

Ombudsman's Determination

Applicant	Mr N
Scheme	Network Rail Defined Contribution Pension Scheme (the Scheme)
Respondents	Network Rail Pension Trustee Limited (the Trustee) Capita Employee Solutions (Capita)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee or Capita.

Complaint summary

2. Mr N's complaint concerns delays, incorrect information and poor customer service that he says he experienced when trying to switch his holding out of the NRDC Property Fund (**the Fund**). He estimates that the delay has cost him between £3,000 and £5,000 in investment income.

Background information, including submissions from the parties and timeline of 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. Mr N is a member of the Scheme which is managed by the Trustee. Capita was responsible for the administration of the Scheme at the time that the events relating to Mr N's complaint occurred. River & Mercantile (**R&M**) are the Scheme's investment managers and the Fund is invested with Aviva.
5. In July 2016, the Trustee issued a communication to Scheme members concerning the Fund (**the Announcement**). It said:-
 - The Fund had experienced an increased number of investors wanting to withdraw from the property market and changes were being introduced to manage the orderly withdrawal of funds.

- More people wanted to sell than buy units in the Fund, and properties would have to be sold to meet this demand. It would take time to build up cash holdings in such a way as to avoid having to sell properties quickly, at low prices.
 - Until further notice, there would be a restriction on disinvestments from the Fund (**the Restriction**) which would apply for up to 12 months.
6. On 28 November 2017, a representative of Aviva attended a Trustee Investment Sub Committee meeting. During a presentation the representative said that, as part of the Restriction, Aviva was applying a rolling 12-month deferral period. So, the 12 months would be measured from when a switch request was submitted, rather than it being a fixed 12-month period from July 2016 to July 2017.
 7. On 31 May 2018, R&M notified the Trustee and Capita that Aviva was expecting to be able to lift the Restriction during quarter two or three of 2018.
 8. On 8 August 2018, Mr N submitted a switch request to Capita. He requested that all of his units be disinvested from the Fund. On 10 August 2018, Capita confirmed that the Restriction was still in place. It suggested that he submit an alternative switch request.
 9. On 13 August 2018, Mr N submitted a different switch request, but again this involved a disinvestment from the Fund.
 10. On 14 August 2018, Mr N emailed Capita to question the Restriction. On 20 August 2018, Capita responded. It confirmed that the Fund could not be traded during the Restriction.
 11. On 25 November 2018, Mr N submitted a third request to switch his investments out of the Fund. On 28 November 2018, Capita responded, repeating the contents of its email of 10 August 2018.
 12. On 30 November 2018, R&M notified the Trustee and Capita that Aviva was planning to be able to lift the Restriction during quarter four of 2018.
 13. On 3 December 2018, Mr N contacted Capita to question the legitimacy of the Restriction.
 14. On 19 December 2018, R&M notified the Trustee and Capita that Aviva was going to lift the Restriction in late January 2019. On 12 March 2019, it provided a further update, saying that Aviva was planning to lift the Restriction during quarter two of 2019, subject to certain conditions being met.
 15. On 2 May 2019, Mr N submitted further switch requests, which included a switch out of the Fund.
 16. On 7 May 2019, Capita emailed Mr N to say that his switch request was being put in a queue due to the Restriction, which it said was still in place. It confirmed that his request would be placed on hold until the Restriction was lifted.

17. On the same day, Mr N reminded Capita that he had asked it for confirmation of the legal position in relation to the Restriction. He maintained that this was the first time that he had been made aware that his request was in a queue.
18. On 14 May 2019, Mr N emailed Capita. He repeated his request for details of the legal position in relation to Aviva's right to keep him held in property since the Announcement in 2016. He said that the Announcement stated that the Restriction would be for a maximum of 12 months.
19. On 16 May 2019, Capita responded to Mr N's requests concerning the legality of the Restriction. It said that Aviva had provided the following extract from the policy document:

“[Aviva] may defer any transaction involving the cancellation of Units [...] for a period of [...] up to twelve (12) months in the case of the Investment Funds that invest in real property (or any Investment Funds that have holdings in Investment Funds that invest in real property) if

 - a. it is in the interest of existing policyholders; or
 - b. if there is insufficient liquidity in the Investment Fund.”
20. Capita also said:-
 - So far, it had processed all redemption requests within the 12-month window.
 - The Financial Conduct Authority was aware of the Restriction, and it was in regular contact with it.
 - A change in procedure allowed it to issue Mr N's request as a redemption request and then perform a manual buy into his desired fund. It said that this may allow Mr N's request to complete earlier.
 - However, it warned that this may lead to a three-to-five-day delay before Mr N's money was reinvested. Under a switch request this would happen on the same day. It asked him whether he wished to proceed on this basis.
21. On 17 May 2019, Mr N responded to Capita's email, but he did not make it clear whether he accepted the alternative approach it had suggested.
22. On 28 May 2019, Capita reiterated to Mr N the alternative approach it could use to complete his request and it asked him to confirm if he wished to proceed.
23. On 29 May 2019, Mr N confirmed to Capita that he wanted his holding in the Fund to be sold.
24. On 11 June 2019, Capita confirmed to Mr N that it had issued a request to Aviva to make the sale of his holding in the Fund.

25. On the same day, Mr N asked Capita if the sale could be notified to him in advance so he could check whether it would be favourable to him or not.
26. On 12 June 2019, Capita confirmed to Mr N that it could not confirm the sale before it was actioned.
27. On 9 August 2019, Mr N emailed Capita to request an update on the sale of his holding in the Fund.
28. On 15 August 2019, Capita confirmed to Mr N that the sale of his holding in the Fund was still in a queue.
29. On the same day, Mr N emailed Capita. He maintained that Aviva did not have a right to keep the Restriction in place beyond 12 months. He asked for details of where he was in the queue.
30. On 9 September 2019, Capita sent an email to Mr N. It said:-
 - During the Restriction, requests had been in a queue and had been actioned when sufficient funds were available.
 - The Restriction had been lifted and all Fund trades were being actioned on a business-as-usual basis.
 - His holding in the Fund had been disinvested at a value of £9,861.02.
 - It needed to know where he wanted this money to be invested. It said that, if it received no response by 23 September 2019, the money would be invested in the cash fund.
31. On 9 September 2019, Mr N expressed his dissatisfaction to Capita that he had not been provided with advanced warning of the sale of his holding in the Fund. He was also unhappy that he was not placed in the queue earlier.
32. On 17 September 2019, Capita confirmed to Mr N that it had been unable to provide him with the advanced warning he had requested.
33. On the same day, Mr N contacted Capita. He said that Aviva had not communicated to him beyond the initial announcement of the Restriction. In addition, it was not permitted to keep the Restriction in place for the length of time that it did. He raised a complaint. He also confirmed that he wanted the disinvestment from the Fund invested in the cash fund.
34. On 23 September 2019, the investment in the cash fund was cleared.
35. On 25 November 2019, Capita responded to Mr N's complaint. It said:-
 - It apologised for the service it had provided.

- The Fund had been placed in deferral. This meant that trade requests, unless for the purposes of retirements or deaths, had been placed in a queue and the funds were released when available.
 - It offered him an ex-gratia payment of £200.
36. On 16 January 2020, Mr N emailed the Trustee concerning Capita and the time it had taken to switch his holding out of the Fund. He said:-
- He had asked to switch his units out of the Fund during a period when the Restriction was in place.
 - After an initial contact from Capita, he only received updates when he contacted it. It had offered him £200 for the inconvenience caused by its poor service and communications.
 - By the time that the switch was completed, he had lost out on investment returns.
37. On 27 January 2020, the Head of Pensions responded to Mr N under stage one of the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**). He said:-
- In 2016, shortly after the Brexit vote, Aviva took the decision to "gate" the Fund over concerns that investors may rush to sell their units. Gating was where the opportunity to sell units was closed for a period of time. Other property investment funds had done something similar.
 - Aviva had to sell properties to meet the demand of investors wishing to disinvest and this took time. A priority wait list was imposed with priority being given to those retiring, dead or transferring out their benefits. Those wishing to switch funds were not priority listed so could only be actioned after the wait list had cleared or the gating had been removed.
 - The gating was expected to last a year. However, it lasted for longer as cash flows were limited.
 - The Trustee had asked Capita to keep members regularly informed, especially where a request had been made that required disinvestment. It failed to do this.
 - Capita's letter to Mr N of 25 November 2019 said that it had reviewed its processes and made a £200 offer to him for the inconvenience caused. The Head of Pensions considered this to be a reasonable offer.
 - He did not agree that there had been a loss of investment. The facility to switch monies out of the Fund was not available. The investment manager reserved the right to cease the option to trade during a period of poor liquidity. Mr N's switch was made in a timely manner after the gating was removed.
38. On 29 January 2020, Mr N emailed the Trustee. He confirmed that he wished to refer his complaint to the Trustee Board under stage two of the IDRP. He said:-

- He had rejected Capita's offer of £200.
 - The period that the Fund was gated exceeded the maximum 12 months as advised in the first communication he received.
 - No formal communication was received in relation to the queuing process.
39. On 27 April 2020, the Chair of the Trustee provided the Trustee Board's stage two IDRP response. He said:-
- It upheld Mr N's complaint regarding poor service and communication by Capita. It believed the offer of £200 was reasonable.
 - Mr N's complaint concerning delays in completing the switch and loss of investment returns was not upheld.
 - Aviva had imposed the Restriction that made it impossible for the switch he had requested to complete earlier.
40. Mr N made the following additional submissions:-
- His switch request should have been completed earlier based on the initial letter which quoted a maximum 12-month delay and the lack of further communications outlining the extension to this period.
 - His request to queue the sale of his holding in the Fund was ignored by Capita and it was unable to tell him what position he was in the queue. He later found out from it that there was no such queuing and he had been misinformed.
 - Capita's offer of £200 did not meet the investment loss he had suffered which he estimated to be between £3,000 and £5,000.
41. The Trustee said that there was no direct agreement between it and Aviva concerning the period over which Aviva could delay a switch. However, it believed that it was within Aviva's rights to introduce the Restriction.

Adjudicator's Opinion

42. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Capita.
43. The Adjudicator acknowledged the poor service and communications that Mr N received. However, in the Adjudicator's view, the £200 ex-gratia payment already offered to Mr N by Capita was adequate redress for the distress and inconvenience he had suffered. The Adjudicator's findings are summarised below:-
- Property funds like the Fund have risks associated with them as they are not made up of liquid assets. In the event of higher than usual demands to sell units in property funds, there is likely to be a need to sell properties in the portfolio to meet

these requests. Like any sales of properties, this can take time if the seller is looking to achieve a reasonable purchase price.

- Following the Brexit vote on 23 June 2016, there was speculation about a possible drop in commercial property prices. This resulted in a high volume of requests to sell units in property funds. As a result, a number of high-profile investment institutions, including Aviva, put in place temporary restrictions on disinvestments.
- In July 2016, the Trustee issued the Announcement to Scheme members. The Announcement provided details of the Restriction that Aviva had put in place. At that time, it was considered that the Restriction would last for up to 12 months. It was later decided that the Restriction would apply on a rolling 12-month basis, each 12 months being measured from when the disinvestment request was submitted.
- Mr N submitted his first switch request involving the sale of his holding in the Fund on 8 August 2018. On 9 September 2019, Mr N was notified by Capita that the disinvestment had been completed.
- While the disinvestment had taken a month over the 12 months communicated by Aviva, in the Adjudicator's opinion, completion within the 12 months was not a legal requirement. So, the Adjudicator appreciated that the extra delay would have been a cause of frustration for Mr N. However, he was of the opinion that no maladministration had taken place in this regard.
- Furthermore, the Adjudicator took the view that neither the Trustee nor Capita could be held responsible for any financial loss that Mr N had claimed in respect of the time taken to complete the disinvestment of his holding in the Fund. In the Adjudicator's opinion, neither of these parties had any say in relation to how long Aviva felt it necessary to keep the Restriction in place. In addition, while the Restriction was in place, neither party could progress Mr N's switch request.
- However, the information provided to Mr N was not, in the Adjudicator's opinion, always of an acceptable standard:-
 - The Announcement stated that the Restriction would apply for up to 12 months. The Adjudicator saw no evidence that any communication was issued at the end of that period or that the introduction of the rolling 12-month period had been communicated to Mr N.
 - The operation of the queuing system was not adequately explained to Mr N.
 - No updates were provided to Mr N by Capita over and above those he requested, despite the fact that it had been asked to keep members up to date on the Restriction.

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

45. Mr N provided further comments. In summary, he said:-

- The whole process of arranging the switch was convoluted, with misinformation having taken place involving a number of parties. Transactions had been made without proper acknowledgment or instruction.
- He had not seen details of the value of his holding in the Fund when he first requested that it be sold, and after the 12-month period, in order for him to determine any losses at the point when the sale took place. Nor had he seen the Fund's transactional statements from the point the Restriction was first put in place to the point his sale request was completed.
- In general, the pensions arena was very badly managed, with investors being given limited options for their future investments. These largely consisted of failing investments with little growth compared to the leading investments available elsewhere.
- He had not been provided with any communications in relation to the extension of the Restriction beyond the initial 12 months.
- He may have been misinformed in relation to the extension of the Restriction and the queuing system that was in use.

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

Ombudsman's decision

47. Mr N's complaint concerns his request to switch his holding out of the Fund. He says that he encountered delays and poor customer service, and he was provided with misleading information.
48. It was common, following the Brexit vote in June 2016, for investment institutions to put in place a temporary restriction on requests to sell units in property funds. This was due to an anticipated rise in the number of sale requests.
49. Aviva was one of the institutions that took this approach, introducing the Restriction which was communicated to members of the Scheme in July 2016.
50. I acknowledge that the delays in the completion of Mr N's switch request would have been a cause of frustration for him. However, neither the Trustee nor Capita had any say in relation to the introduction of the Restriction or for how long it was to be in place. For this reason, I find that neither the Trustee nor Capita can be held responsible for any financial loss Mr N claims as a result.
51. I find that it was reasonable for Aviva to take the action that it did when it introduced the Restriction. This is because it had a responsibility to protect the interests of all investors in the Fund, including both those staying and those looking to leave.

52. Mr N has said that transactions were made without proper acknowledgment or instruction. I have seen no evidence that this was the case. On 11 June 2019, Mr N had asked Capita if the sale of his holding in the Fund could be notified to him in advance. It confirmed the next day that this was not possible. Mr N expressed his dissatisfaction on 9 September 2019, after the sale had been completed, that he received no advanced warning. I am satisfied that he was given adequate warning that this would be the case.
53. Mr N has requested details of the value of his holding in the Fund at specific points in time together with copies of the Fund's transactional statements. This evidence may have been of interest if I considered that the Trustee or Capita were liable for any loss that Mr N believes he has suffered. However, I do not consider this to be the case. For this reason, I have not requested this information.
54. Mr N commented on poor management within the pensions arena and the poor choice of investment options available. I do not consider this Determination to be an appropriate place to discuss wider pensions issues. So, I have focused my comments on the facts specific to Mr N's complaint.
55. Having reviewed the communications provided to Mr N by the Trustee and Capita, I have seen no evidence of incorrect information being provided. However, apart from the updates specifically requested by Mr N, I agree that inadequate updates were given to him. In particular, Capita had not provided regular updates as it had agreed to do, and the operation of the queuing system had not been explained to Mr N. Furthermore, following the initial announcement of the Restriction, there is no evidence that an update was provided at the end of the 12-month period.
56. I note that Capita has offered Mr N £200 for the distress and inconvenience that he has suffered. I am satisfied that the offer is sufficient in the circumstances. Mr N should contact Capita if he wishes to accept the offer.
57. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
10 May 2022