

The complaint

Mr P complains that, despite having asked about charges previously, he's only just become aware that by consolidating his two pension plans with Standard Life Assurance Limited (Standard Life) he would save a significant amount of money in charges. He thinks that as he is a member of a priority service with Standard Life it should have made him aware of the potential savings sooner. He doesn't accept that would be providing him with advice – but thinks it was simply information that would have made him aware that consolidation was in his best financial interest.

What happened

Mr P took out a SIPP with Standard Life – now part of Phoenix, which is who this complaint is recorded against, in July 2005. This was a result of a transfer of £18,989.70 from a previous arrangement.

The following year Standard Life set up a “pension fund withdrawal plan” from the proceeds of another plan which held benefits accrued by Mr P having earlier contracted out of the state earnings related pension scheme (SERPS). This plan was set up separately as these “protected rights” benefits couldn't be held within a SIPP. Both plans were set up through advisory firms that Mr P worked for.

But the plans both had different charging structures. I understand the SIPP was able to hold three different levels of investments which carried different charges. The third level of investments (individual stocks and shares) also carried additional administration charges. But, depending on the value of the SIPP, rebates of up to 0.5% could be applied. These rebates were extended in June 2022 which meant that a greater rebate could be applied to Mr P's holdings within the withdrawal plan – if it were consolidated into the SIPP – which had been possible after a change to the restrictions on protected rights funds in 2012.

In June 2023 Mr P received notification that there was a shortfall in the cash account of his withdrawal fund that was required to pay the administration fees. He asked if a payment he was going to make was sufficient to cover the charges and was told it was – but Standard Life didn't include another yearly charge that was due, so another shortfall letter was issued. Mr P complained about the incorrect information he'd been given and was paid £100 compensation which was used in part to make up the cash account shortfall.

In August 2023 Mr P questioned why the annual charges on his withdrawal plan were higher than his SIPP. He asked whether he should combine the two plans.

Standard Life didn't uphold the complaint. It said that its “priority plus” service was still only part of an administrative team looking after Mr P's plans. It said it could only provide factual information about the charging structure of the plans – which it had done on several occasions previously – it was unable to give anything which could be deemed as “*advice or a recommendation*”. It said its priority service was in place to provide a better service to higher net worth clients, but this was only in regards of administration of the plans.

Mr P was unhappy with this response, so he brought his complaint to us where one of our investigators looked into the matter. He didn't think the complaint should be upheld giving the following reasons in support of his assessment:

- According to the regulator's Perimeter Guidance Manual (PERG), advice should be about more than providing information or guidance about things a consumer might need to take into account when considering options. It should involve implying or making a judgment about whether a consumer should take actions over or purchase a particular product. So it wouldn't be fair to expect Standard Life to have contacted Mr P and suggest that it would be advantageous for him to consolidate his pension plans.
- However, he then considered if Standard Life ought to have been clear about the difference in charges between the two plans when Mr P contacted it previously.
- The annual pension statements Mr P had received did make it clear that both plans carried separate, individual charges. Standard Life's website also confirmed this, and Mr P was also made aware of that fact in the response to his previous complaint.
- Because of the pension costs that applied in March 2021 when he thought Mr P first raised the question of charges, he didn't think it would have benefitted Mr P to have consolidated his plans in any case.
- When the question was raised again in August 2023 there would have been an advantage by consolidating the plans. So Standard Life was correct to provide that information and its adviser's opinion of what should have been discussed previously didn't take into account what questions would have been asked and when. There was little evidence to suggest that incorrect or a lack of information had been given in previous calls.
- He thought that, based on calls that were regarded as material to the complaint, there was nothing to suggest Standard Life should have done more to make Mr P aware of the difference in charges or how consolidation would have affected the overall charging structure.

Mr P didn't agree making the following points in response:

- He set out examples of what he understood by "advice", but he thought that Standard Life's charges on its products was a matter of fact and should be available information in order for consumers to make an informed choice.
- He thought today's regulatory framework ought to oblige providers to be open about their charges.
- He thought he had provided evidence to show that he was aware that he no longer had to segregate the two pensions, but he'd been expected to complete a "40 page application" in order to consolidate them – which he found too complicated to complete.
- When he spoke to Standard Life in 2023 he was made aware that the pensions had different charging structures and he was financially disadvantaged by holding both separately. It was Standard Life's adviser who raised the complaint for him at that point, suggesting the matter should be investigated.
- He thought the priority plus team – as "experts" – should be proactive and honest about charges.
He thought this raised the bigger question of whether Standard Life ought to have contacted all its consumers about the changes to the segregation rules.
- He wanted us to clarify what was meant by "advice" in this case.

The investigator wasn't persuaded to change his view. He said:

- He agreed that Standard Life informing Mr P about charges wasn't advice but thought the method it was conveyed by *could* constitute advice. He thought that by Standard Life contacting consumers to tell them that their policies could be merged and would incur lower charges would be implying consumers should take a certain course of action – which would constitute advice.
- He didn't think it was practical for Standard Life to individually review each policy and contact consumers with "tailored" information and thought if it simply sent out a blanket communication it could cause some consumers to take a course of action they wouldn't otherwise have taken.
- Standard Life could only answer questions Mr P asked it directly and couldn't have proactively contacted him to imply the benefits of consolidating his two plans because of lower charges. The general information about its charges was also available through annual statements and the website which meant Mr P could have made a decision to consolidate on the basis of that information as well.
- The call of 15 August 2023 did correctly set out the impact the charges would have in direct response to Mr P's question about consolidation. But the adviser couldn't have known what specific questions Mr P had raised in previous calls so couldn't have known what should have been discussed specifically in those calls.
- During the previous call from March 2021 the adviser also checked the impact of charges on consolidating the two plans, but correctly explained there was no benefit to do so at that time. It was only after June 2022 following the changes Standard Life made that it would have been beneficial to consolidate.

Mr P asked for the transcript of the call from August 2023 to confirm the impression he'd been given by the adviser about consolidation. He also noted that his annual statements came at different times - so it wasn't clear that the plan charges were totally separate. After listening to the call Mr P thought it further supported his position that "*Standard Life could and should have done better. This therefore may have led to the possibility of higher costs (for charges) being levied against me.*" He asked for his complaint to be referred to an ombudsman – so it's been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator. I know this outcome will disappoint Mr P and I have some sympathy for the position he finds himself in – so I'll set out my reasons below.

The priority plus service and whether Standard Life could offer advice to Mr P

Mr P had access to the priority plus team because of the value of his investments with Standard Life. He says that he expected that team to provide him with a greater level of service and that it should have proactively made him aware that he might be better off by consolidating his pension plans, both as a result of the change in rules of separating non protected and protected rights funds and also because of Standard Life's change in the level of charges applied to both plans.

He says he had a number of conversations with the team over the years and the subject of charges and consolidation was discussed on several occasions. So he says he would have expected Standard Life to have provided him with information about the respective charges and put forward the idea for him to consider that he might benefit from merging the plans together.

So in the first instance I've looked at Standard Life's website to see how its priority plus service is defined.

The website says that "*whilst we can't give you financial advice, there are a number of plus points to this dedicated service.*

For instance we can

*Give you guidance to help you make the most of your pension
Answer any queries you may have about our products
And help you understand your retirement choices."*

In addition Standard Life has told us that priority plus isn't a service that customers sign up to or choose. Once their plan is over a certain value they are directed to the priority plus team. There aren't any terms and conditions or service agreements.

So I haven't seen anything to suggest that Mr P was either entitled to receive advice from the priority plus team or that he should have been proactively contacted about matters that might have been financially beneficial to him – such as the change in charges complained about here. It would seem that the service provided what Standard Life said it would – namely a higher level of service to certain customers when they contacted Standard Life. And from the evidence I've seen in respect of the contact Mr P had with Standard Life, particularly within the two calls that I've listened to, I think that's what Standard Life provided here.

Mr P has asked us to define what is meant by "advice" in these situations as he doesn't believe that the provision of factual information about charges – which would then enable Standard Life to be able to determine which of his two plans had the lower charges – constitutes advice.

The regulators handbook, PERG, sets out what a business needs to consider in this area.

Section 8.24 covers advice which:

2) is advice on the merits of his (whether as principal or agent):

(a) buying, selling, subscribing for, exchanging, redeeming, holding or underwriting a particular investment which is a security, a structured deposit or a relevant investment; or

(b) exercising or not exercising any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment.

So Mr P is right to say that the issue of charges and providing information about them doesn't constitute advice. And, although I'll return to this aspect of the complaint later, I've not been provided with anything to show that Standard Life hasn't provided information about the charges which apply to Mr P's pension plans or hasn't made that information available throughout a number of different communications – such as its website and also through annual pension statements.

But the issue here is that to either proactively approach Mr P with information about charges on his plans and to infer he ought to consolidate his plans on that basis, or to tell Mr P during any of the conversations it had with him that there was differential in charges between his plans and it would be in his interest to consolidate them would, in my view, have constituted advice - and wouldn't have been permitted under Standard Life's remit.

Although Mr P had access to the priority plus service, it could still only provide information in relation to the questions it was asked at any time. It wouldn't be reasonable for them to provide a list of all the features and benefits about each plan every time a call was received, so I would have expected it to answer Mr P's enquiries relative to their content. So I don't think Mr P was right to expect the priority plus team to simply assume Mr P wanted to be told about relative plan charges and if it was beneficial to him to merge his plans into one, unless he asked about that matter.

But Mr P has told us that he did discuss the possibility of consolidating his pensions on more than one previous occasion and should have been told about the difference in charges. Moreover he says that during the crucial call of August 2023 the adviser he spoke with agreed that he should have been told about the difference in charges and advised to consolidate his plans. So I've gone on to look at what Mr P was told and what he should have been told about the charges.

The information Mr P was given and whether Standard Life should have been more proactive at various times in telling Mr P about the pension charges

In his call with Standard Life in August 2023 Mr P suggested he'd discussed the issue of merging his pensions together many times previously and had also asked it to confirm he wouldn't be better off consolidating. So we asked Standard Life to provide the calls that Mr P had with it. Unfortunately there have been a large number of calls over the years so Standard Life filtered by listening to the calls that were appropriate and providing us with the ones where consolidation and charges were actually discussed.

So I listened to a call from 18 March 2021 when Mr P said he "*wanted to get his head around the charges on his SIPP*". He said he was aware that he could have transferred one plan to the "*main pot many years ago*" and asked the adviser directly if he was paying more by having two plans rather than merging them together. He was told that it would depend on how he decided to invest, but the likelihood was that the charges wouldn't change. The adviser then gave an explanation of how the charges are driven by the tier or level that each investment comes under (insured, mutual and external funds) and that the total charges are driven by how the pension funds are invested. Mr P asked if he is "*doing himself down by having the two separate, there is no material gain... from a charges perspective?*", although he did confirm that he should combine them in any case as a result of separation of non-protected/protected rights changes in 2012.

The adviser explained that "*it wasn't for him to say*" and it was for Mr P to make up his own mind, so Mr P put forward another question – although it was in the form of a statement, that "*he categorically wouldn't be better off consolidating?*" The adviser confirmed that if Mr P remained within the level one tier of investments the discount on charges within both plans would be the same.

I'm satisfied that Standard Life dealt with Mr P's enquiry correctly. It did explain to him about the rebate on the charges that applied to both plans and explained that it would depend on how Mr P invested his funds that would determine the overall charges if he combined the plans. And I think that's the point at which it was unable to stray into advice here because Mr P had invested his funds differently in both plans – split between level 1, 2 and 3 rated investments.

The only way to determine the overall charges on merging the plans would have been to develop an overall investment strategy within the consolidated pension – which wasn't something on which Standard Life could advise Mr P.

But even if I am wrong in my understanding of what Mr P was or could have been told, there would have been no basis on which it was beneficial – from a purely charges point of view –

for Mr P to have consolidated his plans. I say that because Standard Life has confirmed that it didn't enhance the rebate or discount to level one investments until June 2022 and Mr P's SIPP value at the time was below the £100,000 required for the yearly administration charge for level three investments to be reduced. So regardless of what Mr P may have expected Standard Life to have done in respect of "advising" the consolidation of his plans, it wouldn't have been financially beneficial for him to have done so anyway.

Furthermore Mr P was already aware of the change in the rules that meant non protected and protected rights plans could now be held together. Mr P says he was provided with the application form that would have enabled him to consolidate the plans after the rules changed, but I understand Mr P didn't feel able to complete the form because of its complexity. However, that doesn't mean he wasn't given the opportunity to do so – even if he had used the services of a financial adviser. It was for Mr P to complete the form – not Standard Life – so I think Mr P did have the chance to consolidate and mitigate his position at that point.

So I'm satisfied that before June 2022 there wasn't any financial benefit in Mr P consolidating his plans. And I haven't been provided with any evidence of a call Mr P had with Standard Life between June 2022 and August 2023 in which the idea of consolidation and comparing charges was discussed. So I've gone on to look at what was discussed in August 2023 when Mr P had cause to contact Standard Life after he'd sent an online message and the question of charges was raised again.

During the call of 15 August 2023 Mr P asked "*would I have saved charges if the two funds had been consolidated? I think simply these are best consolidated anyway.*" This reiterated the question he'd asked in 2021 and confirmed his understanding that they could be consolidated anyway based on the 2012 rules changes.

The adviser went into detail about each plan and the individual funds, adding that "*if you were to move the SERPS one you have to decide what fund you want to invest into*". Mr P then asked, "*do the charges cover my name (my holdings), have I been charged more by having two accounts?*". The adviser then confirmed "*it may but that's not something we can guarantee because you've got them in two separate funds*". She then gave a detailed analysis of funds, charges and the position should Mr P transfer one plan into same fund with the other fund.

So I think at this point the adviser had provided a similar answer to that given in 2021 – namely that consolidation was indeed possible, but the benefit of lower charges could only be determined after an understanding of Mr P's intended investment strategy across both plans. That was because any rebates or reduction in administration costs would be dependent on the amount of assets held within each of the investment levels (either 1,2 or 3).

At that point Mr P thought that he ought to have been told previously that he would have benefitted from consolidation stating that "*I'm meant to be in this priority plus arrangement, would it not be appropriate to say that over the last few years on a number of occasions, when I've spoken to them that someone actually turns round to me and says do you realise that if you consolidate the funds together you may have a saving in your charges. Wouldn't that be a fair question?*"

Although the adviser again explained that the priority plus team couldn't provide advice, she did concede that if Mr P had brought up the question of consolidation on the basis of charges previously, Standard Life ought to have fully disclosed the various charges and could have put Mr P in an informed position whereby it had identified costs might be lower if he transferred his SERPS plan into the SIPP.

And this has formed the basis of Mr P's complaint that the priority plus team ought to have identified, from his previous discussions with them, that he would benefit from lower overall costs by combining the two plans. He says that the adviser's concession from the August 2023 conversation that this ought to have happened supports his claim.

Mr P is right to say that the adviser did set out what information should have been provided had he asked the same question as he did on that day. And it follows that I understand why he thinks this matter should be further investigated, again as suggested by the adviser. But I think the adviser, although she could have been clearer in emphasising this, was simply setting out hypothetical actions in response to hypothetical situations because, as she herself stated, she wasn't present on the previous calls and couldn't have known what questions Mr P asked and what responses were given.

But as I've already said, I haven't been presented with any evidence to support the claim that Standard Life didn't fully disclose the costs applicable to Mr P's pension plans or conclude whether he would be better off consolidating the plans, when it was asked to do so by Mr P.

In 2021 there would have been no material benefit to consolidating the plans anyway, and the only time I can find that Mr P asked directly about the charges involved in his plans Standard Life did provide the correct information about the new charges. I know Mr P is concerned that the adviser told him in 2023 that he should have been made aware of that during any previous calls, but that doesn't mean that Standard Life made errors during those calls. It simply means that's the information she expected it to have provided if Mr P asked specific questions about those charges in relation to a potential consolidation. I can find no evidence that it didn't answer any previous questions about that subject incorrectly or gave misleading information. And for the reasons I've already given, I don't think it should have proactively made that suggestion to him.

Mr P's assertion that he thought the charges were for his overall holdings

Mr P says he always assumed that the charges were calculated on the "*basis of my accounts with you, i.e. my holdings with Standard Life in my name.*" So he wasn't clear that he needed to merge the plans to benefit financially until he was made of the differential in the telephone call.

But it's not clear to me why Mr P would have thought that because all the evidence I've been presented with such as annual statements and the information on the website – and what Mr P would have been issued with when he took out both plans separately, showed that each plan had its own individual charging structure. I've seen nothing to support Mr P's claim that the charges were based on his overall holdings with Standard Life, and I haven't been provided with any evidence to show on what basis Mr P made his assumption.

Mr P has said that he received his annual statement at different times of the year and therefore didn't compare the charges that were set out in each one. And I can understand why Mr P might just have assumed that all plans carried the same charges – even without his understanding that post 2012 he was able to consolidate the plans – which he hadn't been able to do before.

But I think there has been sufficient information provided to Mr P over the years to demonstrate that there were different charges – not just on each plan, but also depending on which tier of investments he held within each plan. And I think that when asked about charges directly Standard Life did enough to make him aware that the charges weren't the same on each plan.

But even if I am wrong in my presumption of what information Mr P did receive and look at, I don't think this point can support Mr P's overall complaint that he thinks Standard Life ought to have been more proactive in telling him that the charging structure of each plan had changed in such a way that he would probably be better off consolidating his two plans into the SIPP.

My final decision

For the reasons that I've been given I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 May 2024.

Keith Lawrence
Ombudsman