

Ombudsman's Determination

Applicant	Mr N
Scheme	Victoria Electrical & Building Services Ltd Pension Scheme (" the Scheme ")
Respondents	Standard Life Assurance Limited (" Standard Life ")

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Standard Life.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint is that Standard Life obstructed his administration of the Scheme. Mr N says that Standard Life delayed releasing funds from the Scheme which he requested for the settlement of costs incurred in respect of the property owned by the Scheme, and that he incurred financial loss, and suffered distress and inconvenience as a result of Standard Life's conduct.

Background information, including submissions from the parties

4. Mr N says that Standard Life delayed releasing funds from the Scheme which he requested for the settlement of costs incurred in respect of the property owned by the Scheme, and that he incurred financial loss, and suffered distress and inconvenience as a result of Standard Life's conduct.
5. The Scheme is a Small Self-Administered Scheme (**SSAS**). Mr N is the sole beneficiary, Managing Trustee, and Administrator, of the Scheme. Standard Life is the Scheme provider.
6. Mr N informed Standard Life, on 16 December 2016, that there was ongoing legal action being undertaken on behalf of the Scheme and the Scheme had incurred legal costs in relation to the legal action. Mr N instructed Standard Life to pay the sum of £25,183.03 from the Scheme funds either directly to him or to his Solicitors, Mellicks Solicitors, if Standard Life had any objections to paying the funds directly to him. He stated that he anticipated receiving the funds from Standard Life by early January 2017 so that he could settle the legal costs without delay.

7. Mr N provided Standard Life with a document entitled "Summary of Costs" in which he set out legal costs totalling £25,183.03, broken down as follows:-
 - Morisons Solicitors £10,103.40
 - Mellicks Solicitors £9,038.38
 - Mellicks Advocate £2,820.00
 - Mellicks Fleming £1,440.00
 - Fleming £1,781.25
8. Standard Life responded on 28 December 2016, that they were unaware of ongoing legal action in relation to the Scheme. Standard Life asked Mr N to provide copies of the relevant invoices and a summary of the works undertaken for the Scheme by the Solicitors, so that it could consider Mr N's request. Standard Life also stated that any payment made in accordance with Mr N's request would affect his retirement value, details of which had recently been provided to him.
9. Mr N informed Standard Life, on 25 February 2017, that his letter of 16 December 2016, was a clear instruction he made as Administrator and Managing Trustee instructing Standard Life to make prompt payment of £25,183.03 from the Scheme funds to him, or to his Solicitors. Mr N stated that Standard Life has no authority to make "such demands" on him, and that its continued attempts at "nullifying his authority" had resulted in the value of the Scheme assets reducing by over £100,000 and had cost him personally close to £7,000. Mr N stated that he would not accept Standard Life's "self activated bureaucracy", that the situation was now critical and Standard Life must make the payment by 10 March 2017.
10. In response Standard Life confirmed that Mr N had asked Standard Life in the past to pay Scheme funds into his personal bank account and Standard Life had explained why that would be inappropriate but he was free to take his retirement benefits from the Scheme at any time. Standard Life stated that it had received a "Note of Account" from Mr N's Solicitors which confirmed that work undertaken in respect of the Scheme amounted to £8,938.38, there was therefore a discrepancy of approximately £16,000 between the costs details Mr N and his Solicitors had provided to them.
11. Standard Life asked Mr N to comply with its request for invoices and a summary of work undertaken by his Solicitors, or he could amend his instructions in respect of the lower figures provided by his Solicitors. Standard Life explained that although it was not the Scheme Administrator, it required the documentation so that it could demonstrate that the requested payment could be made as an authorised scheme administration employer payment pursuant to section 180 of the Finance Act 2004. Standard Life stated that its actions would help to protect Mr N from tax charges which could be levied by HM Revenue and Customs (**HMRC**) in the event that the payment was deemed not to be an authorised payment under the legislation.

12. On 8 March 2017, Mr N informed Standard Life that the cost details he and Mellicks Solicitors had provided were sufficient to verify the lengthy legal action and costs incurred in relation to the Scheme. Mr N stated that HMRC is capable of contacting him directly should HMRC require information about the legal costs. He stated that if Standard Life continued with its “unjustified dogmatic stance”, he would have no option but to proceed with legal action and Standard Life would be liable for the past and future costs, and losses incurred.
13. On 9 March 2017, Mr N wrote to Standard Life and reiterated that he had given Standard Life a deadline of 10 March 2017 for the requested payment to be made and asked that it makes payment before that deadline.
14. On 22 March 2017, Mr N wrote to Standard Life confirming that the costs have now increased by £450.00 in respect of surveyors’ fees giving a revised total of £25,633.03. Mr N stated that Standard Life was responsible for the costs because it was obstructing his use of his pension, the payment of Solicitors’ fees, and the sale of the Scheme assets. He stated that Standard Life would be liable for further Solicitors’ fees when the matter proceeds to Court, it would be liable to pay interest at the rate of 5.99% on the sum of £37,737.98 and Standard Life would be liable for the cost of any other loans he requires to properly administer the Scheme and his personal affairs.
15. In or around July 2017, Mr N contacted the Pensions Advisory Service (**TPAS**) to assist him in resolving his dispute with Standard Life, but subsequently he referred his complaint to this office as the matter remained unresolved after TPAS’ involvement ceased.
16. Mr N stated, in his complaint to this office, that he would like an answer to the specific question of whether Standard Life has the authority to obstruct his instruction as Managing Trustee, and Administrator, of his pension fund by using its “bureaucracy and demands”. Mr N stated, in his submissions, that he has the authority as the Scheme’s Managing Trustee, and Administrator, to invest the Scheme’s funds to the best possible use, but Standard Life is acting as shadow Scheme Trustee and is obstructing his administration, causing him great stress as a result.
17. Standard Life has confirmed that it has already complied with Mr N’s request for payment. Standard Life stated that Mr N subsequently provided Standard Life with a further invoice which meant that the full payment he requested was accounted for. As a result, on 18 September 2017, Standard Life paid £25,927.38, as an authorised payment to Mr N’s solicitors on account of their costs. Standard Life also sent a cheque for £33,547.45 to Mr N as tax free cash.

Adjudicator’s Opinion

18. 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:-

- The provisions in relation to the incurring and payment of costs are set out in Clauses 3 and 13 of the Deed as follows:

Participating employers

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(3) Expenses incurred in connection with the establishment, administration and management of the Scheme shall be paid by the Participating Employers.....Any expenses not paid by the Participating Employers may be met by the Trustees out of the Fund.

“Trustees’ agents

13. (1) The Trustees may appoint an individual or a corporate body or one or more of themselves to act for and on behalf of them in relation to the administration and management of the Scheme.....

.....

(6) The fees, remuneration and other costs paid or incurred by the Trustees in respect of this clause shall constitute expenses of administration and management of the Scheme.

- Whilst these provisions entitle Mr N, as Trustee, to appoint Solicitors and incur Solicitors' fees payable from Scheme funds, it was entirely reasonable for Standard Life to request invoices and a summary of work undertaken in order to support the payment Mr N requested.
- Standard Life also identified a discrepancy in the amount of costs Mr N requested and the figures his Solicitors submitted. Standard Life suggested that Mr N either provided evidence to support the full amount of costs he sought payment of or, in the alternative, he reduced the amount he was seeking in order to match the amount of Solicitors' fees which were proved to have been incurred.
- Standard Life acted appropriately in requesting documentation to justify the full amount requested and to also ensure the proper tax treatment of payments from the Scheme. Standard Life's conduct in withholding payment until Mr N provided suitable supporting evidence did not amount to maladministration.
- In relation to the request to make payment to Mr N directly, Standard Life informed Mr N that it could only transfer scheme funds to another scheme and not to his individual bank account.
- The Scheme Rules authorise Standard Life to pay beneficiaries benefits due under the Scheme. Mr N did not ask Standard Life to make the payment to him as benefits due to him under the Scheme, rather he sought payment as costs incurred on behalf of the Scheme. Other than the payment of costs in accordance with Clauses 3 and 13 (in relation to which Standard Life's refusal to pay Mr N those costs directly was

reasonable for the reasons set out in paragraph 18 above) and the payment of benefits due under the Scheme, there are no provisions in the Rules for Scheme funds to be paid or transferred to any person or body other than in accordance with Rules 8B and 8D, set out in the Appendix.

- There is no evidence that Mr N had requested the payment in the capacity of administrator, trustee, or manager, of a Receiving Scheme pursuant to Rule 8B, or that the option under Rule 8D, for a Member to have a cash equivalent, applied to Mr N's request. There was no basis under the Deed and Rules for Standard Life to make the payment in question directly to Mr N.

19. Mr N did not accept the Adjudicator's Opinion and the complaint was referred to me to consider. Mr N provided the following further comments which do not change the outcome:-

- Standard Life resigned as Trustee in March 2014, yet it continued to administer control over the remaining Trustee and authorised Administrator without authority, thereby obstructing proper administration of the Scheme.
- The consequence of Standard Life's obstruction was that the Scheme asset was devalued by as much as £150,000.
- It is incomprehensible that Standard Life would act against the genuine and legal instruction of the Administrator. Standard Life acted in a dogmatic matter in its own interest and as such, is accountable.

Ombudsman's decision

20. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

21. Mr N has reiterated that Standard Life obstructed the proper administration of the Scheme because it did not act in accordance with his instructions to transfer funds from the Scheme within his stipulated deadline.

22. I have carefully considered the evidence and I do not agree that Standard Life was obstructive or interfered with the proper administration of the Scheme. I find that Standard Life acted reasonably and in accordance with the Deed and Rules, in requesting documentary evidence to justify the full amount of the funds requested, and to also ensure proper tax treatment of the payment. I am satisfied that having subsequently been provided with the relevant information, Standard Life made the payment and I do not consider that Standard Life's conduct in this regard amounts to maladministration.

23. Mr N has also said that the Scheme asset has been devalued by as much as £150,000 as a consequence of Standard Life's alleged obstruction. I do not find that Standard Life acted in an obstructive manner and its conduct does not amount to

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maladministration. With regard to Standard Life's conduct concerning the issues raised in this complaint, I do not consider that Standard Life is liable for any diminution in value that the Scheme asset may have experienced.

24. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
19 March 2019

Appendix

Standard Life's General Rules for Small Self-Administered Schemes SAS71 April 2006

8B. Transfer of assets from the Scheme

- (1) Subject to section (3) of this Rule and Rule 8D, where a Member so requests in writing, the Trustees may make a recognised Transfer to the administrator, trustees or managers (hereinafter called the "Managers") of a scheme which qualifies as a Receiving Scheme such assets as represent the Member's interest and the interests, if any, of his Dependants (hereinafter called the "Transfer Payment") and he shall cease to be a Member.
- (2) To qualify as a Recognised Transfer for the purposes of section (1) of this Rule, the Receiving Scheme must be a Registered Pension Scheme or a Qualifying Recognised Overseas Pension Scheme and the transfer must satisfy the requirements of section 169 of the Finance Act 2004.
- (3) Before making a transfer in accordance with section (1) of this Rule the Trustees shall;
 - a. Ascertain that the Receiving Scheme is one of the types of Scheme described in section (2) of this Rule;

.....

8D. Option to have a cash equivalent applied

A Member (or Ex-Spouse Participant) who has a right to a cash equivalent under Chapter IV (or Chapter IVA) of Part IV of the Pension Schemes Act 1993 may exercise the option conferred by that Chapter by making an application in writing to the Trustee requiring them to exercise their powers under either or both of Rule 8B (or the Pension Sharing Rules) and Rule 8C, in any way or ways, compatible with the provisions of the appropriate Chapter of that Part, that he chooses.