

Ombudsman's Determination

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| Applicant | Mr L |
| Scheme | Standard Life Staff Pension Scheme (the Scheme) |
| Respondent | Trustees of the Standard Life Staff Pension Scheme (the Trustees) |

Outcome

1. Mr L's complaint is upheld, and to put matters right, the Trustees shall pay Mr L the sum necessary to compensate him for the number of units Mr L would have purchased had his transfer been made no later than 25 April 2017.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L has complained that he was provided with incorrect and misleading information regarding his statutory right to transfer.
4. Mr L has further complained that his transfer was delayed, and that he has suffered a significant investment loss as a result.

Background information, including submissions from the parties

5. Mr L is a current employee of Standard Life and had a deferred defined benefit (**DB**) pension accrued during his employment with Standard Life.
6. Mr L was also actively contributing to a work based defined contribution (**DC**) pension arrangement.
7. In late 2016, Mr L considered the possibility of consolidating all his benefits into one arrangement.
8. As such, he set up a Standard Life Group Flexible Retirement Plan (**GFRP**), into which he could transfer both his DB and DC benefits. Mr L also arranged for all his future contributions (employee and employer) to be paid into this GFRP.
9. The GFRP was initially invested in a default "Standard Life My Folio Managed III Pension Fund".

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10. In late November 2016, as part of this benefit consolidation, Mercer provided Mr L with a Guaranteed Transfer Value (**GTV**) statement. This GTV was guaranteed for 3 months, and was due to expire on 24 January 2017.
11. On 9 February 2017, Mercer confirmed that Mr L had returned all the relevant transfer paperwork before the guarantee period expired and explained that the relevant funds would be “disinvested” in due course.
12. There then followed an extended period during which Mr L chased Mercer for an expected completion date for the transfer, without receiving a satisfactory response.
13. On 28 July 2017, not content with the perceived delay, Mr L raised a formal complaint under the Scheme’s internal dispute resolution procedure (**IDRP**).
14. On 1 August 2017, Mercer emailed Mr L explaining that:

...as the member is an active member he is not entitled to a statutory transfer and as such the requirement to settle the transfer within 6 months statutory window does not apply...”
15. On 2 August 2017, full payment was made and Mr L’s transfer was finalised.
16. On 4 October 2017, the Trustees issued Mr L with a stage one decision under the Scheme’s IDR (**IDR1**). In this letter, the Trustees stated that:

“First and foremost, the Trustees agree that there has been a breach of the regulatory code that must be complied with in terms of paying out your defined benefit transfer value within 6 months of its original guarantee date. The 6 months point was reached on 25 April 2017 and the transfer payment was not processed until 1 August 2017.”

...

“As a result, the DB transfer would require to [be] completed within 6 months of the initial guarantee date which means an optimum completion date of 25 April 2017.”
17. The Trustees also explained that if the transfer is not completed within this timeframe:

“...the transfer value that was previously guaranteed needs to be revised and enhanced by the greater of:

 1. The original DB transfer value with interest added of 1% above base rate which would increase the amount settled by 1.25% and this adds £4,304.65 to the settled DB transfer giving rise to a new figure of £348,676.41

Or

2. The original DB transfer value is recalculated using the transfer conditions in force at the point when the transfer value was finally settled to your chosen DC recipient plan. As at 1 August 2017 the cash equivalent value would have reduced to £317,283.40 and for completeness the value calculated at 31 Jul 2017 (thereby using different factors) would also have reduced to £321,922.59.

The Trustees will therefore make good an additional interest payment of £4,304.65 in line with statutory requirements.”

...

“Your final contribution to the TBP [a DC arrangement] was made on 15 February 2017 hence you were still accruing benefits in that section of the SLSPS [the Scheme] up to that point. The SLSPS requested the disinvestment of your TBP value on 16 March 2017 and a figure of £18,555.74 was credited to the bank account run by Mercer on behalf of the Trustees. Until a member ceases to accrue DC benefits he or she does not have the statutory right to receive a cash equivalent transfer value (**CETV**) in respect of those funds and does not have a statutory right to transfer those funds. This means that any CETV quotation issued, and with an associated application signed, before 15 February 2017 would have been on a non-statutory basis in terms of your TBP fund. In order to allow the CETV to be statutory the member would have first needed to opt out of the SLSPS and thereby claim the statutory right to obtain a quotation and transfer their DC benefits.

However, despite this background assessment of your DC funds held in TBP, the Trustees do recognise that you were, as you have described it, out of market for an extended period due to the DB transfer delay.

As a result, the Trustees asked Mercer to place a notional value on lost investment opportunity had your TBP funds remained invested in the same funds for an additional period up to 1 August 2017 i.e. when the full transfer value was finally paid. The notional value of your DC investment if retained in TBP was confirmed by Standard Life to be £18,999.00 as at 1 August 2017 hence this measure of investment loss would give rise to a further adjustment of transfer value in the sum of £443.26.”

18. The Trustees also offered Mr L £500 in compensation for the poor service he had received.
19. Mr L was not satisfied with the IDR1 response as he felt it did not adequately address his loss of investment returns.

20. On 15 January 2018, the Trustees issued a stage two IDRPs decision. This letter stated that:

“There is a statutory level of compensation applied to Defined Benefit Transfers which are settled beyond the disclosure limit of 6 months from date of calculation. As set out in the Stage 1 IDRPs response, that is the greater of the transfer value calculated using the transfer conditions in force on the date the transfer value was finally settled (1 August 2017) and 1% above Bank of England Base Rate, which at the time of settlement was 0.25%; pro-rated for each day. In your case, the interest-related compensation gives the greater amount and would have resulted in an uplift offer of £3,313.99 to your GTV.

The Trustees offered you an increased amount of £4,304.65 which was calculated assuming a full year elapsed in the period between calculation and settlement.

Stage 2 Decision The Trustees are not willing to increase the level of the compensation offered at this stage given that this is prescribed by statute. I note that you [Mr L] have rejected the offer of £4,304.65. The Trustees still have a statutory obligation to pay at least the minimum uplift of £3,319.99 to your new arrangement and that will now be actioned.”

...

“The Trustees recognised that your TBP funds were out of market for an extended period.

I note that the Secretary asked you to substantiate your claim for a higher level of compensation, one which reflects the lost opportunity in your new arrangement. It is my understanding that you have declined to provide this.

We therefore asked the TBP Provider to place a notional value on lost investment opportunity in the event that your TBP funds had remained invested in the same funds up to the date of settlement. That measure of investment loss was confirmed by the Provider to be £443.26 and we will now arrange for the £443.26 to be paid to your new arrangement.”

21. The Trustees also increased the offer of compensation for the poor service to £750.
22. Mr L was still not satisfied with the response so he brought his complaint to this office.

Adjudicator’s Opinion

23. Mr L’s complaint was considered by one of our Adjudicators who concluded further action was required by the Trustee. The Adjudicator’s findings are summarised briefly below:-

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- All parties to this complaint acknowledge that the transfer took longer to complete than was necessary, and that the 6-month statutory deadline was exceeded.
 - The Pension Scheme Act 1993 (**PSA 1993**) sets out a member's statutory right to transfer their scheme benefits. The PSA 1993 also makes clear that valid transfer requests should be acted upon within 6 months.
 - The Pension Scheme Act 2015 (**PSA 2015**) gave scheme members greater flexibility to transfer their pension rights when exercising their statutory right to transfer. To ensure these new flexibilities operated as intended, the PSA 2015 amended the PSA 1993. Where a member with a statutory right to transfer has more than one category of benefit in any one scheme, the member can now specify which category of benefit they would like to transfer.
 - With effect from 6 April 2015, the statutory right to transfer now applies separately in relation to a member's specific benefit categories, as opposed to all of the benefits under the scheme.
 - Mr L had a right to transfer both his deferred DB pension, and his DC arrangement separately.
 - Mr L received misinformation about his statutory right to transfer and the 6-month time limit imposed by the PSA 1993 was exceeded.
 - The Adjudicator found, and all parties agree, that the transfer should have been completed no later than 25 April 2017.
 - The Trustees have acknowledged that the transfer was unduly delayed and have undertaken to pay Mr L the minimum level of compensation required by legislation, equal to 1% above the base rate of inflation for the DB section and a notional investment loss calculation for the DC section.
 - The Adjudicator was satisfied that Mr L opened a new GFPR, in advance of the transfer being completed, for the express purpose of consolidating his DB and DC benefits, and that the transfer delay has caused Mr L an investment loss.
24. To address Mr L's investment loss, the Adjudicator felt the Trustees should calculate the growth of Mr L's investment had his transfer been made to his GFRP on 25 April 2017, instead of 2 August 2017. The resulting amount, if greater, should be credited to Mr L's GFRP. Mr L agreed with the outcome of the Opinion in principle, but raised 4 specific queries that he considered were outstanding. Mr L wanted clarity in regard to:-
25. The value of his loss of investment. Mr L believed the Opinion valued his loss of investment at approximately £11,000. Mr L originally believed the true value of his loss to be approximately £14,000.

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26. Whether any payment for loss of investment should be additionally uplifted given the time taken to resolve this issue.
27. Whether the amount of compensation offered for the distress and inconvenience that trying to resolve this issue had caused was fair. Mr L felt the £750 currently on offer from the Trustees was insufficient and is unhappy the opinion omitted this element of the complaint.
28. Whether the “loss of investment and/or the compensation for stress/time spent can be sent as cash” which could be invested elsewhere. Mr L said he was “concerned about lifetime allowance given the expected future growth of investments”. Mr L also felt that I should rule that any payment be in cash as these amounts now represent compensation for maladministration.
29. The Trustees accepted the Adjudicator’s Opinion in principle however they were unable to produce the required calculations within the timeframe which had been agreed. The result of this was that the Trustees subsequently wrote to Mr L on 19 October 2018, with a revised settlement offer.
30. In this letter, the Trustees increased its offer of compensation payment to £1,500, and detailed its loss adjustment calculation showing an investment loss of £21,912.49.
31. With the uplift payment detailed in IDR P 2 deducted, this gave a total investment loss of £18,156.04. The Trustees proposed to pay this amount into Mr L’s GFRP to remedy the investment loss. The figures were calculated as follows:

“To assess any potential loss of investment as a result of this delay, we have to identify if there was a shortfall in the units purchased based on the prices at your actual settlement date and the date at which it should have been settled. To do this, the Standard Life GFRP has advised that the unit price for the MyFolio Managed III Fund as at the 26th of April 2017 was 162.4. This would have purchased 223477.5246 units leading to unit shortfall of 6519.516018.

The Standard Life GFRP has also advised that the £362,927.50 they received on the 2nd of August was switched out to a mixture of 4 funds on the 9th of August 2017. We have therefore apportioned the 6519.516018 shortfall in units in the same proportion as the switch.

The first two columns below detail the split between each fund at the time of the switch. The next column shows how much of the unit shortfall is therefore associated to each fund. In order to place a value on the units lost, the Standard Life GFRP have provided the unit price for these funds at a recent date (9th of October 2018).

| Fund | Proportion | Units | Price at 09/10/18 | Value |
|--------------------------------------------|------------|-------------|-------------------|------------------|
| SL North American Equity | 15% | 977.9274027 | 265.565889 | £2,597.04 |
| SL Baillie Gifford UK and Worldwide Equity | 15% | 977.9274027 | 377.153375 | £3,688.29 |
| SLI UK Smaller Companies | 20% | 1303.903204 | 726.260313 | £9,469.73 |
| SL MyFolio Market IV | 50% | 3259.758009 | 188.892147 | £6,157.43 |

Using the above methodology, the total investment loss is **£21,912.49**.

...

Following the internal dispute resolution process, the SLSPS initiated an uplift payment to your new arrangement using the statutory directive to measure the redress due. As advised in previous correspondence, the Trustees were bound by this directive to make good the payment. The payment comprised of;

£3,319.99 as an uplift to your DB element of your GTV, plus
£443.26 as an uplift to your DC element of your GTV

The total additional payment of **£3,756.45** was made to your new arrangement on 9th February 2018.

This uplift would be offset against your investment loss calculated above; meaning the offer of compensation in relation to your investment loss is **£18,156.04** (£21,912.49 minus £3,746.45)."

32. I agree with the Adjudicator that the complaint should be upheld and deal below with the further points raised by Mr L.

Ombudsman's decision

33. My role is to consider complaints and establish whether maladministration has occurred which has caused the member an injustice. In doing so, I can then put the person back into the position they ought to have been in, had the maladministration not occurred, but within the limits of the law. I can also make awards for non-financial injustice, should I feel that this is warranted.
34. It has not been disputed that a sustained administrative error occurred, causing Mr L financial detriment. The matters remaining for me to determine then are how to provide adequate redress to Mr L, and what form that redress should take.

35. It is clear where the funds would have been invested and the fund performance is readily ascertainable. Consequently, I am satisfied that Mr L can demonstrate actual financial loss as a consequence of the delay, and make a direction below intended to remedy that injustice.
36. On the balance of probability, I find that had the transfer been made to the GFRP on 25 April 2017, it would have been invested the next day and the investment choices switched several days later. This conclusion is consistent with the timescales involved when the transfer was actually completed in August 2017.
37. Following the Opinion, the Adjudicator liaised with the GFRP and was able to provide the Trustees with the unit prices necessary to carry out a loss assessment. This involved ascertaining the number of units which would have been purchased had the transfer been completed on 25 April 2017. The result of this assessment was communicated to Mr L, by the Trustees on 19 October 2018. The same letter also set out the figures and methodology used to assess Mr L's investment loss.
38. I agree with the Trustees that calculating redress on the assumption that the transfer was completed on 25 April 2017 and invested on 26 April 2017 in the same funds, in the same proportions, and with reference to any subsequent fund switches, provides an appropriate comparator for how Mr L's investment would have performed. Calculating redress in this way reflects how the investment would have performed, but for the maladministration.
39. I do not understand Mr L to be disputing the Trustees' methodology, the figures used, or the proposed loss adjustment. However, he has argued that the loss adjustment amount should be paid in cash instead of an additional transfer to his GFRP, saying:
- "Paying an additional transfer to my plan is not putting me back into the place I was in as this is compensation. Any future changes to lifetime allowance limits, and there is a strong industry view that these changes are inevitable in my working lifetime, could remove the link between pension payments and investment growth for allowance limits as the current system penalises good investment decisions. If my compensation for maladministration is not paid in cash and is paid by an additional transfer payment into my plan then it will be incorrectly recorded against my plan.
- ...
- Paying in cash, allowing as investment in an ISA for my retirement, is much closer to the correct position."
40. I do not agree with this submission. Had the original error not occurred and the transfer been completed on 25 April 2017, the transfer value would have purchased a greater number of units in the scheme which received the other funds. It would not have made funds available for investment in an ISA. I therefore cannot agree with Mr L that this payment should be paid to him as cash into a saving ISA.

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41. As it currently stands, I can see no evidence that an additional transfer payment for his investment loss would cause Mr L any further financial hardship. He has not said that it will cause him now to exceed his lifetime allowance. I acknowledge that future changes might occur. However, I cannot make a finding based on an event that has not yet occurred.
42. I note that since the Opinion was issued the Trustees have increased their offer for distress and inconvenience to £1,500 in recognition of the further inconvenience caused by the additional time they needed to complete their calculations. In the circumstances, I am satisfied that this amount, offers fair redress for the distress and inconvenience the matter has caused Mr L.
43. Therefore, I uphold Mr E's complaint and I make directions as set out below.

Directions

Distress and Inconvenience

44. Within 21 days of the date of this Determination, the Trustees shall pay £1,500 directly to Mr L as per its revised offer of 19 October 2018.

Investment Loss Adjustment

45. Within 21 days of the date of this Determination, the Trustees shall pay £18,156.04 'the additional transfer' into Mr L's GFRP, that additional transfer to be allocated to his existing funds in the proportions shown in the table at paragraph 31.

Karen Johnston

Deputy Pensions Ombudsman
30 November 2018