

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Santander Retirement Plan (the <b>Plan</b> )
Respondents	JLT Employee Benefits ( <b>JLT</b> ) Santander (UK) Group Pension Scheme Trustees Limited (the <b>Trustees</b> )

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by JLT or the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y has complained that:
  - prior to leaving Santander Bank in 2015, he was "advised" by JLT (the Plan Administrators), that he could remain in the Plan indefinitely. Mr Y believed a verbal contract was entered into meaning he could remain in the Santander Global Equity Fund, which is only available under the Plan;
  - he has received a poor level of customer service. JLT offered Mr Y £100 for the distress and inconvenience caused which has been declined;
  - if the Trustees refuse his request to remain in the Plan, then he wants the Trustees to pay for financial advice to obtain a recommendation for a suitable replacement pension policy; and
  - if the charges are likely to be higher on any new pension policy he wants to be compensated for the difference over the full term of the Plan.

## Background information, including submissions from the parties

4. Mr Y's pension arrangement was through the "Lifestyle" provision which was the default option for the Plan. The lifestyle option has an arrangement called "Autopilot Drawdown". This arrangement changes the composition of a members funds over the

last 15 years, to automatically transfer from growth funds to bonds and cash, thus reducing the risk profile of the investment the closer a member gets to retirement.

5. Mr Y contacted the Plan administrators prior to leaving Santander on 31 August 2015. He says he obtained specific “advice” from JLT; that he could leave his funds in the Plan indefinitely.
6. JLT have confirmed this conversation took place in August 2015 but there was no promise of Mr Y remaining in the Plan indefinitely. What JLT did was change Mr Y’s retirement date to age 70, meaning for a short period of time only, his funds could remain invested in the Global Equity Fund.
7. Shortly after leaving Santander, Mr Y was informed that his pension would be transferred to Legal & General (**L&G**) under a default transfer option, unless he made his own pension arrangements. Mr Y did not want to be transferred to L&G, and asked the Trustees to honour the information he says was provided by JLT.
8. On 10 September 2015, shortly after leaving employment, Mr Y received written details of his deferred pension benefits in the Plan. In the details sent, Mr Y was informed that his funds in the Plan would be transferred to L&G under a default option within 12 -24 months after his leave date. The Trustees have confirmed there is a process in place to transfer deferred funds of its members to L&G in bulk, approximately every six months.
9. Mr Y says he “trusts” the fund that he is currently invested in, and did not want to research new funds, or accept any default option chosen by the Trustees.
10. Mr Y subsequently brought a complaint against the Trustees via The Pensions Advisory Service (**TPAS**), who confirmed that the Trustees are obliged to ensure the Plan is administered in accordance with the Rules of the Plan. TPAS could see no evidence that the rules had not been followed, or that maladministration had taken place.
11. The Trustees rejected Mr Y’s complaint and said all deferred members under the Plan are transferred to L&G by bulk transfer approximately 12-24 months after leaving service.
12. The Trustees also say that any discussion with JLT, regarding Mr Y’s pension, would have only been for the period between his date of leaving Santander up until the date his deferred benefits were transferred either to L&G or a provider of his choice. It was also confirmed that the Trustees researched the market in respect of their choice of new provider, taking into account a number of factors, including charges. The fund Mr Y was invested in under the Plan is currently charged at 0.705% per annum. The fund it will be transferred to, as the default option, has a lower charge of 0.35% per annum. The Trustees said Mr Y is free to transfer his deferred benefits to any provider of his choice, where he can choose the fund he believes is most suitable.

## **Adjudicator's Opinion**

13. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by JLT or the Trustees. The Adjudicator's findings are summarised briefly below:

- All deferred members will, within a specified timeframe, transfer out of the Plan on leaving service. The Trustees had decided on a default pension provider for its members, which was L&G. This decision was for the Trustees to make as part of their fiduciary duties.
- Mr Y is not bound by the default provider, L&G. Furthermore, if the default fund is not something Mr Y wants to invest in, he will be able to select a different investment fund offered by L&G.
- Mr Y believes he entered into a "verbal contract". Even if JLT had made a clear error and promised Mr Y something that could not be fulfilled under the Rules of the Plan, it would not be a binding contract.
- There was no definitive evidence of a mistake being made, and there is no evidence Mr Y was provided with a personalised retirement statement by JLT, or a promise to remain in the Plan and Global Equity Fund indefinitely.
- Mr Y is free to research the open market to try and seek lower charges elsewhere if he does not want to remain with L&G.
- Mr Y requested that the Trustees pay for a financial advisor to enable him to make a decision on a suitable provider if he could not remain in the Plan. As the adjudicator did not believe the Trustees had made an error, he did not consider it appropriate the Trustees paid for any financial advice.
- JLT offered Mr Y £100 compensation in recognition of the delay in responding to his complaint. This was considered a reasonable award in respect of the level of service he had received from JLT.

14. Mr Y did not accept the Adjudicator's views and he submitted the following comments:-

- JLT have said that they omitted to confirm a time limit when arranging the funds and that this omission had led to the assumption of no time limit.
- Discussions commenced with JLT in April/May 2015 and therefore call recordings should be obtained from this time.
- The communication sent on 10 September 2015 stated that the money would "usually be" transferred out to another plan, not "would be". No mention of the default insurer was mentioned in this communication.

- The Plan Rules should not override agreements entered into by providers; the opinion of the Financial Conduct Authority (**FCA**) should be sought before publication of any decision.
15. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr Y for completeness.

### **Ombudsman's decision**

16. JLT were required to apply the scheme rules. These provide the power for Trustees to buy out a member's benefits before retirement. Rule 9.3(1) provides that 'The Principle Employer and Trustees may agree a policy or policies for the purchase of such buy-out annuities from time to time.' Rule 9.3(3) provides that twelve months after the member has left pensionable service the Trustees may, and subject to any alternative direction from the Principle Employer in the case of a Deferred member will, exercise their buy out power under (1) above without his or her request, unless the member has an outstanding request for a cash equivalent transfer value. I conclude that JLT have acted within the scheme rules.
17. Mr Y says that JLT offered him the opportunity to leave his funds within the Plan indefinitely. I have read the email of 26 May 2015 which answers specific questions put to JLT by Mr Y, but I have seen no evidence that JLT made this promise to Mr Y. Mr Y has asked that the call recordings be listened to. They would have been useful in respect of the case, however, it has been confirmed by JLT that they have been unable to locate any earlier calls. There is no evidence that JLT received a direction from the Principle Employer not to exercise their buy out power in his case and no evidence that JLT made a specific promise on their own account.
18. The communication dated 10 September 2015 confirmed that deferred members would be transferred out of the Plan. Mr Y has highlighted the word "usually". However I do not think that word takes matters any further. In my view, the use of the word "usually" in this communication refers to the timescale of the transfer as "usually" after 12 months. This terminology is not unreasonable given that JLT perform bulk transfers every 6 months for deferred members, and that transfers are made between 12/24 months after a member leaves employment.
19. Mr Y complained before the confirmation letters were issued in relation to the forthcoming transfer. Santander have confirmed that details of the default provider, L&G, and its funds and charging structure would have been sent with more than one month's notice, which is adequate. Mr Y's complaint enabled him to consider the default option earlier than would normally be the case.

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20. Mr Y considers that this particular feature of the Plan should have been brought to his attention before he joined. However, there is no indication that he has suffered any injustice as a consequence of not knowing its post retirement provisions when he joined. He remains able to nominate another provider if he does not wish the funds to be transferred according to the default.
21. JLT offered Mr Y £100 in recognition for the distress and inconvenience suffered because of its and failure to provide prompt online access to their “Benpal” system. I do not consider that the injustice caused by that delay was so significant that I ought to make a further award.
22. Therefore, I do not uphold the complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
27 June 2017