

complaint

Ms M has complained that Standard Life Assurance Limited failed to arrange for regular pension contributions to be collected from her account.

background

I issued my provisional decision on this complaint in March 2018, which is attached and forms part of this final decision.

In my provisional decision – as both sides had conceded fault – I considered that a fair approach to compensation (based on sharing the liability) would be for Standard Life to compensate Ms M for all lost growth on half of the total contributions that should've been made – up until the date of my decision.

I gave both parties the opportunity to reply before reaching a final decision. Ms M had nothing further to add, but Standard Life argued that they should only calculate growth up until the point Ms M viewed her online statement and complained in August 2017.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I will still be asking Standard Life to pay for lost growth up until the date of this decision.

Standard Life believe that any losses would've stopped at the point Ms M noticed the problem and made her complaint, as she could've started to make regular payments from that point. I appreciate that may have been the case, but that would only mean she would begin to earn growth on *those* contributions made from that date forwards. It wouldn't account for the growth she'd lost (and would continue to lose) on the contributions that should've been collected between September 2015 and 2016. And paying regular contributions from that point on would also have no bearing on what the past contributions would be worth now.

There is also the distinguishing fact that, by the time Ms M checked her statements and discovered the problem, she had already lost a substantial amount of money to fraud and said she couldn't then make up the past contributions. So it isn't as if she was in the position to then make up the shortfall at that point either.

I should point out that this case contains a very particular set of circumstances and shared liability that has made the issue of settlement and redress rather problematic. But as Standard Life agreed to pay the lost growth on half the contributions – and for the reasons I have outlined above – I still think it's fair to expect that they calculate the lost growth up until now.

my final decision

For the reasons given above and in my provisional decision, I direct Standard Life Assurance Limited to recalculate what the growth would be on the value of the first years' worth of gross contributions – had they have been collected – from the date the first payment should've been made up until the date of my final decision, and for this to be added back into

the fund. This is in addition to the £200 compensation offered by Standard Life in recognition of their mistake.

This amount will also accrue 8% per year simple interest from the date of my final decision if it hasn't been settled within 28 days of Standard Life receiving Ms M's acceptance of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 3 May 2018.

Jack Ferris
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Ms M has complained that Standard Life Assurance Limited failed to arrange for regular pension contributions to be collected from her account.

background

Ms M consolidated her pensions into one scheme with Standard Life in 2015, and drew down 25% of the fund to repay outstanding debts. In order to help replenish the amount drawn down, Ms M explained that she wished to pay an extra £300 per month into the fund from her personal account.

Standard Life contacted Ms M to confirm the pension fund transfer, at which point they also told her that the regular £300 payment she wished to make had been set up. So Ms M was under the impression that everything was in order, and that the regular payments would start being deducted from her account. But it wasn't until she received an email in August 2017 regarding her electronic statements that she realised no contributions had been made for almost two years.

Ms M contacted Standard Life to query her statements, at which point they informed her that they had sent out two separate direct debit mandates back in 2015 – but as these had never been returned, they say that they didn't have the necessary authorisation to deduct the contributions from her account. Ms M says she doesn't recall ever receiving the direct debit mandates, but was told over the phone that the regular payments had been set up.

Standard Life apologised to Ms M for the misleading information she was told over the phone in 2015, which they say was given in error. They offered £200 compensation for the mistake but Ms M didn't feel this was enough. Ms M argued that Standard Life should pay some of the backdated contributions into the fund on her behalf. But they declined to do this, because although they accept an error was made, they say that Ms M didn't return the direct debit mandate, and should've realised that the money wasn't being taken from her account.

Standard Life have also argued that Ms M was issued with yearly pension statements which would've shown that she wasn't paying anything, and that she hasn't actually *lost* the money as it was never debited from her account. But Ms M says she that she no longer has the money – as it was stolen from her recently through fraudulent activity – and isn't in a position to now be able to make up the difference. She also claims that she never received her annual statements until she logged into her account in 2017.

Our investigator felt that both parties ultimately had some share in what went wrong, and that this should be reflected in any redress Ms M might be due. So in considering what Ms M had actually lost, he felt a fair 'halfway' settlement would be for Standard Life pay the *growth* that would've been attributed to *one* year's worth of contributions at £300 per month – rather than the two year's contributions Ms M claims to have lost.

Standard Life accepted that they hadn't got everything right, and Ms M acknowledged that she was also partly liable for the mistake, so both parties agreed with the proposed settlement in principle. On that basis, Standard Life offered to pay Ms M an additional £156.26 in lost growth, which only accounts for growth attributed up until August 2016 – which our investigator agreed with.

Ms M rejected this as she felt it was too low, arguing that the amount should include growth up until now – which Standard Life declined to do. As both parties were not able to agree on the nature of the settlement, the complaint has been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Given that Standard Life have made an offer in recognition of what went wrong – and given that Ms M was willing to accept the proposed compensation in principle on the basis of sharing liability – I needn't go into what went wrong and who was at fault as it appears both parties have conceded this.

The issue now relates to the adequacy of the settlement put forward by Standard Life, and whether it's fair in the circumstances. Standard Life has offered an additional £156.26, which they calculated as the amount of extra growth that would've accumulated within her fund if the regular contributions had been collected. And in line with what our investigator recommended, they have only calculated what the growth would've been after one year, on one year's worth of contributions (£4500 gross).

Ms M argues that the lost growth should be calculated up to the current date, or that the amount should accrue interest up until the date it is paid. But Standard Life maintain that their offer is fair given the element of shared responsibility, and owing to the fact that Ms M can no longer make these contributions herself. They have argued that their liability stopped when the first yearly statement was issued in August 2016 (which Ms M claims she never received), and that any subsequent growth (or lack of) would be Ms M's responsibility.

But whether or not Ms M could've checked her statements in August 2016, I don't think this means it's fair to restrict her losses to one year's worth of growth. I appreciate that Ms M can no longer make the contributions because of the large amount of money that was taken from her fraudulently. But Standard Life has accepted to pay the growth for the first year's contributions in recognition of what they did wrong. So in the circumstances, I think a fair approach based on 'sharing' liability would be for Standard Life to compensate Ms M for *all* lost growth on *half* of the total contributions that should've been made.

To limit the growth to just one year wouldn't represent a 'fair split' of liability given that the contributions could've continued to attract growth up to the current date. So Standard Life should recalculate the growth on the amount of one year's worth of contributions (£4500 gross) from the date it should've initially been paid in, and calculate what it would be worth *now*.

my provisional decision

My provisional decision – subject to any more evidence or arguments I receive from Ms M or Standard Life – is to uphold this complaint.

In addition to the £200 already offered, I propose to tell Standard Life to recalculate what the growth would be on the value of the first years' worth of gross contributions – had they have been collected – from the date the first payment should've been made, up until the current date, and for this to be added back into the fund. This amount will also accrue 8% per year simple interest from the date of my *final* decision if it hasn't been settled within 28 days of Standard Life receiving Ms M's acceptance of that decision.