

## **The complaint**

Miss H complains that she was advised in 1991 to set up a personal pension with Standard Life Assurance Limited (Standard Life) instead of joining her employer's defined benefits (DB) pension scheme. She says that what happened should've been reviewed as part of the Pension Review but wasn't.

Standard Life upheld the complaint and offered redress but Miss H hasn't accepted it.

## **What happened**

Miss H contacted Standard Life in May 2020. She said she had a query about having opted out of her employer's pension and taken out a personal pension with Standard Life. She asked if she'd been included as part of the Pension Review in the mid 1990s.

Standard Life looked into what had happened before writing to Miss H on 24 August 2020, upholding her complaint and saying that a loss assessment would be carried out by an independent firm of consulting actuaries.

Standard Life wrote to Miss H on 1 March 2023 with the outcome of the loss assessment and making an offer of a cash sum of £148,153.05. Miss H raised some queries with Standard Life about the offer. Standard Life wrote to Miss H on 6 June 2023 dealing with the points she'd raised.

Miss H remained dissatisfied and referred the matter to us.

One of our investigators looked into what had happened before writing to Miss H on 1 December 2023. Essentially the investigator's view was that Standard Life's offer was fair and reasonable. He explained that, in this sort of case, we'd expect the business to calculate loss in line with guidance from the regulator, the FCA (Financial Conduct Authority). He thought Standard Life had done that. And, if a cash payment was to be made (as opposed to paying the compensation into a pension plan), a deduction in respect of income tax that would've otherwise been paid could be made. He also said the value of the personal pension Miss H had taken out instead could be taken into account for the reasons he set out.

Miss H wanted an ombudsman to review the complaint. She said she'd made an independent decision to take out a defined contribution (DC) pension plan. And her choices may have been different if she'd remained in her employer's DB pension scheme. She didn't think the FCA guidance allowed for other pensions to be taken into consideration. She did agree with what the investigator had said about a deduction for tax.

The investigator replied, saying the DC scheme Miss H had joined was provided by her employer and replaced the DB scheme. Had she been correctly advised, she wouldn't have had the personal pension or the DC scheme. So it wasn't unfair for both to be taken into account in the loss calculation.

## 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.

Standard Life accepts that the sale of Miss H's personal pension should've been reviewed as part of the industrywide Pension Review (established by the then regulator in 1994 to review personal pensions sold between 29 April 1988 and 30 June 1994). Standard Life further accepts that Miss H should've been advised to join her employer's DB pension scheme instead of taking out a personal pension and has offered redress. So the only issue is whether what's been offered is fair and reasonable.

The regulator, the FCA, issued new guidance (FG17/9) in October 2017 about how businesses should put things right for consumers where unsuitable advice had been given in respect of DB pension transfers, opt-outs and non joiners. Following a further consultation process in 2022, a policy statement (PS22/13) was published on 28 November 2022 which set out new rules and guidance. Those came into effect on 1 April 2023 and are set out in the regulator's handbook in DISP (Dispute Resolution) Appendix 4.

I mention all that because in a case such as this, where it's accepted that the advice given wasn't suitable and hasn't previously been reviewed, we'd expect redress to be calculated and offered in line with the regulator's prevailing guidance.

Standard Life wrote to Miss H on 1 March 2023 with the result of the loss calculation and making an offer. The letter set out that the calculations had been completed based on the financial and demographic assumptions determined in accordance with the FCA guidance document FG17/9 as updated in March 2022. The basis date for the calculations was 1 January 2023. I think that was correct and in line with the then applicable guidance.

Under the heading '*FCA rule changes on calculating redress*', the letter said the FCA had recently reviewed the assumptions and methodology and a new process would come into effect from 1 April 2023. Miss H could accept the offer made or wait until after 1 April 2023 when the redress amount would be recalculated and that amount paid.

From what I've seen, I'm satisfied that the correct methodology was used and that compensation was calculated and offered in accordance with FG17/9. And, in line with the regulator's expectations, Miss H was also offered the opportunity to have the redress re-calculated, using the updated guidance and new rules.

The calculations are highly complex. They were carried out on Standard Life's behalf by actuaries with very considerable experience in undertaking this type of calculation. We're not actuaries and so it's not possible for us to check the calculations in any detail. But, from what I've seen, I don't have any reason to say the calculations weren't done correctly.

Miss H maintains she'd have had options had she joined the DB scheme and she could've increased her contributions or made AVCs (Additional Voluntary Contributions). And she doesn't agree with the value of the DC scheme being taken into account. On the latter point, the DC scheme was offered by the same employer and replaced the DB scheme. But, although the DB scheme was closed to new members from 31 December 2000, it remained open to active members who were in service before that date. That was Miss H's position so, if she'd joined the DB scheme, she wouldn't have had the personal pension or the DC scheme. In seeing if she's suffered any loss as a result of not joining the DB scheme, the values of both the personal pension and the DB scheme are taken into account against the value of the benefits the DB scheme would've provided had she joined that instead.

On the other point, I understand what Miss H says about possibly having made different decisions and topped up her pension anyway. But I don't think it would be fair to allow and take into account the benefit of money which might have been used in that way but wasn't and which Miss H retained and was able to spend differently.

As I've said we're unable to check the redress calculation in detail. If Miss H wants to do that, she'll need to appoint an independent actuary at her own expense. I understand that the Institute and Faculty of Actuaries holds a list of actuarial firms able to undertake this sort of calculation if Miss H wants to go down that route.

I've noted what Miss H has said about the impact this matter has had. I'm very sorry to see that her personal circumstances have been very difficult. I recognise that dealing with this matter will have added to the stress she's been under.

But I bear in mind that Standard Life told Miss H reasonably quickly (and taking into account that Standard Life had to investigate what had happened in 1991, almost thirty years earlier) that it was upholding her complaint and that a redress calculation would be undertaken.

It did then take a long time to carry out that calculation. As I've said its complicated and the actuaries had to gather a considerable amount of information, much of which was historic, from several sources. There were some delays by third parties so I don't think the time taken was all down to Standard Life. But, in any event, Miss H wasn't prejudiced in financial terms by any delay, given that the loss calculation was carried out, on an up to date basis, as at 1 January 2023. Standard Life is prepared to pay £300 to Miss H for the stress and inconvenience this matter has caused. I think that's fair and reasonable.

### **My final decision**

Standard Life Assurance Limited has offered to settle Miss H's complaint by paying £148,153.05 to her plus £300 for distress and inconvenience. I think that's fair and reasonable in all the circumstances of this complaint. So my decision is that Standard Life Assurance Limited should pay those sums to Miss H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 22 February 2024.

Lesley Stead  
**Ombudsman**