

## Ombudsman's Determination

Applicant	Mr L
Scheme	Legal & General WorkSave Pension Plan ( <b>the Plan</b> )
Respondent	Legal & General Assurance Society ( <b>Legal &amp; General</b> )

## Outcome

1. I do not uphold Mr L's complaint and no further action is required by Legal & General.

## Complaint summary

2. Mr L is unhappy that Legal & General reinvested his pension benefits into an alternative fund. He has complained that:-
  - The change was made without his consent.
  - He did not receive the letter from Legal & General which detailed the proposed changes.
  - Legal & General said it would select an alternative fund based on similar assets and sector, but the fund chosen bore little resemblance to his original fund.
  - He was not informed there was no equivalent replacement fund available.
  - The selected fund had only been in operation for two days.
  - The new fund did not achieve the same level of investment performance compared to his original fund.
  - The change in fund has caused him a financial loss.

## Background information, including submissions from the parties and timeline if events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 30 June 2011, Mr L established the Plan with Legal & General. The Plan is a group personal pension arrangement.

5. On 23 March 2018, Legal & General issued its annual statement to Mr L. It said:-

- The value of Mr L's Plan as at 20 March 2018 was £144,607.25.
- There had been an investment loss of approximately £26,400 during the previous year.
- Approximately 65% of Mr L's pension pot was invested in the BlackRock Gold and General Fund (**the Gold and General Fund**) and 35% was invested in the Cash Fund.

6. On 28 March 2018, Mr L switched £15,771.88 out of the Cash Fund into the Gold and General Fund.

7. On the same day, Legal & General issued a letter confirming that Mr L's funds in the Plan were invested in the Gold and General Fund and also the Cash Fund.

8. In May 2018, Legal & General issued its Member's Booklet for the Plan. It said in the 'Making Changes' section under the heading 'Fund Closure' on page 20:

"The insurer may close a fund so that it is no longer available, or so that no further contributions can be made to it. This may happen if:

- In the opinion of the insurer it becomes impractical or inappropriate to maintain a fund, e.g. where there are very few investors.
- The fund performance consistently falls below expectations in the opinion of the insurer.
- The fund is not suitable for use within a workplace pension, in the opinion of the insurer.
- The fund does not meet customer needs.

The reason we may make a change is not limited to these scenarios.

If this happens, we will give you three months' notice in writing. If this is not possible, we will give you as much notice as we can. We will give you details of the change, the options available to you and will explain what will happen if you don't respond. You will have the option to opt out of the change and make your own investment decisions. If we do not hear from you we will switch your units into the fund or funds, specified by us in the notice."

9. On 25 July 2018, Legal & General issued a letter to Mr L to an address which Mr L had confirmed he was living at that time. The letter outlined three changes which were being made to funds offered by the Plan. These were:

- Some of the funds he held would be closed and his investment would be moved into another fund.

- All of the funds would be managed by Legal & General Assurance (Pensions Management) Limited.
- The funds would be supported by using the latest investment platform technology.

10. The letter also said:-

“As a result of the review of our fund range we will be closing some of the funds in which you are currently invested and introducing new ones. Any money that you have already invested in these funds, along with any future contributions, will be moved into alternative funds that have been carefully selected by us and reviewed by our independent investment advisers.

In selecting alternative funds, we’ve chosen funds that:

- Invest in similar assets
- Invest in a corresponding sector, and
- Where possible have a similar or lower charge than your current fund(s). This will not be the case in every situation...

#### WHAT SHOULD I DO IF I WANT TO CHOOSE OTHER INVESTMENT FUNDS?

If you would like to change your investment choices you can do this at any time but if you would like to select a different fund choice to the one we have selected on your behalf you will need to do this before 26 October 2018.”

11. Options were then provided in the letter to enable Mr L to select a different target fund.
12. On 28 July 2018, Legal & General issued a letter to Mr L outlining some of his options for accessing his pension funds. It also confirmed he was invested in the Gold and General Fund and the Cash Fund.
13. On 31 July 2018, the Gold and General Fund Fact Sheet recorded that the fund was invested:-
  - 82.5% in Gold.
  - 10.1% in Silver.
  - the remainder was held in Cash and Derivatives, Copper and other non-specified investments.
  - It confirmed the investment performance was -10.99%, 57.72% and 0.74% over one, three and five year periods respectively.

14. On 3 August 2018, Mr L changed address and notified Legal & General of this. Mr L also arranged for his post to be redirected to his new address.
15. On 6 August 2018, Legal & General wrote to Mr L confirming his change of address had been recorded.
16. In August 2018, Legal & General set up its PMC Henderson Diversified Alternatives Fund (**the Diversified Alternatives Fund**).
17. From October to December 2018, Legal & General implemented changes to its investment platform.
18. On 24 October 2018, Legal & General implemented the switch out process for the Gold and General Fund.
19. On 26 October 2018, Legal & General implemented the switch in process for the Diversified Alternatives Fund.
20. On 22 March 2019, Legal & General issued its annual statement to Mr L. It said:-
  - The value of Mr L's Plan as at 20 March 2019 was £178,601.95.
  - After allowing for £39,754.50 paid into the Plan during the previous year and investment charges, there had been an investment loss of approximately £5,600 over the year.
  - Approximately 84% of Mr L's pension pot was invested in the Diversified Alternatives Fund and 16% was invested in the Cash Fund.
21. On 5 June 2019, Mr L submitted a complaint to Legal & General under the Plan's complaints procedure. He said that he first learned of the switch out of the Gold and General Fund to the Diversified Alternatives Fund when he received the 2019 annual statement.
22. On 25 July 2019, Legal & General issued its response to Mr L's complaint. It said:-
  - The letter of 25 July 2018 which explained the proposed fund changes was issued to the address it held for Mr L.
  - Legal & General monitored its fund range to ensure the funds available met the needs of all of its customers.
  - After reviewing the choices available on the investment platform, it had made some updates and changes.
  - The Gold and General Fund was closed because it was considered a very specialist option and too focused for the majority of its customers.
  - A different and more diversified fund of alternative asset classes was offered as a replacement.

23. On 5 March 2020, following a switch request from Mr L, Legal & General wrote to Mr L. It confirmed all of his funds, totalling £181,762.30, had been switched into the Cash Fund.
24. On 19 March 2020, Mr L withdrew £95,000 from the Plan and re-invested the proceeds with Hargreaves Lansdown.
25. On 19 March 2021, Mr L withdrew the remaining amount of £86,681.77 in the Plan and re-invested the proceeds with Hargreaves Lansdown.

### **Summary of Mr L's position**

26. Mr L submits:-

- He became aware of the switch of funds in late March 2019 on receipt of the March 2019 statement. However, he only realised the difference in the type of investment later.
- As of 20 March 2019, he held 84.26% of his funds in the Diversified Alternatives Fund and 15.74% cash.
- All the units were sold by the end of February 2020.
- This left a total cash only investment fund of £181,762.30 of which £153,152.91 (84.26%) was from the sale of the Diversified Alternatives Fund.

### **Summary of Legal & General's position**

27. Legal & General submits:-

- The letter of 25 July 2018 detailing the investment changes was issued by post to the address held on file for Mr L. There was no reason it would not have been received.
- Legal & General monitors its fund range to ensure the funds available meet the needs of its customers. Having done so, some updates were made.
- Legal & General has a responsibility to ensure its range of investment options is suitable for its customers.
- The Gold and General Fund was closed because it was considered a very specialist option.
- This decision was influenced by input from its Independent Investment Adviser (**the Investment Adviser**) who recommended that the commodities-based fund was too focused for the majority of Legal & General's customers.
- The Investment Adviser suggested offering a fund which focused on a number of alternative asset classes, rather than one specific one.

## **Adjudicator's Opinion**

28. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by Legal & General. The Adjudicator's findings are summarised below:-

- Mr L complained he did not receive the letter from Legal & General dated 25 July 2018, which detailed the proposed fund changes. Mr L changed address shortly after the letter had been issued. However, he took steps to minimise any potential disruption to the delivery of his mail by arranging a forwarding service. So, in the Adjudicator's view, this should not have been a factor in the letter not being received.
- The letter was correctly addressed. In the Adjudicator's view, there was no reason why the letter would not have been delivered to Mr L. In his opinion, Legal & General could not be held responsible for the non-delivery of the letter or the consequences of this.
- Mr L said Legal & General reinvested his pension benefits in an alternative fund without his consent. The Member's Booklet, which acted as the Terms and Conditions for the Plan, explained when Legal & General could close a fund. This included when it considered:-
  - There were very few investors.
  - Poor fund performance had occurred.
  - The fund was not suitable for use within a workplace pension.
  - The fund did not meet customer needs.
- The Adjudicator was of the opinion that Legal & General had the authority to withdraw an investment fund from its platform, as stated in The Member's Booklet.
- The Member's Booklet also said if it was withdrawing a fund, it would provide three months' notice in writing of this. The Adjudicator was satisfied that Legal & General's letter of 25 July 2018 provided Mr L with this notification. As the changes did not take place until 24 October 2018, the Adjudicator was of the opinion Legal & General acted in accordance with its Terms and Conditions.

29. The Adjudicator went on to consider Legal & General's choice of alternative investment fund:-

- Mr L had also complained that he was informed an alternative fund would be selected based on similar assets. However, he said this was not the case, as the new fund had only been in operation for two days and it did not achieve the same level of performance.
- Mr L's benefits were originally invested in the Gold and General Fund. Legal & General had cited the reason for no longer offering the Gold and General Fund

was due to it being a very specialist option. It also said the commodities-based fund was too focused for the majority of Legal & General's customers. Given that over 90% of the fund was invested in companies whose business was related to Gold and Silver, it was reasonable to conclude this was a specialist fund. So, it was understandable why this type of fund may not have had large appeal and Legal & General considered it to be appropriate to remove this fund from its platform. The Adjudicator was of the opinion it was within Legal & General's discretion to make such a change.

- Legal & General said in its letter of 25 July 2018, it would choose replacement funds that invested in similar assets and in a corresponding sector. The replacement fund, the Diversified Alternatives Fund, has a wider spread of investments. Although the commodity content was much lower than the Gold and General Fund, the Adjudicator was of the opinion the investments it held would reasonably be classified as alternative assets. The main asset classes were generally considered to be Cash, Equities, Fixed Interest, Securities and Property. There was no evidence to suggest that the Diversified Alternatives Fund was not an appropriate replacement fund given the circumstances.
- Mr L said Legal & General set up and subsequently launched its own Diversified Alternatives Fund immediately prior to his fund being switched into it. However, there was an existing version of the fund in operation prior to this date.
- Regarding investment performance, neither of the funds came with any guarantees as to what returns would be achieved. This was dependant on the values of the underlying assets held by the funds. The Gold and General Fund Fact Sheet dated 31 July 2018 showed that there had been growth of 0.74% over a period of five years. However, the fund had also recorded over a 40% loss and over 50% gains in value during this five-year period. This demonstrated the volatile nature of the fund. So, in the Adjudicator's view, using past investment performance was not necessarily an accurate indicator of future performance.
- Legal & General's letter of 25 July 2018 explained what Mr L should do if he was not happy with the replacement fund it had selected, although the Adjudicator noted Mr L said he did not receive this letter, so he would not have been aware of the intended fund change. In the Adjudicator's view, Legal & General fulfilled its obligations by issuing the information to the correct address for Mr L.
- The Adjudicator was satisfied Legal & General was able to make a commercial decision as to what investment funds it offered, as this was detailed in the Member's Guide. The Adjudicator had not seen any indication that Legal & General guaranteed the ongoing availability of any investment funds.

30. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

31. Mr L provided some further comments in response to the Opinion. In summary he said:-

- The Diversified Alternatives Fund was not an appropriate replacement fund. Legal & General said that it had replaced the Gold and General Fund because it was a specialist fund and too focused for the majority of its customers. However, it switched his money to a single fund which, on its website, was listed as also being a specialist fund.
- Legal & General should have mitigated the risks of under performance by switching his investment to a range of funds. This could have included, for example, the North America Equity Index Fund, which had performed well.
- He has not seen any evidence that Legal & General took independent advice when re-investing his money.
- The Diversified Alternatives Fund was the sixth most expensive fund to manage out of the 85 funds available. Since January 2018, Legal & General's own PMC Diversified Fund had achieved similar performance to the Diversified Alternatives Fund, but with half the charges.
- Janus Henderson's Key Investor Information document indicated that the Diversified Alternatives Fund was an unsuitable investment when it said:  
  
"This Fund may not be appropriate for investors who plan to withdraw their money within 5 years. The Fund is designed to be used only as one component of several in a diversified investment portfolio. Investors should consider carefully the proportion of their portfolio invested into this Fund."
- He was due to retire three years and nine months later, which Legal & General was aware of.

32. Legal & General provided its further comments:-

- Its use of the term "specialist" when making the decision to close the Gold and General Fund related to the fact that the fund had a very narrow selection or exposure to asset types or market sectors. It and its independent investment adviser determined this as being inappropriate for the majority of workplace members.
- The investment objective of the Diversified Alternatives Fund outlined the diversified nature of the portfolio, including its exposure to funds that invested in a range of other funds.
- It could not guarantee that certain funds would outperform others and it had never made such commitments as part of the switch exercise.

33. I have considered the additional points raised by both Mr L and Legal & General, however they do not change the outcome, I agree with the Adjudicator's Opinion.



## **Ombudsman's decision**

34. Mr L's complaint concerns Legal & General's reinvestment of his funds in the Gold and General Fund into the Diversified Alternatives Fund.
35. Mr L has maintained that he received no advance warning of the proposed changes. Legal & General has asserted that it wrote to Mr L on 25 July 2018 giving him three-months' notice of the switch. In this letter it said that it notified Mr L that he could change his investment choices at any time. However, if he wanted to select a different fund from the one it had selected on his behalf, he was told that he would need to take action before 26 October 2018.
36. Legal & General has produced a copy of the letter of 25 July 2018 that it says was issued to Mr L. The letter was addressed to the same address as shown on Mr L's 2018/19 council tax bill. Legal & General has advised that, when sending communications like this to a large number of its customers, mail merges were undertaken by an external organisation to create, print and post the letters. Because a copy of the letter had been loaded back to Mr L's file, on the balance of probabilities, it is more likely than not that the letter was produced and sent.
37. I acknowledge that the fact that Mr L did not receive Legal & General's letter of 25 July 2018 will be a cause of frustration for him. This communication exercise involved a number of Legal & General's customers. It was reasonable for Legal & General to believe that the letter would have been delivered to Mr L. The fact that Mr L says it was not received was a matter outside of Legal & General's control.
38. One of the consequences of Mr L not receiving the letter was that he did not have the opportunity to select an alternative fund before his investments were switched into the Diversified Alternatives Fund. It is possible that Mr L would have selected an alternative fund had he received the letter. However, Legal & General cannot be held responsible for the fact that he did not have the opportunity to do so.
39. I have seen no evidence that Legal & General sent Mr L a statement in October 2018 showing his closing balance in the Gold and General Fund and his opening balance in the Diversified Alternatives Fund. While it would have been good practice for it to have issued such a statement, the fact that it did not makes no difference to the outcome of Mr L's complaint. Furthermore, he could have obtained this information using Legal & General's online platform.
40. The remaining points that Mr L has raised stem from the non-receipt of this letter which resulted in him being left with part of his money invested in the Diversified Alternatives Fund following the switch. He said that he did not consider that this fund met his needs.
41. Mr L has made reference to the performance of the Diversified Alternatives Fund. He compared this performance with that of other funds offered by Legal & General. I am not going to comment on the comparisons that Mr L has made as they are with the

benefit of hindsight. The future investment performance of the funds referred to by Mr L was not known at the point that the switch was made.

42. Mr L has said that the Diversified Alternatives Fund was not an appropriate replacement for the Gold and General Fund. I have carefully considered Mr L's reasons for saying this.
43. Legal & General was not looking to replace all specialist funds, so I do not agree that there was anything wrong with it replacing one specialist fund with another. It had identified the Gold and General Fund as particularly having a very narrow selection or exposure to asset types and market sectors. I find that it was within its rights to replace it, and I have seen no evidence to suggest that, at the time, a more diversified fund was not an appropriate alternative.
44. I do not agree that Legal & General was required to replace the Gold and General Fund with a range of funds. Both this fund and the Diversified Alternatives Fund were classified as specialist funds. If Mr L wanted to mitigate the risks of under performance in the way he has suggested, then he could have sought financial advice. He should not have expected Legal & General to have achieved this for him as part of the switch.
45. Given that the switch involved a number of investors, I would not expect Legal & General to have been able to identify a target fund that exactly matched Mr L's circumstances. Legal & General provided adequate notice of the switch to investors in the Gold and General Fund. The investors had adequate opportunity to identify an alternative target fund if they considered that the Diversified Alternatives Fund was inappropriate for their needs. It is unfortunate that Mr L did not receive this notification.
46. I do not uphold Mr L's complaint.

**Anthony Arter**

Pensions Ombudsman  
14 October 2022