

Ombudsman's Determination

Applicant	Mr R
Scheme	Selven Pension Scheme (the Scheme)
Respondent	Westbridge Pension Administration Limited (Westbridge)

Outcome

1. Mr R's complaint against Westbridge is partly upheld. To put matters right, Westbridge SSAS shall:-
 - 1.1. Pay Mr R the sums described under my Directions in paragraphs 92.1 to 92.3, below; and
 - 1.2. Take the steps described in paragraph 92.4 to allow Mr R to conclude the transfer of his Cash Equivalent Transfer Value (**CETV**) under the Scheme to another pension scheme.

Complaint summary

2. Mr R has complained that:-
 - 2.1. James Hay Partnership (**JHP**) incorrectly split the value of the Scheme's investments (**the Fund**) between him and the deceased member in 2019.
 - 2.2. JHP made an unauthorised death benefit payment to the other beneficiary of the Scheme in 2019.
 - 2.3. He was unable to transfer his share of the Fund to a Self-Invested Personal Pension with Charles Stanley (**the SIPP**) because of how JHP calculated his share of the Fund and how it split the investments to pay out the death benefit to Mrs S.
 - 2.4. JHP's administration has caused him to incur excess fees and charges.
 - 2.5. He has experienced delays when attempting to draw a Pension Commencement Lump Sum (**PCLS**) benefit from the Scheme.
 - 2.6. He should receive compensation from Westbridge for the financial loss he has incurred as a result of its delays and for the distress and inconvenience the matter has caused him.

Summary of the Ombudsman's Preliminary Decision and reasons

3. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Westbridge. The reasons for the Adjudicator's Opinion are reproduced at paragraphs 39 and 40, below.
4. The Adjudicator was of the view that parts of Mr R's complaint were brought by him as a trustee against the other trustees of the same scheme, so were not within my jurisdiction. However, this does not prevent me from giving directions where Mr R's complaint is in respect of any rights, including his rights as a trustee, that he could enforce as a member or that have caused him injustice as a member.
5. Mr R did not accept the Adjudicator's Opinion and submitted his further comments in response to it. I considered Mr R's comments and reviewed all documents submitted in this investigation. I did not agree in all respects with the Adjudicator's Opinion and, on 29 May 2025, I issued my preliminary decision (**the Preliminary Decision**), which provided an explanation of those parts of the Adjudicator's Opinion with which I disagreed. These are summarised below and a more detailed explanation is provided in the section "Detailed Determination".
 - 5.1. JHP failed in its duty, as the professional trustee and administrator, to provide information to Mr R in a timely and open manner.
 - 5.2. JHP failed in its obligations, as a professional, independent trustee, to satisfy itself that the provisions of the SSAS, including the requirement for trustee decisions to be unanimous, were met.
 - 5.3. JHP, as administrator, breached its duty of skill and care by allowing a payment to be made by the Scheme without taking steps to establish that a unanimous trustee decision had been made.
 - 5.4. JHP's performance in relation to the disposal of shares fell below the standard to be expected of a reasonably competent administrator.
 - 5.5. JHP's errors, actions and inactions were serious and persistent.
6. My preliminary decision was that the complaint should be partly upheld against Westbridge in respect of the failings of its predecessor JHP as Trustee of the SSAS and as administrator of the SSAS.

Detailed Determination

Material facts

7. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there was a significant number of other exchanges of information between all the parties.

8. The Scheme is a Small Self-Administered Scheme (**SSAS**), a type of money purchase occupational pension scheme with fewer than 12 members. It was established in 1979 in connection with Selven Limited (**the Principal Company**), which was owned by Mr R and his co-directors, Mr S and Mr E.
9. The Scheme's governing documents are:
 - 9.1. a Deed of Establishment dated 29 February 1988 (**the Deed of Establishment**) between the Principal Company and the Trustees of the Scheme;
 - 9.2. the Definitive Trust Deed and Rules dated 27 October 1992 (**the 1992 TD&R**);
 - 9.3. a Resolution by the Trustees dated 23 March 1999 (**the 1999 Resolution**);
 - 9.4. the Definitive Trust Deed and Rules dated 15 September 2004 (**the 2004 TD&R**); and
 - 9.5. the Deed of Amendment dated 19 December 2006 (**the 2006 Deed of Amendment**).
10. The Fund consisted of:
 - 10.1. cash in the operating bank account for the Scheme (**the Scheme Account**);
 - 10.2. cash on deposit in an account with HSBC, which was closed and the residual balance transferred to the Scheme Account in August 2020;
 - 10.3. two commercial property investments (**Property One and Property Two**);
 - 10.4. an Investment Portfolio with Charles Stanley (**the Investment Portfolio**), including Unit Trusts with Link Fund Solutions and Valu-Trac; and
 - 10.5. shares held through online share-dealing services Link Asset Services and Computershare (**the Shares**). The holdings with Link Asset Services included shares in K3. The holdings with Computershare included shares in Rolls-Royce and RBS.
11. When the Scheme was established, JHP was the administrator (**the Administrator**) and Union Pensions Trustees (London) Limited (**UPT**), also trading as JHP, was the Independent Trustee. In this Determination, I therefore use JHP to refer to JHP as both the Administrator and the Independent Trustee. Mr R, Mr S and Mr E were the Member Trustees of the Scheme (**the Member Trustees**). The Member Trustees and the Independent Trustee were, collectively, the Trustees of the Scheme (**the Trustees**), and were responsible for how the Scheme's funds should be invested in accordance with the Scheme's Trust Deed and Rules (**the TD&R**). JHP's book of SSAS pension schemes has since been taken over by Westbridge.
12. The Scheme continued after the Principal Company was sold in 2004. At that time, the Member Trustees were Mr R, Mr S, Mr E and Mr N. Mr E and Mr N retired as

Trustees in 2005. Mr S died in July 2017, leaving Mr R as the sole continuing Member Trustee.

13. Mr R said he relied on Mr S to conduct the Member Trustee business of the Scheme. Both he and Mr S had encountered problems drawing retirement benefits from the Scheme in 2015 and 2016, so had decided to transfer their respective shares of the Fund to individual pension plans. Mr S was in the process of preparing for the intended transfers when he died.
14. In September 2017, Mr R authorised Mrs T, Mr S's daughter and Executrix of his estate, to deal with all payments and general administration with respect to the Scheme. Mr R said Mrs T held all documentation and correspondence relating to the Scheme and that he had no access to Mr S's computer systems or files. The process to appoint Mrs T as a non-member Trustee of the Scheme commenced and, following what Mr R has said was JHP's delay in producing the relevant documentation, concluded in March 2018.
15. There was no dispute that the death benefit payable from Mr S's share of the Fund was to be paid to his widow, Mrs S. The Fund was valued in April 2018 and the split between Mr R and Mr S was calculated. Mrs S made an initial proposal to allocate Property One to her at a value of £500,000 with the remainder of the Fund allocated to Mr R for encashment. Mr R did not agree with this proposal, as he intended to emigrate to New Zealand and preferred to receive his share of the Fund in the form of cash. He was also of the view that the proposal undervalued Property One.
16. Property One was sold in February 2019 for £670,000 from which Mr R expected his share of the fund could be settled as a transfer value. However, JHP first required the Fund to be revalued following the sale of Property One. The valuation was completed on 24 April 2019, when it was valued at £1,366,746.43. This included the Investment Portfolio which was valued at £480,505.59. Mr R's and Mr S's shares of the Fund were valued at £665,320.05 and £701,426.38 respectively.
17. On 3 June 2019, Mr R and Mrs T signed a Trustee Resolution (**the June 2019 Resolution**) allocating the late Mr S's share of the Fund to be paid as a death benefit to Mrs S. The June 2019 Resolution said:

“As the trustees of the scheme, we hereby resolve and confirm that the late [Mr S's] fund value be duly allocated to [Mrs S] as the sole beneficiary of the fund.”
18. The June 2019 Resolution also recorded that a partial death benefit payment of £185,000 had already been made by the Scheme to Mrs S.
19. Trading in two investments in the Investment Portfolio, the Link Fund Solutions and the Valu-Trac investments, was suspended on 3 June 2019 and 25 July 2019, respectively (**the Suspended Investments**).

20. In June 2019, Mr R discovered that the death benefit payable to Mrs S had been settled from the cash holdings in the Fund, as there would have been adverse tax consequences if it was not settled within two years of Mr S's death. The remainder of the cash holdings, the Investment Portfolio, the Shares and Property Two had been allocated to Mr R.
21. On 10 June 2019, Mr R expressed to JHP his preference that the Investment Portfolio should be sold and he expected that JHP would revert to him with instructions on how to effect the sale. JHP indicated that the Investment Portfolio would not be sold until Property Two had been sold, but Mr R challenged this and indicated that he was concerned about the potential loss of investment growth, having identified an opportunity to achieve a guaranteed investment return of 1.85% per annum under the SIPP.
22. On 30 June 2019, Mr R complained to JHP (**the June 2019 Complaint**) that the death benefit payment made to Mrs S was "unauthorised". He had previously requested that cash holdings in the Fund should be used to settle the transfer request he intended to submit. He was of the view that:-
 - 22.1. There was sufficient time for JHP to transfer the illiquid assets to Mrs S before the two-year deadline.
 - 22.2. He was not consulted about the arrangement for allocation of assets.
 - 22.3. His consistent requests for cash to be allocated to him were ignored.
 - 22.4. His need for the transfer in the form of cash should have taken priority. Mrs S was in a position to be more flexible. Mrs S could have accepted a death benefit in the form of a combination of investments, property and cash, as long as the benefit was paid within the two-year period.
 - 22.5. After Mr S's death, JHP should have endeavoured to liquidate various assets and agree an allocation between him and Mrs S. But as it took over 18 months to progress its enquiries regarding discrepancies in previous valuations, it was left with little time to do so and instead made a precipitous payment to Mrs S from cash in the Scheme Account.
 - 22.6. Mr R was left with the full cost of liquidating the remaining assets and bearing ongoing expenses of the Fund.
23. On 10 July 2019, Mr R sent an email to JHP instructing it to disinvest the tradable holdings in the Investment Portfolio, about which he had previously enquired on 10 June 2019. JHP requested a revised instruction bearing his signature, which he provided on 11 July 2019. JHP then asked for a further revised instruction on 17 July 2019, this time also bearing Mrs T's signature.
24. JHP said it attempted to sell the Investment Portfolio on 31 July 2019, although Mr R submitted that Charles Stanley did not receive any instructions from JHP until 19 August 2019. JHP then discovered that it did not hold Legal Entity Identifier

numbers (**LEI numbers**) for the holdings in the Investment Portfolio. Although Mr R was of the view these LEI numbers were not required, it took JHP until 13 September 2019 to obtain them. Mr R's instruction to disinvest the Investment Portfolio was executed on 2 October 2019.

25. On 4 October 2019, Mr R asked JHP to liaise with HM Revenue and Customs (**HMRC**) regarding whether he could proceed with a transfer of his share of the Fund excluding the Suspended Investments (**the Partial Transfer**), to the SIPP without incurring a tax penalty. He followed up his enquiry on 21 November 2019, then complained to JHP on 28 November 2019 that he had received no response.
26. On 18 December 2019, JHP explained to Mr R that it understood the liaison with HMRC was conditional on the SIPP confirming that it would accept the Partial Transfer, which it had not yet done. Mr R disputed JHP's understanding. The administrator of the SIPP subsequently provided the confirmation to JHP on 15 January 2020.
27. On 27 December 2019, JHP informed Mr R that he had scope to draw a further PCLS of around £15,000 from his share of the Fund. For health reasons, Mr R was unable to respond until 9 January 2020, when he confirmed that he wished to draw the additional PCLS. JHP provided an application form, which Mr R submitted on 23 January 2020. JHP did not accept the application as it said, on 31 January 2020, that a risk consideration form (**the Risk Form**) had not been completed. Mr R completed and returned the Risk Form, noting it had not been mentioned in JHP's guidance to him. JHP rejected the Risk Form as it was not signed by Mrs T, so it sent a replacement form for completion on 6 February 2020. Mr R complained that the initial Risk Form did not have anywhere for Mrs T to sign, whereas the replacement form did. Mrs T was not immediately available to sign the Risk Form and there was a consequent further delay to 18 February 2020.
28. Mr R sent five reminders regarding his claim for the PCLS, before making a complaint regarding the delay on 16 March 2020. He then authorised his partner to speak to JHP on his behalf as he had become too stressed to deal with JHP himself. JHP advised that the Fund needed to be revalued in order to progress his claim for the PCLS.
29. In March 2020, JHP received the share certificate Mr R needed to dispose of the K3 Shares held via Link Asset Services. It forwarded the certificate to Mr R in June 2020.
30. On 30 March 2020, JHP advised Mr R that its PCLS calculations had been completed and were being checked. On 6 April 2020, it emailed Mr R advising that it had identified historical issues with the valuation that needed to be resolved before his PCLS claim could progress. On 15 April 2020, it elaborated that the issues concerned previous calculations of the split of the fund between Mr R and Mr S and that the death benefit paid in respect of Mr S might have been incorrect. It reminded Mr R that he had the option of drawing taxable income pending resolution of the valuation query. Mr R declined to draw taxable income as there was a tax-free option available

in the PCLS and because he did not want to commence a new process that could go wrong and cause him more trauma.

31. Between 13 May 2020 and 26 May 2020, Mr R contacted JHP on six occasions by various means regarding his outstanding queries and complaints. On 28 May 2020, JHP wrote to Mr R to say his complaints were already under investigation and agreeing to provide some, but not all, of the documentation he had requested. It indicated that it would not be providing copies of internal documents relating to the death benefit payment to Mrs S.
32. JHP sent its final response to Mr R on 10 November 2020 (**the Final Response letter**), the details of which are embodied within Westbridge's position at paragraphs 36 and 37, below. Between 15 January 2021 and 25 March 2021, Mr R sent further correspondence to JHP elaborating on his complaint, as follows:-
 - 32.1. He questioned the validity of the Deed appointing Mrs T as a non-member Trustee of the Scheme.
 - 32.2. A £900 death benefit administration charge had been deducted from both the Fund and from the death benefit payment to Mrs S.
 - 32.3. An overpayment of property service charges had not yet been returned to the Fund.
 - 32.4. A missing rental income payment had not yet been credited to the Fund.
 - 32.5. The death benefit to Mrs S had been overpaid.
33. On 14 April 2021, Westbridge confirmed to Mr R that it stood by the Final Response Letter and made additional comments, which are included in Westbridge's position at paragraphs 36 and 37, below, in relation to his subsequent correspondence up to 25 March 2021.
34. Correspondence between Mr R and Westbridge continued to 26 August 2021, summarised as follows:-
 - 34.1. Mr R instructed that Westbridge should not make any further payments to, or communicate with, Mrs S without his agreement. He accepted the explanations given with the exception of that regarding the amount of death benefit paid to Mrs S.
 - 34.2. Westbridge confirmed that there had been errors involving an overpayment of rent to the Scheme and a separate underpayment of rent that had been received but not credited to the Scheme. The two errors all but cancelled each other out, with the result that the death benefit paid to Mrs S was £207 less than what should have been paid to her.
 - 34.3. Mr R maintained that the death benefit should not have been paid to Mrs S without his consent and withheld his consent to pay the £207 shortfall to Mrs

S. He would not be proceeding with the drawdown of the PCLS benefit available to him.

- 34.4. Westbridge advised Mr R that the SIPP had confirmed it could not accept the Suspended Investments as part of his transfer value from the Scheme. Westbridge awaited Charles Stanley's guidance as to the options available for their disposal.
- 34.5. Mr R asked for confirmation that Mrs T had been removed as a Trustee and noted that he was no longer receiving statements from Charles Stanley as the latter appeared to be awaiting an updated signatory list from Westbridge.
- 34.6. Westbridge confirmed that Mrs T had been removed as a Trustee and informed Mr R of his options in relation to the Suspended Investments.
- 34.7. Mr R informed Westbridge that he had decided to take no action in relation to the Suspended Investments on the basis that he understood they would be wound up imminently. If the wind-up took longer than expected, he would then consider writing them off, with compensation for their loss being paid by Westbridge. He decided not to proceed with his claim for a PCLS payment as he was concerned that this could cause a repeat of the stress he had already experienced.

Summary of Mr R's position

35. Mr R's position, given in his complaint initially via the Financial Ombudsman Service (**FOS**) on 14 October 2019, then directly to The Pensions Ombudsman (**TPO**) on 22 February 2021, was as follows:-
 - 35.1. The appointment of Mrs T as a non-member Trustee of the Scheme was not intended to be to his exclusion. JHP should not have declined to share with him copies of its correspondence with Mrs T regarding the death benefit payment to Mrs S.
 - 35.2. JHP should not have withheld from him the formula for calculating the split of the Fund between him and Mr S.
 - 35.3. The June 2019 Resolution was not properly executed as it was signed by him and Mrs T, but not by JHP. It also omitted any reference to its purpose for payment of the death benefit to Mrs S that had been included in a previous version in April 2018.
 - 35.4. JHP was aware that he required his share of the Fund as cash and he had not consented to be left with the Scheme's property, shares and unit trust investments. JHP should have negotiated the outcome with him and Mrs S and as a result of not doing so, his plan to emigrate to New Zealand had to be suspended.

- 35.5. The valuation of the Fund on which Mrs S' death benefit was based incorrectly included an overpayment, as a result of which the death benefit was overpaid by £4,257.21.
- 35.6. His share of the Fund unfairly bore all the costs of the sale of Property Two for Mrs S.
- 35.7. JHP had sufficient time to settle the death benefit to Mrs S other than by use of the Scheme's cash holdings.
- 35.8. The sale of the Computershare investments were delayed due to missing information and missing share certificates. The value of the investments fell during the delay and JHP was responsible for the loss of £16,713.21.
- 35.9. His instructions to sell the Investment Portfolio were not executed promptly and as a consequence their realisable value, which was £480,505.59 in April 2019, had fallen to £435,038.42 in October 2019, a loss of £45,467.17.
- 35.10. His attempts to draw down a PCLS payment in February 2020 had not gone ahead due to JHP's failures.
- 35.11. JHP was responsible for the losses in the value of his share of the Fund, the stress and damages caused by its actions.
- 35.12. JHP should compensate him for all losses and refund all fees charged to the Fund since 3 June 2019.

Summary of Westbridge's position

- 36. Westbridge's position, outlined in the Final Response letter, subsequent letter dated 14 April 2021, and its formal response to TPO dated 3 November 2021, was as follows:-
 - 36.1. Mr R and Mrs T, the Member Trustees at the time to which Mr R's complaints relate, were responsible for management of the Scheme and its investments and for seeking professional advice where necessary. JHP had attempted to provide guidance to the extent that it could.
 - 36.2. While it did not initially provide an adequate explanation of the historical issue with the PCLS valuation, it subsequently did so on 21 April 2020 and again on 28 May 2020.
 - 36.3. The historical issue with the PCLS valuation related to receipt of an overpayment of rental income from a tenant of the Scheme. The value of the Fund when Mr S's death benefit was calculated wrongly included this overpayment, so the death benefit was overpaid. Another rental income payment that was received by JHP was not credited to the Fund. The two errors essentially cancelled each other out. While Westbridge was not a property manager, it subsequently accepted this part of Mr R's complaint,

given that errors had been made and on the basis of the time that was taken to correct them.

- 36.4. It was not responsible for the delays Mr R experienced in disposing of shares held by the Scheme, except the K3 Shares where it accepted it had failed to promptly forward the share certificate he needed.
 - 36.5. It was not responsible for the Investment Portfolio being left holding the Suspended Investments. Mr R's instructions were received in August 2019, after both investments had been suspended in June and July 2019.
 - 36.6. Mr R's signature of the June 2019 Resolution was his approval of the allocation of Mr S's share of the fund to Mrs S as the sole beneficiary. While JHP had not signed the June 2019 Resolution, it prepared it for signature and paid out the benefit, so JHP's implicit approval, following signature by Mr R and Mrs T, was not contentious.
 - 36.7. JHP was under no obligation to provide Mr R with its internal documents regarding the death benefit payment to Mrs S.
 - 36.8. It had not duplicated the death benefit administration fee, as it had refunded the charge initially deducted from the Fund.
 - 36.9. It accepted that there had been confusion about Mr R's query regarding the Partial Transfer in October 2019, and that it then failed to bring the query to a conclusion at the time.
 - 36.10. While it had not withheld any documentation that Mr R had a right to see, some of the documents could have been provided more promptly.
 - 36.11. The Deed appointing Mrs T as a non-member Trustee was signed in accordance with the signing rules adopted by the Scheme in November 2018 and was not invalid.
 - 36.12. It was not responsible for the loss of potential investment growth alleged by Mr R as he had the option to invest under the Scheme but decided not to. Nevertheless, Westbridge was of the view that it should recognise Mr R's distress and inconvenience by increasing the award previously made by JHP.
37. Westbridge offered Mr R the following compensation:-
- 37.1. £1,500 payable directly to him in recognition of the difficulties he had experienced.
 - 37.2. £1,864.21 to the Fund in respect of the Suspended Investments, should Mr R decide to have them written off.
 - 37.3. To refund all JHP charges incurred by the Scheme from June 2019 until completion of the transfer to the SIPP.

Adjudicator's Opinion

38. The Adjudicator was of the view that parts of Mr R's complaint related to his membership rights under the Scheme while other parts related to his role and responsibilities as a Trustee and that TPO did not have jurisdiction to consider the latter.
39. The Adjudicator's views in relation to those parts he considered to have been brought by Mr R as a member of the Scheme are listed in sub-paragraphs 39.1 to 39.7, below. His views in relation to those parts he considered to have been brought by Mr R as a Trustee of the Scheme are listed in sub-paragraphs 39.9 to 39.14, below.

Opinion on Mr R's complaints as a member of the Scheme

- 39.1. JHP did not make an unauthorised payment, in the context of its meaning in pensions legislation, in respect of the death benefit payable to Mrs S.
- 39.2. JHP was responsible for a series of delays, particularly in resolving the issues it identified in the valuation of the Fund. This had a knock-on effect that prevented Mr R from drawing a PCLS when he wanted to draw it. While the Adjudicator was of the opinion that this amounted to maladministration, he also noted that Mr R had the option to withdraw income but chose not to do so. On this basis, the Adjudicator was of the view that Mr R had not experienced financial distress as a result of JHP's maladministration.
- 39.3. When Mr R was informed that he could not transfer to the SIPP until the Suspended Investments could be traded, he asked JHP to establish if a partial transfer, excluding the Suspended Investments, was possible. JHP failed to deal satisfactorily with Mr R's enquiry and this amounted to maladministration.
- 39.4. Mr R was not deprived of his statutory right to a Cash Equivalent Transfer Value (**CETV**) of his benefits under the Scheme. In order to give rise to such a statutory right, Mr R was required to make a formal request to the Trustees, his request then had to be accepted by the Trustees and a CETV illustration issued. At the time when the death benefit was paid to Mrs S, Mr R had not submitted a formal transfer request to the Trustees and had not, therefore, attained a statutory right to a CETV.
- 39.5. The Trustees were not responsible for Mr R being left with Suspended Investments in his share of the Fund, as one was suspended on 3 June 2019, whereas it was not until 10 June 2019 that Mr R indicated that all of the investments in his share of the Fund were to be encashed. The Adjudicator noted that JHP had offered to reimburse its administration fees from 3 June 2019 until such time as the transfer of his CETV was able to proceed, and that this would have been an appropriate offer, if it had been the Adjudicator's view that JHP had been at fault.

- 39.6. JHP was not required to reserve the Scheme's cash holdings in preparation for a transfer request from Mr R as he did not have any powers to give such an instruction.
- 39.7. Mr R experienced significant distress and inconvenience as a result of JHP's maladministration. JHP offered Mr R compensation and goodwill payments to the value of £3,684 in addition to which it would reimburse its administration fees from 3 June 2019 until Mr R's CETV was transferred. It was the Adjudicator's opinion that no further award would be made if Mr R's complaint was referred to me for consideration.

Opinion on Mr R's complaints as a Trustee

- 39.8. The parts of the complaint that the Adjudicator considered to be outside TPO's jurisdiction, listed in paragraphs 39.9 to 39.14, below, relate to Mr R's powers, duties and expectations as a Trustee of the Scheme.
- 39.9. The cash holdings in the Fund should be reserved for the purpose of settling his CETV and should not have been used to settle the death benefit payable to Mrs S.
- 39.10. JHP's accounting for the Scheme was unsatisfactory.
- 39.11. The June 2019 Resolution allocating the Fund between Mr R and the late Mr S, and the Deed appointing Mrs T as a non-member Trustee, were not properly executed.
- 39.12. The Trustees refused to provide him with copies of documentation he requested in relation to the Scheme.
- 39.13. JHP failed to act on his investment instructions to a satisfactory standard.
- 39.14. Mr R required JHP to reimburse him for the cost of administration he was required to undertake in dealing with his concerns and queries about the administration of the Scheme.

Mr R's response to the Adjudicator's Opinion

40. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. He provided his further comments which are summarised in sub-paragraphs 40.1 to 40.37, below. Mr R was of the view that:-
- 40.1. TPO side-stepped issues on the basis that they were complaints by one trustee about the other trustees and are therefore out of its jurisdiction, having initially accepted jurisdiction in September 2021. This u-turn was unacceptable. His complaints were against JHP and Westbridge as paid administrators. He did not see any element where JHP or Westbridge acted in their capacity as Trustees.

- 40.2. The delay in reaching an outcome to his complaint reopened the trauma of dealing with JHP and Westbridge and compromised what other actions he could have taken to ensure a fair outcome.
- 40.3. JHP admitted ignoring his request for a transfer cash settlement but accepted that Mrs S could dictate the reservation of cash for a death benefit payment even though she was neither a member nor a Trustee.
- 40.4. When he signed the June 2019 Resolution, he was approving only the share of the Fund between him and the late Mr S, not payment of the death benefit or how assets in the Fund should be distributed. JHP was pressurised by Mrs T into completing a cash death benefit payment, without reference to him. JHP acted in haste, without carrying out reasonable checks of its calculations, based on an illegal document. The Adjudicator did not consider the falsification of documents and accounting records. JHP paid out the death benefit on receipt of an emailed erroneous form without following procedures or involving the Trustees to sign it off.
- 40.5. JHP came up with the argument that he had no right to see its internal documents to cover up the death benefit payment that was against his instructions and its own internal procedures. There has been no acknowledgement of his power to have an input to how the allocation of assets was to be made, or JHP's procedural failing in authorising the June 2019 Resolution about the make-up of the allocation to Mrs S without his input. He asked for confirmation that his evidence in this regard was considered by the Adjudicator and what steps were taken to investigate, including the legality of the June 2019 Resolution.
- 40.6. Had procedures been followed before paying the death benefit to Mrs S, the errors would have been identified. By this time, it would have been publicly known that the first of the Suspended Investments was suspended on 3 June 2019, so he would not have signed the revised document. The Suspended Investments would not then have been allocated to him and loss of value to the fund would have been shared with Mrs T.
- 40.7. When JHP stated several times that the fund was having a full review, this was clearly a lie and a cover up to buy time to sell their business to Westbridge and avoid dealing with Mr R. Westbridge backdated bank account entries covering up various issues, which Mr R considered to be maladministration.
- 40.8. JHP was neglectful in notifying Mr R about issues with the Suspended Investments.
- 40.9. It is unclear how TPO has drawn the conclusion that accounting matters were raised by him in his capacity as a Trustee of the Scheme.

- 40.10. JHP sought Mr R's permission to make the death benefit shortfall payment to Mrs S but did not ask Mr R's permission to make the initial cash death payment to Mrs S.
- 40.11. TPO has not considered his submissions regarding the legitimacy of the Deed appointing Mrs T as a Trustee.
- 40.12. JHP did not follow procedures and checks for the payment of the death benefit to Mrs S. It relied on "a (probably unsupervised junior) undertaking a calculation". If checks had been made, the error would have been identified. JHP did not pass the June 2019 Resolution to professional trustees, who would not have been able to sign it off as it was so heavily flawed.
- 40.13. JHP was responsible for the loss of potential investment growth. He encashed investments to then transfer the proceeds to the SIPP where he could be in total control of investments. The transfer to the SIPP and guaranteed income of 1.85% alternative was the best option for him. With knowledge that a SIPP transfer was not possible, he could have pursued re-investing in the Scheme, but these would have had risk associated with them, and he could not trust JHP to handle them correctly based upon their on-going maladministration.
- 40.14. It was unclear how each element of his complaint was attributed to him as a member or Trustee.
- 40.15. He understood JHP's responses to be coming from them as administrators of the Scheme. They were never tagged as coming from the Professional Trustee. The Administrator created the forms for trustees to sign. He therefore held them responsible for the errors in the forms.
- 40.16. Many of his disputes were "of fact or law" and being one of two Trustees, the requirement for half of the Trustees to be party to the complaint for the Pensions Ombudsman to investigate it, was qualified.
- 40.17. His retirement plans remained in suspense. If the Administrator had acted in a timely, truthful and professional capacity, his nervous breakdown, ill-health, stress, family insecurity and cancellation of his relocation could have been avoided.
- 40.18. JHP repeatedly stated it was carrying out a full review of the fund. This was proved to be a complete lie. The only explanation was that they were sidestepping him while it sold its business to Westbridge.
- 40.19. JHP realised late in the disinvestment process that LEI numbers were needed and then tried to pass the blame to the Trustees by inventing a forward dated letter.
- 40.20. There were many other accounting queries which were not included in the information sent to TPO. For example, money was dispensed from the

pension fund as mortgage payments when there was no mortgage. These can be supplied if necessary. This added to JHP's maladministration.

- 40.21. JHP's apology for maladministration was inadequate given the level of its incompetence and the impact it has had on his pension fund value and personal health.
- 40.22. The renunciation of the Suspended Investments remained open to negative scrutiny from HMRC.
- 40.23. He made numerous complaints regarding ongoing maladministration over virtually all transactions, including excessive delays and incorrect guidance in selling shares, excessive delays and failure to maintain bank account signatory lists.
- 40.24. JHP admitted many failings, but its financial offer of recompense was set at an arbitrarily low value. He expected TPO might have commented unfavourably on its offer which he considered to be derisory. The Adjudicator admonished JHP's failings, but made no penal judgements. Given the administrative extremes of having to get the Administrator to correct mistakes, process instructions in a timely manner and act professionally in the Scheme's affairs, how and from whom should he seek appropriate compensation if not from TPO?
- 40.25. Westbridge argued that he could renunciate the remaining suspended investment to facilitate the transfer to the SIPP, which was contrary to its own specialist tax advice. There remained the possibility of the fund being heavily taxed and Westbridge never confirmed that this would not be the case or that it would underwrite any transfer loss.
- 40.26. Mr R required confirmation that TPO considered the document he provided marked reference OMB4.
- 40.27. The issue of a 95% tax penalty on a partial transfer, raised by JHP in June 2019, referred to point of transfer, not the point of renunciation of an investment. JHP withdrew this assessment in July 2021, before Westbridge reintroduced it on 18 August 2021. The Adjudicator's Opinion did not grasp that this penalty was a prime barrier to considering or pursuing any kind of partial, renunciated or full transfer to his Charles Stanley SIPP. JHP's offer to liaise with HMRC to discover whether there were exceptions, or workarounds to this tax penalty, was never delivered. Had a successful, tax-free transfer to the SIPP taken place, he would have been relieved of the ongoing maladministration and constraints of JHP and Westbridge. He would now be in a far better position to direct his fund's growth.
- 40.28. There was no evidence of delays by other parties.

- 40.29. He did not accept that he would have been left with the Suspended Investments regardless of JHP's administration. He still had one suspended Unit Trust investment and, despite some movement forward to a settlement being achieved, the final outcome and its date were still uncertain.
- 40.30. He did not ask JHP to liaise with HMRC regarding a partial transfer excluding the Suspended Investments. JHP volunteered this liaison. He would not have thought of asking JHP to liaise with HMRC, had it not volunteered. Having done so, he assumed JHP's tax experts were in regular contact with HMRC and this was standard.
- 40.31. There was an erroneous mention in the Adjudicator's Opinion of a non-existent 2015 Resolution.
- 40.32. There was no opinion on JHP's offer in paragraph 144 of the Adjudicator's Opinion.
- 40.33. While the Adjudicator found that JHP's failure to progress his enquiry regarding a partial transfer amounted to maladministration, it was not properly considered when determining redress and compensation.
- 40.34. It was unfair to draw conclusions from the absence of a formal transfer request. There was no point to formally requesting a transfer when JHP had stated there would be a 95% tax penalty and Charles Stanley could not accept a partial transfer.
- 40.35. It did not matter if one or two investments was suspended; the consequent transfer embargo was the same. His share of the Fund would not have included suspended Woodford/Link assets if JHP had followed correct procedures.
- 40.36. Having proved that a deed and a resolution were not executed properly and did not follow JHP's procedures, which organisation should he approach for a negative judgement against the Administrator?
- 40.37. The updated value of the Suspended Investments was £272.11. The reimbursed value should be as of the suspension date.

Mr R's Response to the Preliminary Decision

41. The Preliminary Decision was issued on 25 May 2025 and both Mr R and Westbridge were given the opportunity to comment on it. Mr R submitted his further comments, which are summarised in sub-paragraphs 41.1 to 41.15, below. Mr R was of the view that:-
- 41.1. He had priority over Mrs S for the Scheme's cash holdings.
- 41.2. There was ample time to resolve the allocation within the two-year time limit for Mrs S to receive the tax-free death benefit.

- 41.3. Had he been afforded the opportunity, he firmly believed that he and Mrs S would have been able to find a way forward.
- 41.4. Mrs S's husband Mr S, was responsible for placing the Rolls Royce and RBS/Nat West shares in an incorrect holder's name and was correcting this when he died.
- 41.5. There would have been no barrier to selling the Value-Trac unit trusts when agreeing asset split, so there was no reason for Mrs S not to take them.
- 41.6. Mrs S would have had to take the Link/Woodford unit trusts to avoid the tax penalties on the two year deadline.
- 41.7. He suspected the urgency of the cash payment of death benefit may have been seeded by the knowledge of the pending difficulty in liquidating the non-cash assets. He believed Mrs T had influence over JHP "to push the payment".
- 41.8. Had JHP provided a competent service, it should have started an asset split consultation well in advance.
- 41.9. It was not unlikely a split of the Scheme's investments would have been agreed and was of the view he had demonstrated that it most likely would have been agreed.
- 41.10. As Mr R was left with 100% of the Scheme's non-cash assets, the award in paragraph 87.1 of the Preliminary Decision should be for 100% of the associated loss.
- 41.11. The Charles Stanley diminution to which the Preliminary Decision referred in paragraph 34.9 was incorrect. The realised value of the investments was £435,038.42 and not £436,038.42.
- 41.12. There was no mention of loss of interest in the directions. He considered this to be an omission.
- 41.13. There was a contradiction regarding the 50% award in paragraphs 69.3 and 81 of the Preliminary Decision and the 100% in paragraph 82.
- 41.14. The award of £2,000 did not reflect his severe distress and inconvenience.
- 41.15. The directions fell short of making a statement as to how his compromised transfer could now be completed.
- 42. Having considered Mr R's comments and reviewed all documents submitted in this investigation, I set out my determination below.

Ombudsman's decision

43. I partly uphold Mr R's complaint for the reasons set out below, which include my findings in relation to Mr R's response to the Preliminary Decision. I also set out below clarification on the matters that I consider to be within my jurisdiction.

Jurisdiction

44. While Mr R is a Trustee of the SSAS and some aspects of his complaint relate to the conduct of his fellow trustees, it appears to me that his complaint is brought in his capacity as a member only. His complaint is principally that JHP (and its successor Westbridge), in its role as Trustee or in its role as administrator, maladministered the SSAS and caused him injustice as a member, even if some of the maladministration related to breaches of obligations to him as a Trustee. The remedy he seeks, being compensation for the financial loss he has incurred as a result of the maladministration, is in respect of its effect on his benefits as a member of the SSAS. To that extent, his complaint is within my jurisdiction.
45. For completeness, I confirm that I can only accept jurisdiction in respect of a dispute brought by trustees in respect of other trustees of the same scheme¹. Mrs T was appointed as a trustee of the Scheme by way of a Deed of Appointment made 23 January 2018 and the parties appear to agree that she had not been removed at the time when Mr R's complaint was brought. So, at the time of the complaint, there were three trustees. As such, it appears that any dispute that might have been brought by Mr R as trustee of the SSAS against the other trustees is not within my jurisdiction. This, however, does not prevent me giving directions in respect of any rights, including his rights as a trustee, that he could enforce as a member or that have caused him injustice as a member.

The SSAS

46. Before proceeding to consider Mr R's complaints, it is helpful to summarise how the SSAS was governed. The SSAS was established in 1988. As a SSAS, it was set up on the basis that all members would be trustees and all trustee decisions would be taken unanimously. A key feature of the SSAS was that no member could be excluded from any trustee decision and as, under general law, trustees are required to share all information relating to the trust with the other trustees, no member could be excluded from information relevant to the trust or to any trustee decision. Inland Revenue rules at the time also required the appointment of a professional 'pensioner trustee' involved in all decisions other than investment decisions.
47. The SSAS was successively governed by deeds referred to at paragraph 9, above. At the time of the relevant events, the SSAS was governed by the 2004 Deed as amended by the 2006 Deed (which dealt primarily with changes relating to the

¹ See sections 146(1)(e) and 146(1A)(c) of the Pension Schemes Act 1993 ("PSA").

Finance Act 2004 and changed the role of JHP from 'pensioneer trustee' to 'independent trustee').

48. The 2004 Deed provided for each member's benefits to be determined by the value of their 'Fund Reserve'. It provided for each member's Fund Reserve to be applied to provide death benefits for their spouse or other beneficiaries. At joining, each member had nominated a beneficiary for their death benefits and Mr S had nominated Mrs S.
49. The 2004 Deed, unlike the 1992 Deed, did not provide expressly for the pensioneer trustee (later independent trustee) to have a different role to the other trustees and in particular did not limit investment decisions to the member trustees (or 'managing trustees') as was the case under earlier deeds. It continued to provide for all decisions of the Trustees to be taken unanimously². It permitted the Trustees to delegate any of their functions. It also provided for the Trustees to be exonerated and indemnified from the SSAS assets for any liability incurred except for "any breach of trust knowingly and intentionally committed by him".
50. JHP acted originally as the pensioneer trustee and later the independent trustee or, in their own terms, "as co-trustee, professional trustee and scheme administrator". Its role was to ensure the SSAS was operated in accordance with pensions legislation and tax regulations³. JHP also acted as administrator of the SSAS, maintaining records and accounts on behalf of the Trustees, liaising with investment managers, and preparing or arranging for the preparation of new deeds and resolutions. It charged fees for its services both as professional trustee and as administrator.
51. By 2017, there were only two members, Mr R and Mr S, and there were three trustees. It appears that Mr R had permitted Mr S to deal with most administrative tasks relating to the SSAS that were not dealt with by JHP and that much of the information relating to the SSAS was held on Mr S's personal computer or in his files. Following Mr S's death, Mrs T, his daughter and executor, took possession of these files, and dealt with matters relating to the SSAS even before being appointed as a Trustee in March 2018. It appears that at least some of these files were trustee files (i.e. containing information relating to the responsibilities of the Trustees under the SSAS) and not personal files and should have been shared with JHP and Mr R under the general duty to share information relating to the trust with the other trustees.

Information sharing and delegation

52. I have seen Mr R's email of September 2017 and I am satisfied that Mr R consented to Mrs T's involvement with administrative tasks on behalf of the Trustees, including payments and general administration. I am not satisfied that he waived his right to receive any information relating to the SSAS or that he delegated any of his rights and powers, including his right to be a party to any decisions concerning the SSAS or its assets. I am satisfied that he had delegated to Mr S responsibility for holding

² Clause 9.3 of the 2004 Deed.

³ See JHP's letter 10 November 2020.

documentation and correspondence relating to the SSAS and dealing with correspondence on behalf of himself and Mr S and that after Mr S's death and from September 2017, he agreed that Mrs T could continue to hold such documents. I do not consider that this was an irreversible renunciation of his rights to see such documents. He remained entitled to see them.

53. Westbridge contend that they and JHP were under no obligation to provide Mr R with its internal documents regarding the payment to Mrs S. I disagree. Mr R as Trustee was entitled to information relating to the administration of the SSAS and in particular information regarding payments made by the SSAS (including calculation, authorisation and actual payment), including both information in the possession of JHP as Trustee (and under a duty to share information relevant to the trust with its fellow trustees) and in its possession as administrator (being under the supervision of the Trustees and required to account to the Trustees in relation to its actions in respect of administration of the SSAS). Failure to provide information to Mr R in a timely and open manner was maladministration. Save as considered below, such maladministration may not have caused Mr R any financial loss, but I consider that it caused him significant distress and inconvenience.

Payment to Mrs S

54. Mr R's principal complaint relates to the payment of Mr S's death benefit to Mrs S in cash on 5 June 2019 by allocating most of the cash held in the Fund to Mr S's Fund Reserve, to his detriment.
55. Some reliance has been placed on the June 2019 Resolution signed by Mr R and Mrs T but not signed by JHP. Under clause 9.3 of the 2004 Deed, to be effective as a written resolution of the Trustee it needed to be signed by all the Trustees.
56. JHP having prepared the document and collected the underlying valuations and having made the payment to Mrs S, have asserted that JHP had approved it. However, JHP did not sign it and it is not a valid resolution of the Trustees. In any event, the Resolution does not provide for approval of an allocation of the assets and does not provide for approval of the payment in cash to Mrs S.
57. For clarity, I should confirm that, while the Resolution was not a valid resolution of the Trustees, the question of whether Mr S's death benefit was duly allocated between Mr S's potential beneficiaries is not a matter that I have jurisdiction to consider in a complaint from Mr R as a member of the SSAS.
58. The June 2019 Resolution is stated to confirm the value of the scheme assets as listed as at 24 April 2019, the value of Mr S's share and the allocation of his share to Mrs S as sole beneficiary. Mr R has no standing to challenge the allocation of Mr S's share to Mrs S and this allocation is not disputed. The validity of that allocation of benefit decision by the Trustees is not a matter I need to determine. I note that Mrs S had been nominated as Mr S's sole beneficiary when he joined the SSAS.

59. What is disputed is the valuation of the assets at that date and the allocation of assets then made between Mr R's Fund Reserve and Mr S's Fund Reserve. As set out above at paragraphs 15 and 16, proposals had been made in relation to the allocation of the assets which had not been agreed. Mr R was seeking a transfer and preferred to receive his share of the Fund in the form of cash. Following the sale of Property One, JHP arranged for a valuation of the portfolio as at 24 April 2018. This included the Investment Portfolio.
60. It appears that there were errors in the valuation summary, which Westbridge has accepted, relating to rental payments: Mrs T had notified JHP that an overpayment of rent had been included that was repaid and JHP incorrectly failed to adjust for this. As Mr R was unaware of this error at the time, his signature on the Resolution does not amount to an acceptance of the error or the over-valuation of the scheme assets. I understand there was also an underpayment of rent which should also have been recognised. These issues are considered further below.
61. The more material point is the allocation of assets between Mr R and Mr S's Fund Reserves. Nothing in the June 2019 Resolution deals with the allocation of assets.
62. The Fund Reserve of each member is defined in the 2004 Deed (disregarding the provision for certification by an actuary which was not seemingly used or required) as that part of the Fund as is "notionally attributable to that member solely for the purposes of calculating benefits". It is clear from this and from the summary of the Fund assets in the Resolution (which lists all assets including the illiquid assets) that no part of the assets were allocated to either member. There was only one Fund, not two separate funds with separately identified assets.
63. As such, Mr R and Mr S had an equal interest in all scheme assets. The apportionment of the assets of the Fund, necessitated by Mr S's death and his death benefits becoming payable and Mr R's desire to take a transfer to a SIPP, was a material issue requiring a decision by the Trustees which needed to be a unanimous decision under the 2004 Deed. It appears that JHP, acting with Mrs T, proceeded to realise Mr S's Fund Reserve by allocating the cash to Mr S's Fund Reserve and then making payment to Mrs S in the absence of a valid Trustee decision.
64. JHP (and Westbridge) have not disputed that Mr R was not consulted and that he did not consent to this apportionment of the Fund assets. As all Trustee decisions were required to be taken unanimously, there was no effective decision to allocate the liquid assets to Mr S's Fund Reserve prior to making payment to Mrs S. While Mr R had permitted Mrs T to deal with administrative tasks and payments, I do not find that he had delegated to her his powers in respect of Trustee decisions, nor do I find that JHP believed that he had done so: they had sought his consent to the matters set out in the Resolution. Apportionment of the Fund assets and payment, or approval of payment by Mrs T, of Mr S's death benefit in cash to Mrs S without a unanimous decision of the Trustees was a breach of trust by JHP as Trustee and a breach of duty by JHP to exercise skill and care as administrator in ensuring payments were only made that were duly authorised.

65. The breach of trust was in paying away scheme assets without authority: JHP (or Mrs T acting with JHP's knowledge and approval) paid away cash that was part of the Fund securing both members' benefits and that had not been approved for allocation to Mr S's share to the exclusion of Mr R's. They did this not only without a valid unanimous decision from the Trustees but without notice to Mr R. Failing to provide information to Mr R as a Trustee about proposed decisions, transactions and payments relating to scheme assets was in itself a breach of trust. JHP was aware that there was no prior allocation of assets between the members as they prepared the Resolution on the basis of a single fund, that the allocation of assets was a matter for agreement on which agreement had not been reached by Mr R and Mrs T (and Mrs S) and that the payment to Mrs S was made without Mr R's knowledge, consent or approval. This was a knowing and intentional breach of trust by a professional trustee. As a professional independent trustee, JHP had a special obligation to know and uphold the provisions of the SSAS and the requirement for unanimous Trustee decisions, proper authorisation of payments and information sharing between Trustees.
66. The breach of duty of skill and care by JHP as administrator was in:
- 66.1. making or allowing the payment to proceed without Trustee authority and without taking appropriate steps to confirm that there had been a unanimous agreement by the Trustees; and
 - 66.2. failing to provide accurate and timely information about the valuation of the investments.
67. For the reasons set out above, I uphold Mr R's complaint that JHP maladministered the SSAS by splitting the Fund between himself and Mrs S by allocating the illiquid assets to Mr R and making a cash payment to Mrs S without authority, i.e. without a unanimous decision of the Trustees, and by failing to take account of certain over- and under- payments to the Fund in determining the value of the benefit payable to Mrs S. JHP's liability for breach of trust is to account to Mr R for the loss he suffered in consequence of the payment of the cash to Mrs S and the allocation of the illiquid assets to Mr R.
68. JHP's liability for failure to exercise skill and care as an administrator is to put him in the position he would have been in but for the payment of the cash to Mrs S without authority. While the basis may be different, in practice, the remedy for breach of trust as a Trustee or breach of the duty of care as an administrator is not materially different in this case.
69. I note Mr R's statement that he made consistent requests for cash to be allocated to him and that his need for a transfer in cash should have been prioritised because Mrs S could more easily have accepted a combination of investments, property and cash. However, I am not persuaded by the evidence that this would have been agreed. Mr R also submitted, at paragraphs 41.2, 41.3, 41.5 and 41.9 above, in his response to my Preliminary Decision, that agreement could have been reached with

Mrs T and that there was ample time for the trustees to resolve the allocation within the two-year period following Mr S's death. My Determination is on the basis of the facts that agreement was not reached and the tax implications of the delay did not authorise the other trustees to pay out funds without unanimous agreement. In the absence of agreement, Mr R and Mr S had an equal interest in the cash and the non-cash assets.

70. I therefore determine that JHP should compensate Mr R for 50% of the loss he suffered from the allocation to him of the non-cash assets of the Fund and the payment of cash to Mrs S on 5 June 2019, including 50% of:
- 70.1. the cost of liquidating the assets;
 - 70.2. the losses arising from the suspension of the Suspended Investments; and
 - 70.3. the fees charged to the Fund in respect of the period since 5 June 2019.
71. I note Mr R's comments at paragraph 41.10 above, giving reasons why he is of the view that my award in this regard should be on a 100% basis. While JHP had a particular responsibility as professional trustee and administrator for the good administration of the SSAS, it was the responsibility of all trustees to agree the split of assets as necessary following the death of Mr S. JHP's responsibility is reflected in the award for distress and inconvenience at paragraphs 88 to 91, below. JHP was not solely responsible for the investments as the Scheme was a SSAS, so I have not found that it was responsible for 100% of the investment related losses. My Determination is principally about providing Mr R with his entitlement under the trust on the basis of the factual finding that no split of assets was in fact agreed and the legal finding that unanimous agreement was required. Mr R's comments do not change the outcome.
72. In relation to Mr R's comments at paragraph 41.12 above, the part of my award for the diminution of Mr R's fund reserve, described in paragraph 35.9 above, relates to diminution during the delay in facilitating the transfer. I have not found that there was a loss on 5 June 2019 or that JHP was responsible for the inability to dispose of some of the investments on 5 June 2019, due to their suspension. As this is a calculation of any diminution from 5 June 2019 to the date of calculation, and as any diminution sum is payable within 28 days of my Determination, loss of interest is not applicable.

Disposal of shares and Suspended Investments

73. Westbridge and JHP accepted Mr R's complaint in respect of the delays in disposing of the K3 Shares because JHP had failed to promptly forward the share certificate needed and delays in clarifying the implications of gifting the share certificates.
74. Westbridge and JHP have not accepted Mr R's complaint in respect of the disposal of the shares held via Computershare. JHP accepted that the difficulties arose from Computershare's original registration of the shares in the name of the principal company of the SSAS, Selven Ltd and that JHP failed to reply promptly to Mr R's

enquiries over an extended period. While ensuring the correct registration of scheme assets in the name of the SSAS or the Trustees was the responsibility of JHP as a Trustee, it was also the responsibility of Mr R, and while I consider that JHP may have caused Mr R distress and inconvenience in not responding, I do not find that it is responsible for any loss Mr R suffered. I acknowledge Mr R's comment, at paragraph 41.4 above, but it does not change the outcome.

75. While there were administrative errors in relation to obtaining signatures and LEI numbers to allow the placing of instructions to dispose of the Suspended Investments between July and October 2019, given the dates on which the Suspended Investments became suspended (3 June 2019 and 25 July 2019), I do not find that these delays caused Mr R any additional losses.
76. I do consider that JHP's conduct in failing to respond promptly to Mr R in these matters and the various administrative errors in failing to maintain necessary data in respect of scheme assets fell below the standard to be expected of a reasonably competent administrator and professional trustee.
77. Mr R has submitted, in paragraph 41.15 above, that the directions in the Preliminary Decision fell short of making a statement as to how his compromised transfer could now be completed. I agree with Mr R's comment and have addressed it in my Directions at paragraph 92.4.

Delays in respect of Mr R's requested transfer to his SIPP

78. Westbridge and JHP accepted that there had been confusion about Mr R's query regarding the Partial Transfer in October 2019, and that it then failed to bring the query to a conclusion at the time. I agree. Mr R had asked to transfer his Fund Reserve in full and in cash to his SIPP with Charles Stanley. This was not possible because of the Suspended Investments and a partial transfer was suggested as an alternative. JHP undertook to check information and then failed to provide a response or deal with the matter promptly. I do not find that these delays and failures caused Mr R any additional losses, but it would have caused him distress and inconvenience.
79. Mr R disputed the Adjudicator's finding that JHP was not the cause of him being left with the Suspended Investments which impeded his ability to transfer out of the Scheme. However, by the time Mr R indicated, on 10 June 2019, that all investments should be sold, one of the investments had already been suspended on 3 June 2019. So, I find that, regardless of JHP's performance in arranging the disposal of the investments, it could not be held responsible for failing to dispose of an investment that had already been suspended before his request was made.
80. The possibilities considered in relation to the Suspended Investments that were impeding Mr R's transfer, were renunciation of the investments or a partial transfer excluding the Suspended Investments. I understand that both entailed uncertainty as to potential adverse tax implications for Mr R's share of the Fund. However, as I have found that JHP was not responsible for being unable to dispose of the Suspended

Investments, it follows that it cannot be held responsible for compensating Mr R for any consequent adverse tax implications of holding or disposing of them.

81. Mr R was of the view that it was unfair for the Adjudicator to say that JHP had not breached his statutory right to a CETV as he had not formally requested a CETV illustration that would have given rise to the statutory right. While I understand Mr R's argument that there appeared to be no point in requesting a CETV illustration when he knew a transfer was unlikely to be possible at that time, the Adjudicator's statement is a matter of fact.

81.1. The rules regarding the statutory right to a transfer are contained in Part 4ZA of the Pension Schemes Act 1993 (PSA 1993). Section 94(1) provides that "a member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement".

81.2. Section 93A(1) provides that the trustees or managers of a pension scheme "must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights."

82. As Mr R had not made an application under section 93A(1) of PSA 1993, it follows that he had not yet acquired the statutory right to a CETV under section 94(1), so there was no statutory right in force at the time for the Trustees to breach. In this regard, the Adjudicator is correct.

83. I note for completeness that Mr R was of the view that the Adjudicator was incorrect to say he had asked JHP to make enquiries of HMRC regarding the tax penalties in relation to disposal of the Suspended Investments. Rather, JHP had offered to make enquiries. While I find that Mr R is correct, it is an academic point which does not change the outcome.

Delays in respect of PCLS

84. Westbridge accepted this part of Mr R's complaint, given the errors that had been made and the time that was taken to correct them. I agree and determine that Mr R suffered injustice caused by JHP's maladministration in being unable to access his PCLS. The delay arose because of errors relating to receipt of an overpayment of rental income from a tenant of a SSAS property which was wrongly included in the value of the Fund when Mr S's death benefit was calculated and a rental income payment that was received by JHP was not credited to the Fund. These were administrative errors by JHP in breach of their duty to carry out the administration with due skill and care. JHP's failure to provide prompt, open and transparent information about these issues to him was further maladministration, although I do not find that he suffered additional financial loss from such maladministration. I do consider that it would have caused him distress and inconvenience.

Excess fees and charges

85. As above, I have found that the payment of Mr S's death benefit in cash on 5 June 2019 caused Mr R injustice in that he has borne all fees and charges relating to the administration of the SSAS since that date and he should be compensated for 50% of those fees and charges.
86. In addition, there was considerable maladministration relating to the ongoing administration of the SSAS before and after that date. This included the matters of delays in providing information and responding to queries, keeping correct records in respect of shares, including share certificates and ensuring correct registration of shares owned by the SSAS, failures to promptly disclose and explain the details of overpayments and underpayments. Having regard to this considerable maladministration, I consider that JHP failed to provide a proper service either as a professional independent trustee or as administrator of the SSAS and that its own fees and charges in respect of the period from 5 June 2019 should be subject to a 100% discount.
87. Mr R, in his response to the Preliminary Decision, found a contradiction regarding the 50% award in paragraphs 69.3 and 81 of the Preliminary Decision and the 100% in paragraph 82. Paragraphs 69 and 81 of the Preliminary Decision relate to non-JHP costs and fees on a 50% basis as these were correctly incurred but should not have fallen entirely to Mr R. Paragraph 82 of the Preliminary Decision relates to JHP's own SSAS administration charges, which I find should be discounted on a 100% basis, as the services for which they charged have substantially not been provided. Mr R's comments do not change the outcome.

Award for distress and inconvenience

88. The Adjudicator viewed JHP's actions regarding Mr R's unfulfilled request for a PCLS payment, the errors that caused the request to be unfulfilled, the delay in putting the errors right, and the failure to deal satisfactorily with the question of a partial transfer, as maladministration.
89. I agree with the Adjudicator that JHP's errors, actions, and inactions in relation to these parts of Mr R's complaint addressed at paragraphs 39.2 and 39.3, above, amount to maladministration that has caused Mr R serious distress and inconvenience.
90. Where I find that maladministration has occurred and that the maladministration and efforts required to put matters right has caused distress and inconvenience, I may make an award for non-financial injustice. In the case of non-financial injustice, it is my aim to make an award that represents appropriate compensation commensurate with the distress and inconvenience. Having regard to the seriousness and persistence of the delays, errors, failure to maintain records and registers and withholding of information, I determine that an award of £2,000 is appropriate.

91. Mr R has said in his response to the Preliminary Decision, that the award of £2,000 does not reflect his severe distress and inconvenience. My awards for non-financial injustice will fall into one of the following five categories of awards; nominal, significant, serious, severe and exceptional. The amounts range from nil where I consider distress and inconvenience to be nominal, to £2,000 where I consider it to be severe, or more only where it is considered to be exceptional. I consider that the distress and inconvenience Mr R has experienced falls into the severe category but does meet the threshold to be considered exceptional.

Directions

92. Within 28 days of the date of this decision, Westbridge should:
- 92.1. Pay Mr R an amount equal to 50% of any diminution of his Fund Reserve in respect of the performance of his Investment Portfolio after the date of 5 June 2019 and expenses, fees and charges incurred by the SSAS in relation to the management of the Investment Portfolio after that date; and
 - 92.2. Pay Mr R an amount equal to all fees and charges deducted from the Fund by JHP or Westbridge in respect of their role as Trustee or as administrator of the SSAS from 5 June 2019; and
 - 92.3. Pay Mr R an amount of £2,000 for the severe distress and inconvenience caused by JHP's errors, actions, and inactions in relation to the administration of the SSAS; and
 - 92.4. Take whatever steps are necessary to allow Mr R to renounce the remaining suspended shares held in the Scheme, so that he may, if he so wishes, instruct Westbridge to conclude the transfer of his CETV under the Scheme to another pension scheme.

Camilla Barry

Deputy Pensions Ombudsman
30 July 2025