

**PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

Applicant	Ms Heather Jones
Scheme	Standard Life Self Invested Personal Pension Plan - (the SIPP)
Respondent(s)	Standard Life

Subject

Ms Jones has complained that Standard Life, the SIPP administrators mismatched the SIPP member's share of a property asset with their share of the associated mortgage. She says that the mismatch led to the mortgage going into arrears which resulted in them having to sell the property at a loss.

Summary of the Ombudsman's determination and reasons

The complaint should be not be upheld against Standard Life because they acted legitimately in determining the share of the property asset and mortgage between the SIPP members and had received appropriate agreement from her independent financial advisers, Deep Blue Financial Limited (**DBFL**).

DETAILED DETERMINATION

Material Facts

1. Ms Jones, Mr Sell and Mr Harland (who is not party to this complaint) transferred their personal pension funds into the SIPP in 2005. The SIPP funds were then used to purchase a commercial property.
2. Ms Jones completed Standard Life's SIPP application form which was signed by her on 31 August 2005. The application form said,

"Using this form

...Your adviser will advise you on whether you are eligible for this contract and what options are most suitable for you.

"If you are receiving advice from an adviser you should remember that the adviser is acting on your behalf not only by giving you advice, but also regarding the completion of this form".
3. At Part 1c of the application form, Ms Jones said that DBFL were acting as her financial advisers.
4. Ms Jones, Peter Sell and Mr Harland completed Standard Life's Commercial Property Information Questionnaires and signed them on 14 September 2005, 12 September 2005, and 13 September 2005 respectively. Part I of the Commercial Property Information Questionnaire showed that the share of property and mortgage was to be confirmed. The original amounts were crossed out. The section headed "Using this form" said,

"...This application will be the basis of the agreement if we accept your application.

...when filling in Part I please use the box marked in red to enter the details of the Contact Member who will be the point of contact with Standard Life for the syndicate.

For syndicate purchases the Contact Member must provide written authority if they wish an Independent Financial Adviser to act on behalf of the syndicate. This doesn't apply if the Financial Adviser represents all the members of the syndicate.

Part 10 Declaration

If I am a member of a syndicate, I authorise Standard Life to take instructions from the person identified as the main contact point in Part I, or from the financial adviser authorised by that person..."

5. Standard Life sent an email to DBFL on 18 October 2005. It was headed,
 "Avcard House, St John's Road, Isleworth, Twickenham (Sell/Jones/Harland)".
 They said in the email,

"...Can you please confirm the percentages to be used, including those for the mortgage..."
6. DBFL responded to Standard Life's email of 18 October 2005 on 19 October 2005 saying,

"Further to our conversation this afternoon, please find attached a memo concerning the split of the Property Avcard House."
7. DBFL's attached memo said,

"File Note
 Date 19 October 2005
 Standard Life wanted confirmation of the ownership split of the new building. Rang Peter Sell & confirmed:
SIPP
 Ivor Harland 50%
 Peter Sell 25%
 Heather Jones 25%
Mortgage
 Ivor Harland 44%
 Peter Sell 27%
 Heather Jones 29%"
8. Standard Life wrote to DBFL on 31 January 2007 and a similar letter was sent to Ms Jones in March 2007 saying,

"...it has come to my attention that the split of costs for the purchase of the above property have been processed incorrectly.
 When paying the purchase balance to our solicitor our system assumes that the share of the property & mortgage is equal. If the splits are different then we must calculate each member's share of the purchase balance manually. I regret that in this instance my colleague...did not manually calculate the purchase balance due for your share and our system deducted the wrong amount from your SIPP.
 I have considered compensation for the errors made to your SIPP and I will arrange to recredit your SIPP with the following..."
9. Standard Life wrote to DBFL on 18 May 2007 attaching copies of letters that they sent to Ms Jones. They explained the reasons why the mortgage and ownership shares were different for each SIPP member. Their attached letter to

Ms Jones said that DBFL had asked Standard Life to contact her to explain the reason why the share of the property and mortgage were different. They said that it was because her fund would have been insufficient to cover her share of the property purchase.

10. Standard Life wrote to DBFL again on 23 July 2007 saying,

“...In order for Mr Sell and Mrs [Sic] Jones to increase their share (so that the three members have an equal share of the property) they would have to invest approximately...into Mr Harland’s SIPP...”
11. Mr Burns of Standard Life wrote to DBFL on 5 November 2009 saying,

“You indicate ...that you would like this situation to be rectified so that the mortgage and ownership are the same. This is of course something I would be able to arrange. We would normally make a charge of £65 per hour for dealing with this type of transaction...”
12. Standard Life wrote to DBFL on 17 January 2011 in response to an earlier letter from them. The writer of the letter said,

“...the split originally requested was not possible due to the values Mr Sell and Mrs [Sic] Jones held within their SIPP. In respect of the percentage splits suggested by Standard Life...this was aimed at achieving a split as near as possible to what was original requested, using the values Mr Sell and Mrs[Sic] Jones hold.

In regards to your suggestion that the ownership splits and mortgage splits could have been the same ...This was not possible as Mr Sell and Mrs [Sic] Jones did not have sufficient funds to action this...”
13. The property in question was sold by the SIPP members in 2011.

Summary of Ms Jones’ position

14. She was reliant on the advice and guidance from Standard Life and their linked independent financial advisers, DBFL.
15. There is uncertainty about the source of the memo of 19 October 2005 as it has no logo or header.
16. The mismatch of the share of the property asset with the share of the mortgage first came to light in Standard Life’s letter in March 2007 when they admitted fault and offered resolution. They then reversed their stance and would not uphold their initial offer of resolution.

17. She expected that Standard Life would discuss issues relating to the SIPP set up with DBFL as they were their financial advisers. DBFL state that there were options for the percentage split other than the one presented.
18. Standard Life and DBFL exercised poor due diligence in not ensuring that proposals were clearly laid out with concrete options for the mortgage and property percentage splits. They failed to ensure that she was properly briefed to be able to understand and agree to such proposals, and that forms were completed correctly.
19. Mark Burns said in his letter to DBFL of 5 November 2009 that the original SIPP and mortgage percentages could be amended. However, Standard Life subsequently changed their minds about this.
20. The final calculation of the share of the property asset with the share of the mortgage in relation the SIPP by Standard Life was inequitable. This is because, one SIPP member has been unreasonably disadvantaged compared to the other two members because of it.
21. She has suffered financial loss in that the mismatch led to the mortgage going into arrears which resulted in the SIPP members having to sell the property at a loss. She also suffered distress and inconvenience and incurred expense in having to deal with the matter.

Summary of Standard Life's position

22. The SIPP started via Ms Jones' independent financial advisers, DBFL. Standard Life communicated directly with them. It was DBFL's responsibility to ensure that Ms Jones understood the process and had received any relevant correspondence regarding the SIPP.
23. DBFL would have been aware of how the SIPP was going to be set up; if this was not to Ms Jones' specification she should have informed Standard Life at the appropriate time.
24. DBFL were not a tied agent of Standard Life at any stage.
25. Standard Life could not proceed with the original mortgage and ownership percentage shares requested by DBFL because of HMRC limits. This was explained to DBFL.

26. Standard Life calculated the nearest percentage shares with the funds available at the time which was accepted by DBFL. Standard Life received DBFL's confirmation on 19 October 2005.
27. Standard Life offered a solution to Ms Jones and Mr Sell in 2007. This would require them to each pay a substantial sum to the 3rd member of the SIPP to increase their share to the original request.
28. Although Mr Burns indicated in 2009 that Standard Life could rectify the mortgage and ownership shares so that they were the same, this was incorrect and Ms Jones was subsequently made aware of this.

Conclusions

29. DBFL were appointed by Ms Jones and the other SIPP members to act as their independent financial adviser in connection with the SIPP. There is no evidence that DBFL were acting as tied agents to Standard Life.
30. It was DBFL's responsibility to have informed Ms Jones at the outset of any terms regarding the SIPP and to have ensured that she was fully aware of the process. Ms Jones was aware from Standard Life's SIPP application form she completed on 31 August 2005 that DBFL were responsible for informing her about the options regarding the SIPP and about the completion of form. This would include the provision of information about the share of the property asset of the SIPP and the associated mortgage. In the Commercial Property Information Questionnaire she completed on 12 September 2005, she agreed that Standard Life could take instructions from DBFL. The evidence shows that Standard Life had provided DBFL with salient information about the share of the property asset of the SIPP and mortgage at the outset. I note that Standard Life received confirmation from DBFL on 19 October 2005 that the SIPP was to be set up on the basis of their attached memo. So Ms Jones should have been made aware by DBFL before 2007 of the basis of the share of the mortgage and property that was agreed between Standard Life and DBFL.
31. Ms Jones says that the source of memo of 19 October 2005 was unclear. However, it is my view that it more likely than not came from DBFL. This is because, the covering note points to a conversation that DBFL had with Standard Life and the author then refers to the attached memo in question.

32. Ms Jones claims that Mr Sell cannot recall the telephone conversation about having to make a decision about the splits as stated in the memo of 19 October 2005. In any event, Standard Life evidently received confirmation about the splits from DBFL in the correspondence of 19 October 2005.
33. Standard Life did not receive any other correspondence from DBFL immediately following their confirmation email of 19 October 2005 or from any other SIPP member at that time to the contrary. I therefore do not think that they had acted incorrectly in setting up the percentages based on their agreement with DBFL as set out in their correspondence of 19 October 2005.
34. Standard Life's admitted fault was in relation to the actual processing of the original splits and not that the percentages were incorrect. I note that Standard Life said in their letter to Ms Jones of March 2007 that the error would be rectified and the SIPP re credited. So she was not disadvantaged by the error.
35. Ms Jones says submits that the final calculation of the share of the property asset with the share of the mortgage in relation the SIPP by Standard Life was inequitable. However I consider that the reason Standard Life gave DBFL and Ms Jones for implementing the share of the property asset and mortgage between the SIPP members in the way that they did was legitimate. They provided a proper explanation in their letter to DBFL of 17 January 2011 and offered an alternative as set out in their letter to DBFL of 23 July 2007. I therefore do not consider that they had acted incorrectly regarding their implementation of the share of the property asset and mortgage of the SIPP or the process that they followed in communicating it.
36. I note Ms Jones' contention that Mr Burns indicted in his letter of November 2009 that the share of the property asset and mortgage could be amended. However, Standard Life subsequently confirmed that the information provided by Mr Burns in his letter was incorrect and explained in their subsequent letter of 17 January 2011 why the shares could not be changed.
37. Ms Jones asserts that she has suffered financial loss in that the mismatch between the share of the property asset with the share of the mortgage led to the mortgage going into arrears. She says that this resulted in the SIPP members having to sell the property at a loss. She also says that she has been caused distress and inconvenience and expense in having to deal with the matter.

However, I have already found that I do not think that there are any grounds for me to make a finding that Standard Life were guilty of any wrong doing in this regard. In any event there was no direct link between the alleged maladministration and any fall in the value of the property. The alleged maladministration may have led to the SIPP members selling the property but that in itself would not have caused its value to decrease.

38. For the reasons stated above, I do not uphold Ms Jones' complaint.

Jane Irvine
Deputy Pensions Ombudsman

30 December 2014