

Ombudsman's Determination

Applicant	Mr S
Scheme	Santander (UK) Group Pension Scheme (the Scheme)
Respondents	JLT Benefit Solutions Ltd (JLT) Trustees of the Santander (UK) Group Pension Scheme (the Trustee)

Outcome

1. Mr S' complaint against JLT is partly upheld. JLT shall pay Mr S £1,000 in recognition of the serious distress and inconvenience caused.

Complaint summary

2. Mr S has complained that JLT incorrectly confirmed that a fund switch he had instructed had been carried out. In fact, the fund he had sought to switch to had been or would be closed, with the holdings transferred to another fund.

Background information, including submissions from the parties

3. Mr S was a member of the Scheme, which is administered by JLT. In December 2015, the Trustee carried out an investment review. As a result, it decided to switch existing holdings in Legal & General's "Over 15 Year Index-Linked Gilts Index Fund" (**the Gilt Fund**) to Legal & General's "Pre-Retirement Inflation Linked Fund" (**the Pre-Retirement Fund**). Around the same time, JLT issued a letter, "Changes to your investment options newsletter" (**the Notification**), to inform Scheme members.
4. Prior to January 2016, Mr S' Scheme holdings were invested in a "Growth Focus" Fund (**the Growth Fund**). On 18 January 2016, he decided to switch his holdings to the Gilt Fund and so instructed JLT.
5. On 25 January 2016, a "blackout" period started, to allow a bulk transfer to take place from the Gilt Fund to the Pre-Retirement Fund. The blackout lasted until 8 March 2016; and from 9 March 2016 new switch instructions were accepted again.
6. On 27 January 2016, JLT wrote to Mr S and confirmed that the investment switch he had instructed, from the Growth Fund to the Gilt Fund, had been carried out.
7. In February 2016, the decision of the investment review was actioned and members' holdings in the Gilt Fund were switched to the Pre-Retirement Fund. In the following

months Mr S checked the value of his Scheme benefits several times using JLT's "BenPal" online portal (**the Portal**). But he said the price of the Gilt Fund remained the same, as at 18 January 2016. He said the Portal also showed that his holdings in the Gilt Fund were worth about £19,800.

8. In the summer of 2016, Mr S telephoned JLT to query why the price of the Gilt Fund had not changed. He said JLT promised to look into this, fix the issue and respond. He said it also promised to issue an updated valuation. But, despite telephoning several times, and receiving promises that JLT would return his calls, JLT did not contact him to resolve this.
9. A few months later Mr S decided to switch his holdings back to the Growth Fund. On 18 October 2016, he contacted JLT with instructions to make the transfer. Mr S then received a letter from JLT, saying that he had no holdings in the Gilt Fund. He telephoned JLT to query this and JLT said it would look into the matter and respond. Despite telephoning several times, and receiving promises of return telephone calls, JLT did not contact him to resolve this.
10. Eventually, JLT confirmed to Mr S that his holdings had not been invested in the Gilt Fund, but in the Pre-Retirement Fund. It said all members' holdings in the Gilt Fund had been switched to the Pre-Retirement Fund, and all members had been notified in December 2015. Mr S said he received no notification, so JLT said it would send him a copy. Despite telephoning several times, and again receiving promises that they would return his telephone calls with an update, JLT did not contact him to resolve this, but it did send a copy of the Notification.
11. In December 2016, Mr S complained to JLT. He outlined the main issue, that is, the failed fund switch in January 2016, and said he had incurred an investment loss of about £2,970, as he was led to believe, for about nine months, that he was invested in the Gilt Fund when this was not the case. Mr S' instruction of 18 October 2016, to switch to the Growth Fund, was processed in January 2017.
12. In February 2017, JLT responded to Mr S' complaint. JLT said it had ascertained that he had suffered a loss as a result of the delay carrying out his switch instruction. Had the switch been carried out on 20 October 2016, rather than 13 January 2017, then he would have had an additional 554.6867 units in the Growth Fund. So, it agreed to credit these units to his Scheme account. It also offered him £100 in recognition of the distress and inconvenience caused.
13. In March 2017, JLT wrote to Mr S, confirmed the unit adjustment, which was worth about £2,000, and reiterated its offer of £100.
14. In May 2017, Mr S appealed. He said JLT had only addressed the minor part of his complaint, the failed switch instruction in October 2016; it had not addressed the major part of his complaint, the failed switch instruction in January 2016.
15. In October 2017, JLT wrote to Mr S and apologised for the delay in responding. It said it had uncovered a fault with its administration database. Due to the investment

review, Mr S' holdings had been invested in the Pre-Retirement Fund at the time of his switch instruction. When the change of investment fund was made, units were sold in the Gilt Fund; but a monetary value remained on the database, which fed through to the Portal. As a result, the Portal showed a monetary value for the Gilt Fund even though he had no holdings in it. Although, the Portal allowed Mr S to instruct a switch, from the Gilt Fund to the Growth Fund, such a switch was not possible as he held no units in the Gilt Fund at the time. So, there was no loss, although it acknowledged incorrect information was provided on the Portal. As a result, it increased its offer to £250.

16. In November 2017, Mr S appealed. He did not accept JLT's response, or its increased award, and he invoked the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He reiterated that he was seeking redress in the amount of the growth difference between the Gilt and Pre-Retirement Funds from January to October 2016, that is, £2,970, plus "compound growth". JLT acknowledged the complaint and outlined the IDRP.
17. In April 2018, Mr N complained under the IDRP. He said he did not immediately question why the unit price of his holdings had not been updated on the Portal, as there had been delays following an earlier transfer from Capita to JLT. He said his investment decisions were made in reliance on the information on the portal, which clearly showed investment in the Gilt Fund. Had accurate information been provided, he might have transferred to another provider or invested in another fund.
18. In August 2018, the Trustee responded under stage one of the IDRP. It summarised its understanding of the issues and correspondence between Mr S and JLT. It also confirmed that the Notification was issued to the address held for Mr S at the time. Although, the portal incorrectly showed holdings in the Gilt Fund after February 2016, the value held was zero. Further, Mr S would have known of the closure of the Gilt Fund, and subsequent fund switch, because of the Notification. He claimed that he would have invested differently had he known of the correct position but he had not specified what he would have done differently. Also, he claimed an investment loss of £2,970 based on growth in the Gilt Fund, however, that fund was not available after February 2016, so his comparison was not "achievable". In short, it did not uphold this part of his complaint, but did agree that the delays and inconvenience he had suffered trying to resolve the matter were unacceptable, so it endorsed JLT's offer of £250.
19. Mr S appealed. He said he had no recollection of receiving the Notification. When administration of the Scheme transferred from Capita to JLT, he spoke to JLT about changing his address but JLT advised him to wait until the Portal went "live", in about six months. The address JLT held for him at the time was his parents' address, and post was forwarded to him only "intermittently". JLT's letter of 27 January 2016 made no mention of closure of the Gilt Fund. His queries about this fund ought to have prompted JLT to explain the situation. Mr S acknowledges that a direct loss comparison was not possible as the Gilt Fund was unavailable after February 2016, so, he was happy to use a similar fund managed by the same fund manager, with an

“identical” strategy, the “Legal & General Over 15 Year Gilts Index Pension Fund”, for this purpose, as he explained in December 2016. In short, the Notification was secondary. Several opportunities were missed to make clear that the Gilt Fund had been closed. Notably, when the switch was confirmed in January 2016, and holdings in the Gilt Fund were converted to the Pre-Retirement Fund in February 2016. Also, in various telephone calls and later on the Portal. He had incurred an investment loss of about £3,000 as a result of being misled into believing he was invested in the Gilt Fund.

20. In October 2018, the Trustee responded under stage two of the IDRPs. It said although the Gilt Fund was “visible” on the Portal, the fund value was zero, so Mr S would have known that no funds were present. Further, the Notification was issued to the address JLT held for Mr S at the time. Even if Mr S did not reside there, he could have updated his address details with JLT.
21. Mr S appealed. He said that JLT had confirmed, on 27 January 2016, after the supposed “migration”, that it had carried out his switch instruction. In his view, this “negated” the Notification. Also, as he had previously explained, the Portal did not show a holding of zero; it showed a holding of about £19,800. Had it showed a holding of zero, his attempts to obtain responses from JLT would have been more “assertive”.
22. In November 2018, the Trustee issued a further response. It said there was a “blackout”, from 5 January 2016 to 8 March 2016, in which no investment switches were allowed. According to JLT, Mr S’ instruction to switch to the Gilt Fund was received before the blackout and then processed, hence the confirmation letter was sent. Further, JLT had confirmed that the Portal allows members to “toggle” between units and fund value. At the time of the bulk switch, 100% of units in the Gilt Fund were sold, resulting in zero units. But, due to the error, a monetary value still showed for the Gilt Fund. The IDRPs were now exhausted, but the offer of £250 stood.
23. Mr S’ position is that he did not receive the Notification; and, in any case, it was in the form of a general “brochure”, not a personalised letter. It was a fact that he was able to switch to the Gilt Fund, which JLT confirmed in writing; the Portal then confirmed the incorrect position for about nine months. He telephoned JLT on several occasions after the confirmation, so it had missed “multiple chances” to resolve the matter.

Adjudicator’s Opinion

24. Mr S’ complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of JLT. The Adjudicator’s findings are summarised below:-
 - There was no dispute that there had been maladministration as JLT accepted that the Portal incorrectly showed a monetary value for the Gilt Fund. Also, the Trustee accepted that due to a system error, the Gilt Fund was still visible on the portal after all holdings had been sold and switched to the Pre-Retirement Fund.

- While the Adjudicator thought that, on the balance of probabilities, JLT had correctly issued the Notification, it was not integral to the complaint. Mr S' instruction to switch from the Growth Fund to the Gilt Fund was carried out, which is why JLT sent confirmation of this on 27 January 2016. However, JLT ought to have declined to carry out the switch, or explained the situation in writing, because any holdings in the Gilt Fund could only have been held for a short period of time before switching to the Pre-Retirement Fund. Had JLT done so, Mr S could have mitigated his loss by immediately investing in a suitable alternative fund.
- Based on the information available, the Adjudicator agreed with Mr S' claim that if the holdings in the Gilt Fund were shown as zero, his attempts to obtain a response from JLT would have been more assertive. This was logical as he had only recently switched into the Gilt Fund, so it would be natural for him to question why his holdings had apparently disappeared. There was no indication that he made such an enquiry. Indeed, Mr S telephoned JLT in the summer of 2016, to query why the price of the Gilt Fund had not changed, but there is no sign that JLT confirmed that Mr S' funds had never been invested in the Gilt Fund before its letter of October 2016. So, the Adjudicator agreed that Mr S would have switched to a similar fund had JLT clearly confirmed the correct position following his instruction.
- Had Mr S been clearly informed in January 2016, or soon afterwards, that he could not switch to the Gilt Fund, the Adjudicator was satisfied that on the balance of probabilities, he would have invested in a similar fund such as the Legal & General Over 15 Year Gilts Index Pension Fund that Mr S identified was a reasonable proxy for the Gilt Fund. So, Mr S had potentially incurred a loss in the difference between: (a) the growth in the Pre-Retirement Fund from January to October 2016; and (b) the growth in the proxy Fund over the same period.
- The Adjudicator took into consideration JLT's handling of Mr S' queries and complaint. In his view, an award of £1,000 was justified. In particular, he had noted that a number of Mr S' communications were not responded to, and his main complaint was not addressed in JLT's response of February 2017. Further, there was at least one delay between May 2017 and October 2017, in responding to Mr S, which all caused distress and inconvenience.
- The Adjudicator recommended that JLT ought to carry out a loss assessment to ascertain any difference between: (a) the growth in the Pre-Retirement Fund from 18 January 2016 to 20 October 2016; and (b) the Legal & General Over 15 Year Gilts Index Pension Fund over the same period. Should (b) be greater than (a), the difference should be paid to the Scheme. In addition, the Adjudicator recommended that JLT pay £1,000 for the serious distress and inconvenience caused by its initial failure to provide complete and accurate information on Mr S' investment switch and holdings, and its subsequent failure to investigate and respond promptly to his queries and concerns.

25. JLT accepted the Adjudicator's Opinion and carried out the loss assessment. This indicated that similar funds would not have performed as well as the Pre-Retirement Fund. While Mr S broadly accepted the Adjudicator's Opinion, he did not agree with JLT's loss assessment results. So, the complaint was passed to me to consider. Mr Y's further comments are summarised below:-

- Had he been made aware that he had switched to the Pre-Retirement Fund, he "could" have done many things such as left his benefits where they were, picked a different fund or switched out to another investment provider.
- The rationale behind using a proxy was that he did not know which fund the 'Gilt Fund' was. So, he was in fact claiming that JLT should cover the difference between (a) the growth in Pre-Retirement Fund from January to October 2016 and (b) the Gilt Fund over the same period.
- After further exchanges, Mr S said that if he had known that the Gilt Fund was not available, he would have sought the same fund in another pension and substituted. This was because he specifically wanted an index-linked fund due to the economic climate at the time.
- Proving whether the Gilt Fund was available during 2016 would be difficult as his pension providers change the funds they offer over time and historical options are not readily available. Further, he had recently amalgamated various pension funds into a SIPP. However, given that the Gilt Fund currently had approximately £4.5 billion invested in it, it was not exclusive to JLT and readily available to the wider market. Given that he had a Legal & General pension, as well as various trading wrappers, he may have had access to the Gilt Fund via those.
- He had spent a number of years trying to resolve this complaint. So, if he had not felt that there was an injustice here, he would have accepted one of JLT's earlier offers.

26. I note the additional points raised by Mr S, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

27. JLT ought to have informed Mr S that his switch instruction would result in his holdings being invested in the Pre-Retirement Fund. Because JLT did not, and the Portal displayed incorrect information, Mr S was unaware of what had happened until approximately nine months later. Mr S indicated that he would have opted for a similar fund to the Gilt Fund had he been told about his holdings in the Pre-Retirement Fund. JLT subsequently reviewed the performance of similar funds to the Gilt Fund and these indicated that the Pre-Retirement Fund provided a greater investment return. However, Mr S later clarified that he only provided a proxy fund as he did not know which fund was the 'Gilt Fund', and that he would not have opted for a similar fund. Rather, he claimed that he would have used another of his pensions to invest in the Gilt Fund as a substitution.

28. Based on the information available, I find, on the balance of probabilities, that Mr S would have switched to a similar index-linked fund rather than use one of his other pensions to substitute his attempted investment in the Gilt Fund. In Mr S' IDRPs application, he said he may have chosen another fund, or that he may have transferred his pension to another provider. In Mr S' IDRPs stage one response he suggested using a proxy, which had an identical strategy and was managed by the same fund manager. He did not specify that he was only listing the proxy because he did not know which fund was the Gilt Fund. Nor did he immediately claim or explain how he would have used one of his other pensions to invest in the Gilt Fund instead.
29. I appreciate Mr S could not have anticipated the errors that occurred, or that he would need to demonstrate what he would have done had he received correct information from JLT from January 2016 onwards. However, I cannot direct JLT to cover the difference between the Pre-Retirement Fund and the Gilt Fund for the relevant investment period unless I am persuaded that Mr S would have invested in the Gilt Fund using alternative methods with some evidence provided to substantiate this claim. While it is possible that the Gilt Fund was available for Mr S to invest in with his other pensions, Mr S has been unable to confirm this. In any event, even if it could be substantiated, I consider that this would only demonstrate that he could have invested in it, not that he would have done. Consequently, I find it more likely that Mr S would have selected an alternative, similar fund to the Gilt Fund.
30. Having reviewed the performance of similar funds over the period in question, in conjunction with JLT's comments concerning the comparison between similar funds and the Pre-Retirement Fund, I am satisfied that the Pre-Retirement Fund performed best, so, I cannot see that Mr S has suffered a financial loss.
31. However, it is evident that the service Mr S received from JLT fell below an acceptable level. In particular, Mr S was required to telephone JLT on a number of occasions and when he was told that JLT would contact him, it appears that this did not always happen. In addition, the main part of Mr S' complaint was not initially addressed. This caused Mr S serious distress and inconvenience.
32. I uphold Mr S' complaint against JLT in respect of its maladministration.

Directions

33. Within 14 days of the date of this Determination, JLT shall pay £1,000 to Mr S in recognition of the serious distress and inconvenience caused.

CAS-32468-H7M3

Anthony Arter

Pensions Ombudsman
6 October 2020