

Ombudsman's Determination

Applicant	Mr N
Scheme	Stagecoach Retirement Savings Plan (the Plan)
Respondent	Standard Life

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Standard Life.

Complaint summary

2. Mr N has complained that Standard Life misinformed him about being able to claim tax relief on a lump sum payment of £14,000 that he made into the Plan (**the Contribution**). He said that as a result, he has suffered a financial loss of £3,500 as he did not receive the amount of tax relief he was expecting.

Background information, including submissions from the parties

3. Mr N is a member of the Plan, which is part of the Stagecoach Group Pension Scheme.
4. On 24 April 2020, Mr N telephoned Standard Life to make the Contribution. The Standard Life representative explained to Mr N that the payment could not be made over the telephone. However, he could email him the details and the relevant form to complete, so that Mr N could make the Contribution via bank transfer. During this telephone call the Standard Life representative informed Mr N that 20% tax relief (**the tax relief**) would not be added to the Plan because of the Plan's rules. Mr N would need to claim the tax relief through HMRC by completing a self-assessment form.
5. On 27 April 2020:-
 - Mr N telephoned HMRC. During that telephone call HMRC informed Mr N that he would be entitled to tax relief on his pension contributions.
 - Standard Life received the Contribution.
 - Standard Life sent a letter to Mr N which said:

“Thank you for your email giving permission to carry out a money laundering check which has been successful. Please note that with this type of contract, tax relief is not added on. As the payment will be coming from your personal bank account, you will need to contact HMRC to sort out any tax relief on your payment.”

- Standard Life confirmed to Mr N, during two separate telephone calls, that it would not add tax relief on the Contribution. He would need to claim any tax relief through HMRC.
6. On 29 April 2020, Mr N telephoned Standard Life and was informed that it had received the Contribution two days prior and had invested it into the Plan. Mr N asked if Standard Life would apply tax relief to the Contribution. The call handler explained that it would not and that he would need to contact HMRC for any tax relief.
 7. In August 2020, Mr N made a complaint to Standard Life about it not informing him that he would not receive tax relief on the Contribution.
 8. In the same month, Mr N also made a complaint to HMRC and said in summary:-
 - HMRC had informed him that he would get the tax relief on the Contribution. It had now told him that he could not claim the tax relief, so he had suffered a financial loss of £2,880.
 - HMRC had asked for proof that Standard Life would not apply the tax relief at source and this took him outside of the 30 days cooling off period for cancelling the Contribution.
 - HMRC had admitted in a letter that it had failed to inform Mr R to get independent financial advice. He did get independent financial advice and was advised to contact HMRC as it knew the law and would pay the tax relief.
 - This situation could have been avoided had he not been given incorrect information from a government body he thought he could trust.
 - He requested that tax relief was paid on the Contribution, as promised by HMRC.
 9. On 19 August 2020, Standard Life responded to Mr N's complaint, not upholding it. It explained that its call handler had informed him on 24 April 2020 that, due to the Plan rules, there would be no tax relief added to the Contribution. Confirmation of this was also sent to him by post. He was also informed that he should contact HMRC if he would like to make a tax reclaim.
 10. On 2 September 2020, HMRC replied to Mr N's complaint and said in summary:-
 - An individual could claim tax relief from HMRC if their pension scheme had not been set up for automatic tax relief.

- HMRC was correct to ask Mr N for documentary evidence because the Contribution was over £10,000. It should have allowed tax relief at the basic rate instead of telling him that he was not due any tax relief.
 - The Contribution had now been included in his tax code and he would receive the basic rate tax relief due. That meant that Mr N would not have paid any tax in that tax year.
 - Any repayment he received from HMRC was limited to the tax he had actually paid. In most instances, where someone made a payment into a pension scheme and the pension provider did not give tax relief at source, the individual could expect a repayment of 20% of that amount. However, this was always on the assumption that the individual had paid that tax in the first place. If the tax that the individual paid was less, then the tax repaid would be limited to the amount of tax the individual had paid.
 - It understood that Mr N felt that he had been treated unfairly, but the fact remained that it could not make a payment to him that exceeded the amount of tax he had actually paid.
 - It had not treated him any differently, as this rule applied to everyone. It apologised for not advising him of this previously. It was unable to comply with his request to make the payment of £2,800 to him.
11. Subsequently, there were further exchanges between Mr N and HMRC concerning this issue.
12. On 2 October 2020, HMRC sent Mr N a further letter which said in summary:-
- During the telephone call on 27 April 2020, it correctly informed him that he would be entitled to tax relief on pension contributions. It explained how pension companies provided relief at source in terms of basic rate tax and gave him details about annual contribution limits, providing information from its guidance.
 - As it was not a financial adviser, and it did not provide advice on how to make investments, it urged him to seek independent financial advice.
 - He contacted it again, as Standard Life did not give him tax relief at source on the Contribution. Standard Life should have been able to provide him with a reason for why it was unable to do so.
 - He needed to contact Standard Life to discuss the refund of the Contribution. HMRC did not prevent refunds from pensions, but a refund outside of certain circumstances could result in an unauthorised payment charge.
13. On 6 October 2020, Mr N telephoned Standard Life. During that call:-
- Mr N informed Standard Life that he had received a letter from HMRC, in which HMRC recommended that he contacted Standard Life to discuss a refund of the

Contribution. During this call, Mr N said that he had made the Contribution “under false pretences from HMRC”.

- Standard Life’s call handler told Mr N not to worry and that Standard Life would get it sorted out.
 - The call handler explained that Standard Life would probably have to refund the Contribution to Mr N’s employer, as the Contribution had come from his employer originally. The employer would then refund the Contribution to him.
 - The call handler asked him to sign up online so that he could send an image of the scanned letter from HMRC and said that Standard Life could get the refund started from there.
 - Mr N explained that the letter he had received from HMRC said that a refund outside of certain circumstances may result in an unauthorised tax charge.
 - The Standard Life call handler said that they did not think that would apply in Mr N’s circumstances and said it would have applied if Mr N was a higher rate taxpayer. The call handler said there was no need for Mr N to worry about this issue and confirmed to Mr N that there should be no issues with him receiving the refund of the Contribution.
14. On 14 October 2020, Standard Life emailed Mr N and confirmed that it could not authorise the refund of the Contribution and explained its reasons for being unable to do so.¹ On the same date, Mr N telephoned Standard Life. He informed it that he was unhappy that he had received contradictory information from it. During this telephone call, Standard Life reiterated that Mr N did not meet the criteria for a refund.
15. Subsequently, between 15 and 20 October 2020 inclusive, there were further exchanges between Mr N and Standard Life concerning the refund of the Contribution and his eligibility to receive a refund. Mr N also raised a further complaint with Standard Life.
16. On 27 October 2020, Standard Life replied to Mr N’s complaint. In summary it said:-
- It appreciated that Mr N felt that it should not have directed him to HMRC to reclaim tax. However, it was important to understand that Standard Life did not know about his personal tax position, and, in turn, his entitlement to tax relief. This was why it had correctly directed him to HMRC.
 - Unfortunately, Mr N did not meet the criteria for a refund of the Contribution. Although there was provision for genuine errors, this was for scenarios where a contribution was not intended but still happened. As he did intend to make the Contribution, it was unable to refund it to him.

¹ The contents of this email are in Appendix 1.

- It was satisfied that it had given him correct information in April 2020, in its capacity as Scheme Administrator and that it had acted in accordance with his instructions. So, it was unable to refund the Contribution or pay the tax relief.
- It accepted that it had made a mistake during the telephone call of 6 October 2020, as its call handler had said that Standard Life would be able to organise the refund for him. It realised this mistake had given Mr N a false expectation, until it had written to him on 14 October 2020, and explained that it was unable to make the refund.
- It apologised for any upset caused and offered Mr N £250 as a gesture of goodwill.

17. Subsequently, Mr N made a further complaint to the Adjudicator's Office about HMRC.

18. On 10 December 2020, the Adjudicator's Office replied to Mr N's complaint. It said in summary:-

- HMRC was only bound by incorrect advice in circumstances where all of the tests in the HMRC Admin Law Manual² (**the Guidance**) were met.
- It did not accept that Mr N had been mis-advised during the telephone call of 27 April 2020, and it could not be bound by the information that was provided to him. It did not consider that all the conditions in the Guidance had been met³. This was because:-
 - Mr N was unable to provide its adviser with all the information regarding the Contribution, and he was not clear concerning how Standard Life would treat the Contribution. So, the advice given by the adviser could only be general in terms of basic rate tax relief, limits on investments and carry forward relief. The adviser was unaware of how Standard Life would apply the Contribution in practical terms and Mr N did not or could not provide this information. So, Condition 2 of the Guidance had not been met.
 - HMRC did not guarantee Mr N a return on his investment, nor did it instruct him to invest. The adviser had told Mr N to seek independent advice on more than one occasion. So, Condition 4 of the Guidance had not been met.
 - Mr N had not suffered a financial loss. The tax relief he received was not what he had expected but Mr N was not worse off than he was, prior to making the Contribution. So, Condition 5 of the Guidance had not been met.

² ADML1300 - Incorrect Advice to Customers: When incorrect advice can be binding - HMRC internal manual - GOV.UK (www.gov.uk)

³ These conditions are listed in Appendix 2.

19. The Adjudicator's Office did not find that HMRC had acted outside of the Guidance, its procedures and the relevant legislation. So, it did not uphold Mr N's complaint.
20. Subsequently, Mr N made a complaint about the tax relief on the Contribution to the Trustee of the Plan (**the Trustee**), through the Plan's Internal Dispute Resolution Procedure.
21. On 27 August 2021, the Trustee replied to Mr N's complaint. In summary it said:-
 - It concluded that the Contribution was invested correctly into the Plan.
 - As outlined in the Finance Act 2004, a refund of contributions from an occupational pension scheme could only be made in certain circumstances. Mr N's case did not fall into any of these categories. So, the Trustee was unable to refund the Contribution to him.
 - It was aware that he had initially received incorrect information from Standard Life concerning the refund. It noted that he had received a payment of £250 in recognition of this error. It had requested Standard Life pay him a further £250 in respect of the inconvenience he had suffered.

Summary of Mr N's position

22. Standard Life informed him that he could claim the tax relief from HMRC, so he made the Contribution into the Plan.
23. After speaking to Standard Life, he telephoned HMRC, which informed him that it would apply the tax relief. HMRC did not apply the tax relief, so he has lost £3,500 from his pension due to Standard Life informing him that he could get the tax relief from HMRC.
24. Standard Life was aware that the Contribution was his entire salary for the year. It should not have told him that HMRC would give him the tax relief. He would like Standard Life to credit £3,500 to his benefits in the Plan.

Summary of Standard Life's position

25. Mr N made the Contribution to the Plan and Standard Life processed it as per his instructions. Standard Life informed him during several calls that it did not apply tax relief at source and that he would need to make such a request to HMRC.
26. It is not a tax expert and had no knowledge of Mr N's tax status.
27. HMRC gave Mr N incorrect information and apologised for it. It also changed his tax code to reduce the amount of tax he paid on future contributions. While Mr N claims that his loss was approximately £3,000, Standard Life cannot confirm this as it has no knowledge of the tax he has paid or whether HMRC has refunded any tax to him.
28. It explained to Mr N the criteria under which a refund of the Contribution was possible. None of those criteria applied in this particular case.

29. Despite HMRC's error, Standard Life understands that any refund of contributions outside the scenarios defined by HMRC are likely to be considered an unauthorised payment. This would result in Mr N and Standard Life incurring tax charges.
30. It acknowledged that it gave Mr N a false expectation that it would be possible to refund the Contribution. It upheld his complaint and paid him £500 for the inconvenience caused.

Adjudicator's Opinion

31. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Standard Life. The Adjudicator's findings are summarised below, in paragraphs 32 to 27.
32. Prior to making the Contribution, Mr N was informed by Standard Life, on three occasions, that it would not apply tax relief on the Contribution and that he would need to contact HMRC to claim any tax relief. Mr N was also informed of this by Standard Life two days after he had made the Contribution, which was during the Contribution's cooling off period.
33. In the Adjudicator's view, while Standard Life could have been clearer in its explanation for why it would not apply the tax relief to the Contribution, what it said to Mr N was factually correct. So, there was no maladministration by Standard Life in directing Mr N to HMRC to claim any tax relief.
34. Mr N had received tax relief on the Contribution but not at the level he had expected. In the Adjudicator's view, Mr N had suffered a loss of expectation and not an actual financial loss, because he was not entitled to the amount of tax relief he was expecting. It was the Adjudicator's opinion that the loss of expectation Mr N has suffered did not result from any maladministration by Standard Life.
35. Notwithstanding the above, the Adjudicator noted that Standard Life had given Mr N incorrect information in relation to him being entitled to a refund of the Contribution, during its 6 October 2020 telephone call.
36. Standard Life provided Mr N with correct information about this issue, eight days later. In recognition of the distress and inconvenience this situation had caused Mr N, it also paid him £500.
37. In the Adjudicator's view, based on my guidance on redress for non-financial injustice⁴, the £500 awarded to Mr N was sufficient for the significant distress and inconvenience he had experienced as a result of being given incorrect information by Standard Life concerning the refund of the Contribution. So, Standard Life did not have to make a further award to Mr N.

⁴ https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

38. Mr N did not accept the Adjudicator's Opinion and in response said in summary:-

- He followed Standard Life's instructions but still ended up "in a mess". In his view, his complaint is valid.
- The Pensions Advisory Service (**TPAS**) told him that he should have never been told to speak to HMRC, as HMRC only dealt with higher rate tax enquiries. In the view of TPAS, it was totally unprofessional of Standard Life to suggest that he would receive the 20% tax relief on the Contribution from HMRC.
- He questions why Standard Life gave him poor instructions when it should have told him that tax relief at source was the only way he could get tax relief at 20% on his salary. Standard Life had been told what he earned, so it was unprofessional of Standard Life to tell him to contact HMRC to obtain tax relief at 20%, when he did not pay any tax.
- He also thinks it is unfair that he missed the cooling off period because HMRC took a long time to respond. As a result, he missed the opportunity to pay the Contribution into a suitable pension arrangement in order to get tax relief at source.
- The only reason he put the Contribution into the Plan was because his late father had left him a lump sum and he wanted to get tax relief on it. He considers pensions to be volatile arrangements. Had he received correct information from Standard Life, he would have considered putting the money into a savings account.
- He has endured three years of constant stress and feels cheated. The £500 Standard Life paid him is not sufficient, as he should have received £3,750 in tax relief.

39. As Mr N did not accept the Adjudicator's Opinion, his complaint was passed to me to consider. I note Mr N's further comments, but I find that they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

40. Mr N complained that he was misinformed by Standard Life concerning him being able to claim tax relief on the Contribution and that he has suffered a financial loss as a result.

41. From the evidence provided, specifically the recordings of Mr N's telephone conversations with Standard Life, I consider that his intention was to pay a one-off contribution into the Plan and for Standard Life to pay an additional amount, equal to the tax relief available from that contribution, which was possibly, but not definitely, 20%.

42. I appreciate that Mr N believes that his complaint against Standard Life is valid, and that he has ended up in the situation that he is in because Standard Life referred him to HMRC.
43. However, I find there was no maladministration by Standard Life when it informed Mr N that he should contact HMRC to claim any tax relief on the Contribution. This is because Standard Life would not have been aware of Mr N's tax position. So, HMRC was the correct body for Mr N to discuss his tax position.
44. Subsequent to his telephone call with Standard Life, on 24 April 2020, Mr N had a telephone conversation with HMRC on 27 April 2020. During this call, HMRC informed Mr N that he would be able to claim tax relief on his pension contributions.
45. I consider that Standard Life could have been clearer in the information it gave Mr N during their telephone conversations. As it did not apply tax relief at source, it could have informed him about the difference between paying the Contribution gross of his relevant rate of income tax, as opposed to paying it net.
46. However, I consider that HMRC, informing Mr N that he could claim tax relief on his pension contributions, broke the chain of causation from Standard Life. This is because it was HMRC that informed Mr N that he would receive tax relief on the Contribution and not Standard Life. It was based on the information from HMRC that Mr N decided to make the Contribution. This was confirmed by Mr N during his telephone call with Standard Life on 6 October 2020 (see paragraph 13 above).
47. I note Mr N's comments concerning him missing the cooling off period for a refund of the Contribution. However, this was not due to any maladministration by Standard Life, it was a result of HMRC requesting additional information concerning the Contribution. So, Standard Life cannot be held responsible for this.
48. I also note Mr N's comments concerning what he was told by TPAS. While I do not dispute Mr N's recollection of what he was told by TPAS, I am unable to comment on what a third party to the complaint may have told him.
49. Mr N has received tax relief on the Contribution but not at the level he was expecting. I find he has suffered a loss of expectation and not a financial loss..
50. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
7 September 2023

Appendix 1

Contents of Standard Life's 14 October 2020 email to Mr N

"Good afternoon Mr [N]

We have been investigating your request to refund the £14,000 payment you made in August this year. The query had to be passed to our internal tax department to look into to whether the refund is authorised under the HMRC procedure [sic].

There are strict rules in place from HMRC for refunding pension contributions – they can only be refunded in the following situations:

- Contributions made in excess of earnings
- Short service lump sum refunds
- Customer is still within the plan's cooling off period

Unfortunately, these situations do not apply to your case. Any refunds made outside of these scenarios will be considered an unauthorised payment and this results in a tax charge for us and yourself.

In your case, you intended to make the single payment into your plan with us and unfortunately, HMRC have made an error in their advice but this does not allow us to make a refund of contributions.

We informed you before you made the payment that for your type of plan, we can't add tax relief so the members are directed to HMRC as standard.

Reading the letter from HMRC you attached in your secure message, it states "Please accept my apologies that we incorrectly told you that you were not entitled to relief." This suggests that you are entitled to tax relief from HMRC and we recommend you contact them to confirm if you are eligible for this and ask them to provide instructions as to how you claim the relief from them.

Sorry we are unable to help further."

Appendix 2

Conditions of the HMRC Admin Law Manual – ADML1300 – Incorrect Advice to Customers: When incorrect advice can be binding

HMRC is only bound by incorrect advice in circumstances where all of the following tests are met:

- The customer made it plain he or she was seeking fully considered advice and indicated what it would be used for (**Condition 1**).
- The customer provided all information relevant to the query (**Condition 2**).
- The advice given by HMRC was clear, unambiguous and without qualification (**Condition 3**).
- The customer acted in reliance on the advice (**Condition 4**).
- The customer would suffer a detriment if the correct statutory position were applied (**Condition 5**).
- To apply the correct statutory position would be so unfair as to constitute an abuse of power (**Condition 6**).