PMS and SIPP which meant he has made no return on the money at all. It has stagnated and with the withdrawals has meant the capital has simply shrunk. To move to a SIPP for the purpose of being able to retain the flexibility of drawdown means the funds must be invested to some extent.

In conclusion I think Standard Life did do something wrong by failing to arrange reviews between 2008 and 2012 so that Mr S's investment strategy could be discussed and properly arranged. While Standard Life said a review was offered in 2012 but not taken up by Mr S. Mr S denied ever receiving a letter. Given the obvious issues with Mr S's money being left in cash, I don't think a single letter in 2012 was the only action Standard Life should have taken to get in touch. I also note no copy of this letter has been provided.

In 2013 a review did take place. This seems to have coincided with a new PCM taking over Mr S's account. The content of the call revealed Standard Life acknowledged no reviews had taken place until that point. It also revealed that Mr S was made aware he needed to do something and move his funds. Mr S knew this and received further details in the post from Standard Life to help him to make a decision. There was some onus on him then to take action.

I think Standard Life did do something wrong and it's fair and reasonable for Mr S to be compensated for that. But I think that from 2013 Standard Life were taking measures to correct those errors and some responsibility then rested with Mr S. As a result any compensation should be limited up to the time of the review in September 2013.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr S as close to the position he would probably now be in if he he'd been given suitable advice about investing his funds.

I think Mr S would have invested differently. It is not possible to say *precisely* what he would have done, but I'm satisfied that what I have set out below is fair and reasonable given Mr S's circumstances and objectives when transferred to the SIPP.

Mr S's SIPP was opened on about 1 August 2008. His first review should have been due about six months after around February 2009. At this stage, I think it's reasonable to assume Mr S's decision to initially place his funds in cash would have been reviewed. I think therefore it's fair and reasonable to use this date as the start date from which to assess the compensation he should receive.

By the same token, Mr S did have a review on 18 September 2013. He was sent details about possible funds in which to invest. Standard Life told him he had to make a decision on what fund he wished to invest it. I think at that point Mr S would have been aware of what was required of him and that Standard Life wouldn't be making that decision for him. At that stage the ball was in his court if he had further questions or didn't understand the information provided. Therefore that should be the end date at which to assess the compensation Standard Life should pay.

what should Standard Life do?

To compensate Mr S fairly, Standard Life must:

- Compare the performance of Mr S's SIPP with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the SIPP. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Standard Life should also pay interest as set out below.

  If there is a loss, Standard Life should pay such amount as may be required into Mr S's pension plan, allowing for any available tax relief and/or costs, to increase the SIPP value by the total amount of the compensation and any interest.

  If Standard Life is unable to pay the total amount into Mr S's SIPP, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mr S's marginal rate of tax at retirement.

- Pay Mr S £250 for the trouble and upset caused by the discovery of the loss to his pension funds.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Standard Life SIPP	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	1 February 2009	18 September 2013	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

This means the actual amount payable from the investment at the end date.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Standard Life should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Standard Life totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr S wanted income (the evidence is he began to take income from August 2010) with some growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr S's risk profile was likely to have been between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude. The answers Mr S provided to the ATR questionnaire during the September 2013 review further support this conclusion.
- Mr S has not yet used his SIPP to purchase an annuity.

In response to my provisional decision, Mr S queried whether he should also receive the refund of the fees originally offered by Standard Life.

The purpose of the compensation set out above is to put Mr S in the position, as far as possible, he would have been had Standard Life carried out the reviews as they were required to do and his money had been properly invested. As a result, reviews would have taken place and he would have continued to pay for the PCM service. I have therefore not allowed for a separate refund of the fees.

Mr S also raised a number of possibilities that may have arisen had his funds not been left in cash. For example he would have benefited from a greater income, or would have had a larger fund with which he could have afforded to invest in slightly more high risk areas.

As I explained, in determining what is fair compensation it's impossible to say what precisely would have happened and the subsequent decisions that may or may not have been made – and indeed what effect these may have had? But, taking all of Mr S's comments into account, I'm satisfied that what I've proposed is a fair way of compensating him for any loss he has suffered.

my final decision

I uphold Mr S's complaint in relation to Standard Life's failure to review and manage his SIPP funds until September 2013. Standard Life Assurance Limited should pay the compensation as calculated above. Standard Life should provide their calculations to Mr S in an easily understandable form.

Under our rules I'm required to ask Mr S to accept or reject my decision before 29 July 2016.

Benjamin Taylor
ombudsman