PO-6284

Ombudsman's Determination

Applicant	Mrs Nicola Buffoni
Scheme	Standard Life Self Invested Personal Pension (**the SIPP**)
Respondent	Standard Life

Complaint Summary

Mrs Buffoni has complained that Standard Life were guilty of systemic management control failure; negligence in accepting the trusteeship of two potentially conflicted SIPPs without ensuring an adequate method for resolving conflicts; poor communication, delay and incompetence and repeated failed assurances of action. As a result a property within the SIPP was not sold within two years of her husband's death and she lost the opportunity to take the money tax free.

The Ombudsman's determination and reasons

My decision is that this complaint should be upheld against Standard Life. My reasons are essentially the same as in X's Opinion of 21 July 2015 (**the Opinion**), a copy of which is attached. My additional comments follow.

Standard Life does not accept the views set out in the Opinion on the basis that:

- Its actions did not favour Mrs Thakrar and the extended deadlines were not only in her interest. A sale on the open market or at an auction would have been unlikely to have obtained the best price for the property which was in the interests of both parties;
- It was not Standard Life's responsibility to inform Mrs Buffoni of the mortgage redemption penalty and it was for her to obtain appropriate financial advice at an early stage. If Mrs Buffoni had received such advice she would have been aware of the penalty and could have made her decision as to how she wished to take the death benefits.
- Standard Life accepts that the failure to conclude a sale of Mr Buffoni's share of the property has prevented Mrs Buffoni from taking the death benefits as a lump sum but the proposed direction would result in a windfall for Mrs Buffoni. Since April

2013 Mrs Buffoni's SIPP has benefitted from rental income, a decrease in the outstanding mortgage and additionally the property will almost certainly have risen in value. These factors should be taken into account when assessing any compensation payable.

- The proposal that Standard Life should pay compensation based on a tax charge that has not yet been incurred does not take into account that if a sale does not take place Mrs Buffoni will benefit from both the large compensation payment and continued rental income.

I have considered the points that Standard Life have made and in particular the point that Mrs Buffoni will benefit from a windfall as a result of the proposal for compensation set out in the Opinion. It is true that Mrs Buffoni will have to pay tax on the proceeds of the sale of the property in whatever manner she chooses to take these. The principal reason that this position has arisen is because Standard Life continued to extend deadlines for Mrs Thakrar and it was then too late to realise the value of the property on the open market.

I accept, however, that the compensation for tax should be calculated on the position that would apply at the time that the property is sold, that is the marginal rate of tax that will apply at the time. I have therefore amended the direction below to allow for the tax compensation to be calculated at the time the property is sold. Mrs Buffoni will have to provide details of her marginal rate of tax to Standard Life and agree the tax compensation figure.

The additional rental income, mortgage payments and any increase in the property value are a consequence of the delay in selling the property and are subject to market fluctuations. For example, interest rates could rise or property values could fall before the property is sold, leaving Mrs Buffoni potentially in a worse position..

Directions

To put matters right Standard Life should within 28 days pay:

To Mrs Buffoni:

- £750 in compensation for the additional distress and inconvenience that she has incurred; and

To Mrs Buffoni's SIPP:

- £2,645 for the additional legal costs that were incurred for the aborted sale of the property; and
- reimburse the management fees that have been deducted since 1 January 2013 and apply no further management fees until 1 May 2016.

In addition, Standard Life should assist Mrs Buffoni in the sale of the property from January 2016 and meet any Scheme sanction charge imposed following the sale of the property if completed by 30 April 2016, should Mrs Buffoni decide to take the proceeds as a cash lump sum. Furthermore Standard Life should agree with Mrs Buffoni, once the property is sold, her marginal rate of tax and pay to her within 28 days of agreement a payment equivalent to:

> X% of the proceeds of her half of the property less any mortgage repayment figure where X% equals Mrs Buffoni's marginal rate of tax.

Anthony Arter

Pensions Ombudsman
28 October 2015

Pensions Ombudsman Service

I am authorised by the Pensions Ombudsman to give opinions on the merits of cases, including whether or not they can be upheld and, if applicable, what should be done to put matters right. The letter accompanying this document explains what your options are depending on whether or not you accept my opinion; please read it carefully.

Opinion by investigator for the Pensions Ombudsman Service

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Respondent(s)	Standard Life

Complaint summary

Mrs Buffoni has complained that Standard Life were guilty of systemic management control failure; negligence in accepting the trusteeship of two potentially conflicted SIPPs without ensuring an adequate method for resolving conflicts; poor communication, delay and incompetence and repeated failed assurances of action. As a result a property within the SIPP was not sold within two years of her husband's death and she lost the opportunity to take the money tax free.

My opinion

I have looked very carefully at the case and it is my view that this complaint should be upheld against Standard Life as deadlines were extended and not enough account was taken of Mrs Buffoni's position and wish to sell the property and take the proceeds tax free.

Background

In August 2007 Mr Buffoni set up a self-invested personal pension plan with Standard Life and was advised at the time by an independent financial adviser, Reid & Co. Mr Buffoni also transferred his investments in a Standard Life personal pension plan into the SIPP. The other major asset of the SIPP was 50% of a property at 13 Provost Street, London. Mr Buffoni held the property jointly with Mrs Dhruti Thakrar, his partner in a firm of solicitors. Mrs Thakrar also held her half of the property in a corresponding Standard Life SIPP.

When completing the application form for the SIPP, Mr Buffoni said that in the event of his death before age 75, he would like Standard Life to pay the SIPP benefits as a lump sum to his wife Nicola. The notes to the application form also said in relation to ‘Commercial Property:

> “Property can be difficult to sell so it may not be possible to sell investments in this type of fund when required. The valuation of property is generally a matter of opinion rather than fact.”

Mr Buffoni took his own life on 26 May 2011, aged 50, and Standard Life as trustee had to decide how the SIPP assets should be distributed. In November 2011 Standard Life confirmed that Mrs Buffoni was the beneficiary of the SIPP. The assets in the SIPP could be paid to Mrs Buffoni tax free provided this was within two years of Mr Buffoni’s death or later date when Standard Life could reasonably have known of Mr Buffoni’s death. As Standard Life was informed of Mr Buffoni’s death on 31 May 2011, the payment had to be made before 31 May 2013 otherwise a tax charge would be incurred.

In December 2011 Mrs Buffoni appointed her father Mr Fleming as her representative and he says in January 2012 he began to explore the methodology of disposing of the property. On 10 January 2012 Standard Life wrote to Mr Fleming and said they were awaiting advice from Mrs Thakrar as to how she wished to proceed and also said “if no contact is received our property team will look at the possibility of instructing the sale.”

Mr Fleming says that on 5 March 2012 Standard Life confirmed in a telephone call that there was approximately £63,000 in the cash account (inclusive of a protected rights account which was to be transferred to Legal & General to purchase an annuity). Mrs Buffoni’s interest in the property was valued at approximately £35,000. Standard Life therefore proposed to keep back an amount to cover future property management fees and would send possibly £40,000 to Mrs Buffoni. Mr Fleming also called Standard Life the following day regarding the monthly mortgage payments. Mr Fleming says that during the conversation Standard Life informed him that Mrs Thakrar might have difficulty in financing the purchase of Mr Buffoni’s share of the property through her SIPP because of the new limits on annual contributions to pension plans and the limitations on borrowings against the SIPP’s assets.

On 5 April 2012 Standard Life paid approximately £35,000 to Mrs Buffoni.

During the period January to April 2012 Standard Life also contacted Reid & Co to establish what action Mrs Thakrar wished to take in connection with the property. On 12 April 2012 Standard Life’s property team contacted Mrs Thakrar and asked if she was in a position to buy Mr Buffoni’s share of the property otherwise they would have to consider a forced sale of the property. Mrs Thakrar replied on 17 April 2012 and said she was still considering whether to purchase the property.

On 10 May 2012 Standard Life wrote to Mrs Thakrar and said that unless they heard from her by 31 May with a feasible plan to buy the property, they would start the process to sell it.

On 3 September 2012 Standard Life sent an email to Reid & Co to say that unless steps were taken to resolve the property issue by 30 September they would start the process to sell it. Mrs Thakrar emailed Standard Life on 24 September to say that she was in the process of trying to secure a loan and would be instructing solicitors to purchase Mr Buffoni’s share of the property.

On 2 October 2012 Mrs Thakrar asked Standard Life for details of the property valuation and the outstanding mortgage amount. Standard Life provided this information to Mrs Thakrar and on 18 October provided Reid & Co with details of the amounts Mrs Thakrar would need to complete the purchase. Mrs Thakrar would have to make a payment of £25,835 into her SIPP and in order to meet the borrowing requirements would have to further increase her total SIPP fund which would require a further contribution of £248,990.

On 29 November 2012 Standard Life sent a reminder email to Mrs Thakrar and gave a further 28 day deadline. Mrs Thakrar emailed Standard Life on 13 January 2013 and said she was in the process of securing a commercial loan as she understood from her adviser that she could not purchase the property through her SIPP due to the large contribution required. Standard Life replied and informed Mrs Thakrar that she would need a new property valuation. On 13 February 2013 Mrs Thakrar emailed Standard Life to ask for the valuation to be put on hold while she obtained some advice on the SIPP.

On 22 February 2013 Standard Life called Mrs Thakrar to discuss the figures for purchasing the property through the SIPP. Mrs Thakrar said she was talking to other advisers the following week. Standard Life said they would be happy to comment further on the information that she received.

Mr Fleming says he called Standard Life on 28 February 2013 to express concern that the end of the two year period for the cash to be transferred tax free was fast approaching. Standard Life responded by saying that there was grace to extend the deadline.

On 15 March 2013 Standard Life asked Mrs Thakrar for an update. Mrs Thakrar replied on 19 March 2013 and said that she would not be buying the property through her SIPP and was seeking to buy Mr Buffoni’s share herself. Mrs Thakrar also asked Standard Life to obtain a valuation on the property.

On 1 April 2013 Standard Life emailed Mrs Thakrar to inform her that the sale must be completed by 31 May 2013 in order that the death benefits could be paid out. On 3 April 2013 Mrs Thakrar returned the sale questionnaire and Standard Life instructed their solicitors Dickinson Dees to act on their behalf.

On 25 April 2013 Standard Life received a valuation of the property from Lamberts Chartered Surveyors.

On 6 May 2013 Mr Fleming wrote to Standard Life to raise concerns regarding the indemnity to any claims under the lease of the property. Mr Fleming also called Standard Life on 8 May 2013 to complain that a lump sum on settlement of the death benefits would not be possible due to the lack of progress on the sale of the property.

On 15 May 2013 Standard Life received an email from Dickinson Dees that they remained confident that the sale would be completed before Friday 24 May 2013. On 24 May 2013 Standard Life received an email from Lloyd’s Bank to inform them that there would a penalty of £14,190 for redeeming the mortgage on the property early. Mrs Buffoni was informed of the penalty on 29 May 2013.

Mr Fleming says that in the last few days leading up to 31 May he had called Standard Life who had said that they believed it would be possible to have an extension of the deadline if capital monies had already been paid out. Standard Life had agreed to come back to him on this point.

On 2 June 2013 Mrs Buffoni wrote to Standard Life saying that until there was certainty on the extension point she would defer going ahead with the sale.

On 19 June 2013 Standard Life emailed Mrs Buffoni and confirmed they had missed the deadline for paying out benefits. Standard Life also proposed that they give Mrs Thakrar two weeks to complete the purchase and if this was not completed by 5 July to consider putting the property on the open market.

On 21 June 2013 Standard Life received instructions from Mrs Buffoni that the sale of the property was not to proceed and that no sale should take place until the fixed mortgage period had expired.

Mrs Buffoni's viewpoint

Mrs Buffoni says that the basis of her complaint is that Standard Life failed to act in a timely fashion so as not to miss the two year limit for payment of the benefits in tax free form and lost control of the marketing and conveyancing by its delays.

Mrs Buffoni believes that Standard Life should compensate her for the severe financial impairment; waive and reimburse the management charges since her husband's death; reimburse the cost of the abortive sale to Ms Thakrar; make a payment for distress and inconvenience and indemnify her against any penalties or tax which HMRC may seek to recover from her.

Mrs Buffoni says she first became aware of the two year limit to realise assets and pay cash tax free when it was mentioned in Standard Life's letter of 21 November 2011. As Mrs Buffoni had two children to support and educate she wanted to receive the cash tax free as quickly as possible and not have a small taxed income and fees taken from a dwindling fund. Standard Life repeatedly assured her that she would receive the tax free cash within the two year period.

Mrs Buffoni says Standard Life's failure to act competently and within the two year period has caused her severe financial impairment and unnecessary stress, anxiety, time and effort and money.

There was no disagreement regarding the sale of the property of which Mrs Buffoni was aware. If there was disagreement regarding the sale of the property by Mrs Thakrar then this was never communicated to Mrs Buffoni by Standard Life. Mrs Thakrar eventually agreed to buy Mrs Buffoni's share of the property outside of her SIPP in March 2013.

The ability for either SIPP holder to force a sale of the property on the open market was raised in January 2012 and was a constant subject in telephone conversations with

Standard Life from May 2012 onwards. Standard Life never expressed any doubt of its ability to sell the property on the open market. Standard Life gave Mrs Thakrar a deadline of 31 December 2012 to make a proposal to buy the property but failed to enforce it.

There was no obligation on the Trustee to sell to Mrs Thakrar as claimed by Standard Life. Mrs Buffoni could have refused to sell to Mrs Thakrar which would have made an open market sale inevitable.

Standard Life's claim of impartiality is a distraction and if it is relevant then Standard Life failed any objective test. Standard Life's own timelines show that they were constantly communicating with Mrs Thakrar between June 2011 and March 2013. Standard Life did not keep Mrs Buffoni informed of the potential funding problems for Mrs Thakrar in October 2012 or give any advice on alternatives. At no point in any of Standard Life's correspondence since the two year deadline expired has Mrs Buffoni's wish to receive the tax free funds been considered. Standard Life's whole attention was and continued to be focused on Mrs Thakrar's wishes and funding problems.

Mrs Buffoni has had substantial costs deducted from the SIPP due to the aborted sale. These amounted to approximately £2,645 inclusive of VAT made up of:

(1) Energy Certificate	£144
(2) Surveyors Valuation	£450
(3) Solicitor's fees	£1,177.50
(4) Standard Life charges	£308.50
(5) DTZ charges	£565.16

Mrs Buffoni has also suffered a financial loss as she will be liable to a tax charge if the property is eventually sold and she receives the money in cash form as the two year limit for tax free payment has expired. Also because of Standard Life's negligence Mrs Buffoni continues to have ongoing management fees deducted. These ongoing management charges would not have applied if a swift sale had been achieved.

Mrs Buffoni has also been advised by Brewin Dolphin that she has suffered severe financial impairment because:

(i) She was not able to undertake Inheritance Tax planning

(ii) Enforced investment in a pension fund with substantial management fees is less financially beneficial than the independent management of cash; and

(iii) She does not know, for instance, if she can nominate her benefits under the SIPP to be divided equally between her children if she should predecease them before recovering any additional cash.

Standard Life's viewpoint

Where a SIPP member has not provided any instructions regarding the payment of death benefits, Standard Life has discretion to pay them in such proportion as it decides. Mrs Buffoni initially asked Standard Life to delay exercising its discretion and it was not until 17 February 2012 that she said that she wished to be considered as a beneficiary and receive the benefits as a lump sum. Standard Life then took steps to progress the sale of the property.

Where a property is purchased by a group of SIPP members Standard Life strongly recommends that a syndicate agreement is put in place. This would provide clear guidance as to what should happen in the event of the death of a member. There is no requirement that such an agreement is put in place as this remains the responsibility of the members.

As Mrs Thakrar indicated a desire to purchase the property Standard Life were obliged to facilitate this purchase if necessary as opposed to forcing a sale on the open market. Standard Life had a responsibility to treat both members (Mrs Buffoni as beneficiary and Mrs Thakrar) equally and to act impartially. Although Standard Life gave deadlines to Mrs Thakrar, it was very difficult to enforce those deadlines if it would be detrimental to one of the members.

Standard Life did give Mrs Thakrar a deadline of 31 December 2012 but even though that date had passed, she did request an extension in January 2013 to take advice on how to proceed. Standard Life did not consider it would be fair to force a sale in those circumstances.

Standard Life did raise the possibility of an extension to the two year limit with Mr Fleming on 27 May 2013. It was not however possible to extend the two year period and Mr Fleming was informed of this on 29 May.

Mr Fleming has questioned Standard Life's charges in relation to the sale of property. The charges were in accordance with Standard Life's scale of charges which Mr Buffoni agreed at the time that the SIPP was established. Mrs Buffoni as the beneficiary is treated effectively as a member and is subject to the same terms and conditions and charges that apply for the continuation of the SIPP.

Ultimately there were several factors that led to the sale to Mrs Thakrar falling through. The two parties were in conflict and refused to have any dialogue with each other; Mrs Thakrar struggled to arrange funding for the purchase; and Mrs Buffoni eventually instructed Standard life not to proceed to avoid incurring a penalty for early termination of the mortgage agreement. As regards the mortgage agreement Standard Life was not involved in the negotiation of the mortgage and was not aware of the terms or the redemption penalty.

My findings

This complaint is concerned with Standard Life's role in paying the benefits from the SIPP following Mr Buffoni's death. Standard Life was informed of Mr Buffoni's death within five days of the event and there was then a two year window during which the value of the property could be realised and paid tax free.

Standard Life say that they had to establish who was eligible to receive the death benefit but even though there was a form detailing Mr Buffoni's wishes it did take over five months from May to November 2011 for Standard Life to confirm that Mrs Buffoni was the beneficiary.

Mrs Buffoni did confirm to Standard Life that she wanted to receive the proceeds of the property as a lump sum. There was however no syndicate agreement between Mr Buffoni and Mrs Thakrar which was surprising given that they were both lawyers. Standard Life say that that they needed to act impartially and treat both SIPP members equally and thus were obliged to offer Mrs Thakrar the chance to buy the property through the SIPP.

I suspect that even if there had been an agreement between Mr Buffoni and Mrs Thakrar it would have given the other member the chance to buy the property first before putting the property on the open market. I therefore do not think Standard Life acted unreasonably in seeking Mrs Thakrar's view as to whether or not she wished to purchase the property. However I am also of the view that if there had been an agreement between Mr Buffoni and Mrs Thakrar there would have been some limitation imposed for the other party to decide whether they wished to purchase the property and if no decision was forthcoming for the property to be then placed on the market.

Mr Fleming, acting on behalf of Mrs Buffoni, was keen for the matter to progress and he did receive assurances that Standard Life would if necessary place the property on the open market.

Standard Life did impose a deadline for Mrs Thakrar to give a decision on whether she wished to purchase the property. Initially this was set as 31 May 2012 and was then extended to 30 September 2012 and 31 December 2012. As early as March 2012 Mr Fleming was given some information that Mrs Thakrar would have difficulty in purchasing the property through her SIPP because of new contribution limits. This was confirmed to Mrs Thakrar in October 2012 and I am of the opinion that at that point Standard Life should have concluded that the purchase would not complete through the SIPP. Standard Life should then have considered Mrs Buffoni's position and how best to realise the property value. At that point Standard Life could have placed the property on the open market but decided to enter into further discussions with Mrs Thakrar and extended the deadline further to 31 December 2012.

Mrs Thakrar also missed the 31 December 2012 deadline but even then Standard Life took no action and as late as February 2013 were still happy to enter into further discussion with Mrs Thakrar. I do not consider Standard Life's actions reasonable or impartial and in my opinion they were more concerned with assisting Mrs Thakrar's interests, even though the purchase, if completed, would be outside the SIPP, than acting in Mrs Buffoni's best interests.

It was not until March 2013 that Mrs Thakrar finally confirmed that she would not be seeking to buy the property through the SIPP and was seeking alternative financing. In my view it was already by then a tight deadline to complete the sale and pay out the benefits before 31 May 2013 as it allowed no leeway for any complications to arise. There was an unexpected complication on 24 May when Standard Life became aware of the mortgage redemption penalty. Mrs Buffoni was informed of this after the Bank holiday and had little time to decide whether to go ahead or not. Standard Life had also by then raised the possibility of extending the deadline but this proved to be more a case of wishful thinking than fact. Standard Life did not confirm that no grace period was allowed until 19 June 2013 which was by then past the deadline.

Standard Life say that Mrs Buffoni decided to pull out of the sale of the property because of the mortgage redemption penalty. But as outlined above this information was not presented until the last moment and there was talk of possible extensions. If Standard Life had proceeded with the sale of the property earlier then Mrs Buffoni would have had more time to weigh up the options and decide whether or not to proceed. I am therefore of the view that Standard Life's continued extension of the deadline to Mrs Thakrar amounted to maladministration and was the main cause of the value of the property not being realised in the two year window.

Mrs Buffoni has claimed the following losses:

(1) The loss of the return of the proceeds of the sale of the property tax free

(2) The fees for the aborted sale of the property and

(3) Ongoing management fees which would have been avoided if the property had been sold within the two year period

In my opinion Mrs Buffoni has suffered a financial loss as a result of the delays by Standard Life and for which she should be compensated. The compensation for these losses is however difficult to quantify as it depends how Mrs Buffoni wishes to proceed. Mrs Buffoni says that she does not wish to sell the property until the mortgage redemption penalty expires which is in January 2016. At that time the value of the property could be higher or lower than the property valuation of £250,000 in April 2013 and Mrs Buffoni's share could also be higher or lower than the estimated return she would have received of approximately £35,000. However for the purposes of compensation I will use the figure of £35,000.

If Mrs Buffoni chooses to take the value of the property when it is sold as a lump sum she will suffer tax on this. In my opinion it will be treated as an unauthorised payment and will incur an unauthorised payment tax charge of 40% as well as an unauthorised payment surcharge of 15%, making a total taxable charge of 55%. In addition the Scheme administrator must pay a Scheme sanction charge. Therefore taking the £35,000 as a proxy for the return that Mrs Buffoni could have received if Standard Life had not delayed matters I consider that Standard Life should now pay the estimated tax charge of £19,250 (55% of £35,000) as compensation to Mrs Buffoni. In addition if and when the property is sold after January 2016 Standard Life should meet the Scheme sanction charge if Mrs Buffoni decides to take the proceeds as a cash lump sum.

I also consider that Standard Life should reimburse Mrs Buffoni for the costs associated with the aborted sale of the property amounting to £2,645 plus reimbursement of the management charges that have been deducted. I have concluded that if Standard Life had kept to their original deadlines and reached a decision in October 2012 that the sale of the property would not proceed through Mrs Thakrar's SIPP then the sale could have been concluded by end of December 2012. Therefore Mrs Buffoni would not have incurred any management charges since 1 January 2013. I have also considered what is a reasonable period for the property to be marketed and sold and what should happen if the sale of the property is delayed for any reason beyond January 2016. I have concluded that the sale of the property should complete by 30 April 2016 and if the sale is delayed beyond this point then Mrs Buffoni should again meet any ongoing management charges.

I also consider that this whole exercise would have added to Mrs Buffoni's distress following the unfortunate death of her husband and that Standard Life should pay her £750 to compensate her for this.

Putting matters right

To put matters right Standard Life should within 28 days pay Mrs Buffoni:

- £19,250 to compensate for the unauthorised payment tax charge that will be payable when the property is sold;

- £2,645 for the additional legal costs that were incurred for the aborted sale of the property;
- £750 in compensation for the additional distress and inconvenience that she has incurred; and reimburse the management fees that have been deducted since 1 January 2013 and apply no further management fees until 1 May 2016.

In addition Standard Life should assist Mrs Buffoni in the sale of the property from January 2016 and meet any Scheme sanction charge imposed following the sale of the property if completed by 30 April 2016 and Mrs Buffoni decides to take the proceeds as a cash lump sum.

Senior Investigator
21 July 2015