

Ombudsman's Determination

Applicant	Mrs D
Scheme	Hilside Investments Pension Fund (the Fund)
Respondents	Trustees of Hilside Investments Pension Fund (the Trustees), and Rowanmoor Trustees Limited (Rowanmoor)

Outcome

1. The complaint is partly upheld. Rowanmoor, in its capacity as the professional pension trustee, shall remedy any shortfall in units Mrs D has suffered as a result of the transfer delay. In addition, it shall pay Mrs D a distress and inconvenience award.

Complaint summary

2. Mrs D has complained that:-
 - The Trustees failed to invest her pension funds between August 2013 and January 2018. She has suffered a financial loss as a result.
 - There were excessive delays during the transfer process.

Background information, including submissions from the parties

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. Mrs D's late husband was a member of the Fund. The Fund is a small, self-administered scheme (**SSAS**), with five members.
5. The original Trustee board consisted of two member trustees and James Hay Pension Trustees Limited (**James Hay**).
6. Two subsidiaries of Rowanmoor Group Limited separately provide independent trustee and administration services for the Fund. They are collectively referred to as "Rowanmoor" in this Determination.
7. In December 2002, following her husband's death, Mrs D began receiving an income from the Fund through capped drawdown.

8. In 2006, Rowanmoor bought the SSAS business of James Hay. The deed appointing Rowanmoor, as the new Trustee of the Fund, states that "Member Trustees" includes all the trustees of the "Scheme," other than the "Retiring Trustee."
9. In April 2013, the Trustees carried out an analysis of the Fund's cashflow. The main asset held by the Fund was a commercial property (the **Property**). The rental income had been used to provide a pension for the retired members.
10. The Property was untenanted, and the Trustees had been experiencing issues with voids for some time. It was also in need of repairs. Three of the members of the Fund were in capped drawdown, and only two members were paying contributions into the Fund. In the absence of rental income, the Fund was running at a deficit of £109,000 per annum. The Trustees' analysis highlighted that the Fund would run out of money within a year.
11. On 8 May 2013, the Trustees notified Mrs D that the Property was being sold. The Trustees confirmed that further borrowing would be needed to carry out the required works on the Property. The Trustees added that, in its current condition, the Property was not receiving much interest from potential tenants: this had been the case for nine months.
12. The Trustees informed Mrs D that a meeting would be held in the next few months to discuss the future of the Fund. The Trustees said that Mrs D attended the meeting, and they explained the reasons behind the sale of the Property.
13. In August 2013, the Trustees sold the Property for £1,170,000. The net proceeds, after repayment of outstanding loans, amounted to £1,152,059, were paid into a basic current account.
14. Between August 2013 and February 2014, the Trustees said that they searched for a new commercial property to acquire with the available funds. The Trustees also said that they considered several properties following online searches and discussions with property agents. However, the properties that were within budget had similar issues to the Property. Namely, they needed repairs and/or were vacant.
15. On 12 February 2014, the Trustees wrote to Mrs D and confirmed the maximum income she could withdraw from the Fund for the coming year. The Trustees also confirmed that the value of the Fund had decreased since the sale of the Property.
16. The Trustees explained that they were in the process of reinvesting the funds and hoped to recoup this loss.
17. During the intervening period, the Trustees said that they continued to search for a new commercial property. In June 2014 and October 2014, the Trustees received emails from three property agents regarding potential investments. However, the Trustees said that they did not find any properties that they deemed suitable.

18. In December 2014, the Trustees engaged a firm of financial advisers (**First IFA**), to review the SSAS and the investment strategy going forward. The Trustees completed a Letter of Authority (**LOA**) so that the First IFA could request information from Rowanmoor, in its capacity as the administrators of the Fund.
19. On 25 February 2015, after a follow up email from the Trustees, the First IFA acknowledged receipt of the LOA. The Trustees indicated that they were keen to start reinvesting as soon as possible.

The First IFA said that it had discussed the matter with its paraplanning department; it had suggested that each member should complete a Risk Tolerance Questionnaire (the **Questionnaire**), which the First IFA said it had attached. The First IFA indicated that it was likely the members would have their monies invested in accordance with their individual “risk” profile. The First IFA said that this would be discussed further once it had received information from Rowanmoor.

20. On the same day, the Trustees explained that only three of the five members were trustees of the Fund. They asked whether all the members, or just those that were also trustees, needed to complete the Questionnaire.
21. On 11 March 2015, the First IFA emailed the Trustees and explained that it was trying to obtain information from Rowanmoor. However, it had requested a LOA from each member of the Fund. The First IFA requested that all the members and the Trustees sign the LOA that was attached to the email.
22. On the same day, the Trustees notified the First IFA that they had received information from Rowanmoor in response to the request from the First IFA. The Trustees said they would share this information.
23. The Trustees asked the First IFA to confirm, on receipt of the correspondence, whether it contained the information it required and whether it was sufficient.
24. On 25 March 2015, the Trustees confirmed that Mrs D’s late husband’s share of the Fund amounted to £245,457, which equated to 29.36% of the value of the Fund.
25. Following further exchanges, the First IFA confirmed that it had received sufficient information to progress with the Review. The First IFA said that it would review the information in more detail with their paralegal department regarding “the best course of action” and provide the Trustees with an update.
26. During April 2015 and May 2015, the Trustees said that they had several telephone conversations with the First IFA concerning the Questionnaire. The Trustees have explained that the First IFA initially advised that only the member-trustees needed to complete the Questionnaire.
27. On 13 May 2015, the Trustees wrote to Mrs D. They explained that the First IFA had identified that the Fund needed an investment strategy which suited all the members, which would be difficult to achieve. Consequently, a SSAS may no longer be a suitable structure for the Fund. They also explained that, as three of the members

were in “drawdown,” the funds needed to remain relatively liquid and invested in low-risk assets. They said that this conflicted with the needs of the two contributing members who were relatively young and could adopt a long-term, high-risk investment strategy.

28. The Trustees outlined three broad options for the SSAS:

- continue with all five members;
- continue with the three members in drawdown; the two contributing members could transfer out; or
- be wound up; with the members transferring their funds into a self-invested personal pension (**SIPP**).

29. The Trustees concluded that another property investment was unlikely to be suitable for the SSAS. They suggested that Mrs D seek independent financial advice and that the members meet to discuss the next steps.

30. On 20 May 2015, the Trustees contacted the First IFA. They explained that they had been trying to get the members to meet to discuss the future direction of the Fund. In particular, whether it needed to continue as a five member SSAS. The Trustees explained that their preferred option might be for a three member SSAS and for the two members, who were still contributing, to each set up a SIPP.

31. On 21 May 2015, the First IFA notified the Trustees that it was in the process of discussing a potential route with Rowanmoor. The First IFA acknowledged that there were several issues involved for a transfer to a SIPP. The First IFA said that it would provide the Trustees with some guidance within the next few weeks.

32. On 9 June 2015, the Trustees notified the First IFA that the SSAS would be continuing; possibly with three members in drawdown. So, they wanted to appoint the First IFA to manage the Fund’s investments. They explained that one of the active members wanted to set up a SIPP for his existing funds. They asked the First IFA for assistance setting this up and managing the investments going forward.

33. During June and July 2015, the Trustees said that they had telephone conversations with the First IFA. The Trustees said that they understood that the First IFA was researching potential investment options and obtaining advice from their technical team.

34. The Trustees said that they met with Mrs D during this time. They have explained that Mrs D confirmed to the Trustees that she wanted to remain in the SSAS because of its connection to her late husband. The Trustees said that they explained to Mrs D that her funds had not been invested and that members could appoint their own IFA and withdraw from the Fund at any time.

35. On 5 August 2015, the First IFA acknowledged that it had been a couple of months since they had spoken with the Trustees. The First IFA advised that it had been

waiting for information from Rowanmoor, which it had now received. The First IFA said that this was now with its technical department. The First IFA also said that it was awaiting responses from other providers.

36. The Trustees have explained that the day-to-day administration of the Fund was undertaken by one individual who was the main point of contact for the First IFA. The Trustees have also explained that the delay, during the intervening period, was down to individuals involved in the Review process being on holiday at different times.
37. On 16 September 2015, the Trustees contacted the First IFA for an update. They emphasised that they needed to ensure that the funds, which they advised currently amounted to £700,000, were invested as soon as possible.
38. On 1 October 2015, the First IFA replied to the Trustees and offered to meet with the Trustees on 15 October 2015 (the **Meeting**). The First IFA explained that its head of paraplanning had spoken to several providers regarding Mrs D's case. It also explained that Rowanmoor had failed to provide them with information. The First IFA asked the Trustees to look into this before the Meeting, as it needed to understand how Rowanmoor had calculated Mrs D's pension.
39. During the Meeting, the Trustees said that they discussed "how difficult" it would be to meet all the needs of the members. The Trustees were unclear whether it would be possible to continue the SSAS with the three members in drawdown, as this would result in only one member trustee remaining. The Trustees said they understood that the First IFA would confirm the position and research investment options based on three members remaining in the Fund.
40. Following the Meeting, the First IFA requested information on the members in drawdown. The Trustees confirmed that they were all in capped drawdown.
41. During the period from 16 October 2015 and 16 December 2015, there were email exchanges between the Trustees and the First IFA. The Trustees have advised that there were also telephone exchanges between the parties.
42. On 16 December 2015, the Trustees sent a follow up email to the First IFA. The Trustees said that they were disappointed that "such little action" had been taken. They warned that unless "things got sorted quickly," they would have to engage new advisers.
43. The Trustees referred to their last conversation with the First IFA and emphasised that they were responsible for the Fund. Consequently, the investments should be in line with the Trustees' risk profile. The Trustees said that the Fund should be invested as a whole, as any gains, losses, and costs, were shared proportionately across the entire Fund. The Trustees highlighted that this was one of the disadvantages of a SSAS.
44. The Trustees said that they did not receive a response from the First IFA.
45. In January 2016, the Trustees contacted two investment managers.

46. On 13 January 2016, the first investment manager (**Investment Manager One**), emailed the Trustees and said that it had attached documents explaining how it could help the SSAS and its objectives. It advised the Trustees that it was unable to provide direct access to a SSAS account without the use of a financial adviser due to the nature of a SSAS. It said it could recommend a local financial adviser firm, with a favourable fee structure, with which it had close links. It also said that this would be more cost effective than engaging their firm directly. It offered to arrange a meeting.
47. On 22 January 2016, the Trustees met with the Investment Manager One and an independent financial adviser (the **Second IFA**). On 28 January 2016, the Second IFA confirmed that he had spoken with Rowanmoor and had suggested a follow up meeting with the Trustees. He said that he would run some thoughts/ideas with the Trustees so that they could progress matters.
48. At the time, the Trustees said that they were confident that they were finally making progress with the Review.
49. On 28 January 2016, the Second IFA met with Rowanmoor.
50. On 18 February 2016, following further exchanges between the parties, the Trustees met with the Second IFA to discuss reinvesting the funds.
51. On 26 February 2016, the Second IFA informed the Trustees that he was “doing some background work” in connection with the Review. He asked the Trustees to provide copies of the bank statements so that the Review could be completed.
52. On 2 March 2016, the Trustees notified the Second IFA that the information had been sent and that he should now have all the information.
53. On 9 March 2016, the Trustees notified the Second IFA that one of the members (**Member One**) was instructing their own IFA (the **Third IFA**).
54. The Second IFA said that he had now received “all the forms back.” He also said that he would consider the next steps and see how they could progress matters. He acknowledged that the members may want to consider their own options; he would be happy to assist them individually, if required.
55. The Second IFA indicated that he would have “some idea” of the next step in the Review Process in a week’s time.
56. During the intervening period, the Trustees said that the Second IFA was gathering information and considering investment options.
57. On 26 July 2016, the Trustees emailed the Second IFA and requested an update. The Trustees asked whether progress had been made in respect of the other members of the Fund and reviewing what happens next. On the same day, the Second IFA informed the Trustees that he would be going on leave. He said that he would obtain a progress report and agree a way forward. He advised that he was waiting for details of the options Member One was considering; it made sense to

consider the Fund as a whole. He suggested a further meeting with the Trustees to review whether any progress had been made.

58. The Trustees have explained that any decision made by Member One, in respect of their share of the Fund, would have had a bearing on how the Trustees balanced the needs of the members and would have influenced the advice provided by the Second IFA.
59. On 27 July 2016, the Trustees notified the Second IFA that Member One was transferring their share of the Fund. On the same day, the Second IFA said he would speak with Rowanmoor over the coming weeks and would contact the Trustees to discuss the next steps.
60. On the same day, the Trustees informed the Second IFA that Member one had completed the transfer after obtaining independent advice.
61. On 10 September 2016, the Second IFA contacted the Trustees to arrange a meeting. The Trustees said that they asked the Second IFA to meet with the SSAS members individually.
62. On 31 October 2016, the Trustees emailed the Second IFA for advice in connection with a potential investment in a 12 month fixed income secured corporate bond.
63. On 7 November 2016, the Second IFA advised that the investment, which was being considered by the Trustees, was not one that he would recommend. He said that he was a firm believer in diversifying and spreading risk across a number of asset classes. He urged the Trustees to reconsider and said that he would be happy to look at alternative investments.
64. Following the exchange, the Trustees acknowledge that there was a period of inaction, as they were unsure how to progress with the Review.
65. In 2017, Mrs D engaged her own IFA (**IFA Representative**).
66. In May 2017, Rowanmoor sent a form to obtain details in respect of the Fund in order to provide this to Mrs D's IFA Representative. However, it was sent to the wrong address.
67. On 7 June 2017, Rowanmoor contacted the Trustees to advise that their signatures would be required in connection with a transfer of Mrs D's funds.
68. Between 21 June 2017 and 30 June 2017, there were further exchanges between Rowanmoor and the Trustees. Rowanmoor requested details of the bank balance in respect of the Fund. It confirmed that it had received authorisation from the Trustees in connection with the split of the Fund's assets.
69. During this period, the Trustees have said that they were responding to requests for information. Also, for their authorisation to disclose information to Mrs D's IFA Representative. At that stage, her decision to transfer out of the Fund had not been communicated to them.

70. During July 2017 and August 2017, the Trustees have said that they answered all the queries that were raised by Rowanmoor. The Trustees have also said that they completed the necessary paperwork to allow the transfer of Mrs D's share of the Fund to progress.
71. In September 2017, Mrs D contacted the Trustees. She requested that they cease her income payments from the Fund.
72. Around the same time, Rowanmoor received notification of Mrs D's decision to transfer out of the Fund. The Trustees said that this triggered the formal transfer process, which included obtaining an up to date fund split and relevant authorisations in connection with the transfer.
73. On 19 September 2017, Rowanmoor sent a declaration form to Standard Life, the receiving scheme. It also sent a "Member Transfer Out Request Form" to Mrs D for completion.
74. On 27 September 2017, Rowanmoor notified the Trustees that the transfer was in progress.
75. On 3 October 2017, Rowanmoor asked the Trustees to confirm the address for one of the member trustees, after a form was returned undelivered. A copy of the form was subsequently received by the member trustee concerned.
76. On 4 October 2017, Rowanmoor notified Standard Life that the transfer payment would be issued once all the paperwork had been completed.
77. On 19 October 2017, the Trustees advised Rowanmoor that a second trustee had not received the authorisation form. The Trustees have explained that following a series of exchanges, it came to light that Rowanmoor had used the wrong address for the trustee.
78. On 26 October 2017, Rowanmoor emailed the Trustees and advised that authority letters from two trustees were outstanding. During the exchanges that followed, Rowanmoor advised that one of the trustees had returned the asset schedule but had not signed the LOA.
79. On 15 November 2017, Rowanmoor advised Mrs D's IFA Representative that it had now received all the required documentation. It also advised that the actuaries were preparing the Fund split.
80. On 20 November 2017, the Trustees emailed Rowanmoor and requested an update on the transfer. Rowanmoor responded the following day and confirmed that it was in progress.
81. On 29 November 2017, Rowanmoor confirmed the Fund split and advised Mrs D's IFA Representative that the transfer payment would be made using the "CHAPS" same day payment system or by cheque.

82. On 5 December 2017, Rowanmoor sent the Trustees a CHAPS form to authorise. The Trustees returned this on 14 December 2017. Following an enquiry from the Trustees, the form was forwarded to the bank on the same day, once Rowanmoor had provided a revised Fund split.
83. On 2 January 2018, the Trustees requested an update on the transfer as Mrs D's funds had not yet left the relevant bank account.
84. On 4 January 2018, Rowanmoor advised the Trustees that the bank had not issued the CHAPS payment.
85. On 19 January 2018, after a cheque was received in Rowanmoor's Salisbury office on 10 January 2018, Rowanmoor notified Mrs D and Standard Life that the transfer had been completed. The transfer payment amounted to £179,893.
86. On 23 January 2018, Standard Life issued a contract note (the **Contract Note**). It confirmed the units that had been purchased on Mrs D's behalf in respect of the transfer payment following deduction of the IFA's initial fee. It showed a total investment of £176,296.55, spread across six separate funds.
87. Mrs D's IFA Representative assessed her risk tolerance level as "medium." While her investments have varied slightly since January 2018, the asset allocation has remained broadly 50% equities and 50% fixed income.
88. On 18 May 2018, Mrs D complained to the Trustees that she had suffered a financial loss amounting to £47,126. Disregarding the 18 month period following the sale of the Property, Mrs D asserted that the Trustees should have used a cautious managed fund and invested between 20% to 60% of the Fund's assets in equities.
89. Mrs D said that she had applied the returns, she would otherwise have achieved, had her share of the Fund been invested in the Standard Life multi asset 20-60% fund (the **Multi Asset Fund**). Based on the assumption, that 85% of the assets should have been invested in the Multi Asset Fund, and 15% held in cash, her transfer value should have amounted to approximately £227,000.
90. On 6 September 2018, the Trustees apologised for the delay in responding to Mrs D's complaint. The Trustees said that they had been obtaining legal advice.
91. The Trustees explained that they contacted the bank concerning the possibility of investing in low risk investments. The Trustees said that they also contacted other high street banks and building societies. However, they were mindful that if funds were invested long term, this would cause an issue on the death of a member or dependant.
92. On 27 September 2018, Mrs D's IFA Representative complained to the Financial Services Ombudsman (**FOS**) on behalf of Mrs D. He said that Mrs D's shares in the Fund had fallen sharply because they had been held in cash over the last five years. Consequently, she had suffered a financial loss of £47,000.

93. On 10 June 2019, Mrs D complained to The Pensions Ombudsman (**TPO**).

94. **Mrs D's position**

- The lack of active investment on the part of the Trustees, over a period of more than four years, in addition to the income withdrawals from the Fund, led to a rapid erosion of the Fund. It reduced her share of the assets; and the transfer value that was subsequently offered to her.
- The Trustees had a responsibility to manage all aspects of the Scheme in the best financial interests of all the members. They had sole responsibility for the investment decisions.
- The Trustees failed to reinvest the funds promptly following the sale of the Property. The Trustees used the funds to engage two IFAs who ultimately did not provide a service to the Trustees.
- They eventually left her with no choice but to seek independent financial advice and transfer her share of the Fund into a SIPP. However, the transfer process took over eight months, during which time her funds were not invested.
- It took nearly four years for her to transfer because the Trustees were continually informing her that they had the situation under control and that they were taking financial advice. If she had known how long her funds would remain in cash, she would have transferred them out sooner.
- Ultimately, the Trustees did not obtain any financial advice and the Fund's assets remained in cash. This is not a large or particularly complex scheme. It should not have taken the Trustees a considerable period of time to invest a proportion of the assets.
- Given the long term low rates of interests, and ongoing "admin" charges being incurred by the Fund, the Trustees should have concluded matters by the end of 2014. Failing that, they should have invested the monies, for example in mutual funds, to achieve some positive returns for the Fund.
- The Trustees would always have needed time to identify suitable investments in which to reinvest the funds. 18 months would have been more than sufficient for this purpose.
- The Trustees should make good any loss of investment returns she has suffered in respect of the period March 2015 to January 2018. Approximately 85% of the funds could have been reinvested. Given the varying needs of the members, the Multi Asset Fund should be used as a benchmark for calculating the redress.

The Trustee's position

95. The Trustees acknowledge that they have a duty to invest pension funds for the benefit of members. The Trustees acted in good faith to obtain the necessary professional advice to enable the Trustees to "invest in a prudent manner." Consequently, their actions in this case do not amount to maladministration. The Trust Deed specifically allow for the appointment of advisers.
96. The Trustees could have adopted a similar investment strategy as other SSAS funds. For example, the Trustees could have invested the proceeds from the sale of the Property in overseas property. Some SSAS funds have since found their investment in overseas property to be worthless; these types of investments are largely unregulated.
97. In any event, Mrs D's investments would have been held in cash from around September 2017 onwards to ensure that her funds were available to transfer out. Mrs D chose to remain within the SSAS despite being aware that her funds had not been invested.
98. Typically, funds held in a SSAS are pooled in order to acquire assets for the benefit of all members. However, in this case, the needs of the members were conflicted. Consequently, the Trustees struggled to reinvest the funds.
99. The interest rates on offer at the time was 0.05% for a 60 day deposit account and between 1-2% for 2-5 year bonds. The Trustees considered investing the funds in low interest accounts or bonds while the Review was being conducted. However, the options that were considered by the Trustees required the funds to be locked away for several years.
100. Had the Trustees invested Mrs D's funds, and her investments fallen in value, it is unlikely that Mrs D would have accepted a reduction in her fund value if the remaining funds, which had not been ringfenced, had not dropped in value.
101. Mrs D's risk profile is not a benchmark against which to measure potential investment returns in respect of the SSAS. It is possible that at least some of the funds would have been invested in high risk equities to meet the needs of the younger members who were still contributing to the SSAS. This could potentially have tempered any gains from investments in low risk assets.
102. The Trustees assumed the responsibility of Trusteeship and were operating within the Trust Deed in securing (or at least attempting to secure) professional advice. It is not for Mrs D to agree the timeframe following the Trustees' appointment of an IFA. No monies from the SSAS were paid to the IFAs concerned. However, fees were paid to Rowanmoor, in its capacity as the administrator of the Fund, and to the individual who carried out the day to day administration for the SSAS.
103. Neither the Trustees nor Rowanmoor is authorised to provide financial advice. The Trustees will advise the member trustees on the regulations that affect the Scheme,

and any legislative requirements. However, they are unable to provide financial advice or comment on the suitability of the SSAS.

104. Following the sale of the Property, the Trustees continued to pursue a strategy of investing in commercial property. It is only with the benefit of hindsight, that the Trustees became aware that they would ultimately decide not to invest in commercial property.
105. The Trustees question the assertion that they should have engaged two IFAs at the outset. They initially engaged an IFA that was known to them and had previously provided advice on other matters in a professional and timely manner.
106. If the Trustees had engaged an additional IFA at an earlier stage, or two IFAs at the start of the process, this would have impacted the time they had available for the day to day administration of the Fund. Furthermore, the Trustees would have incurred additional costs. This would likely have resulted in complaints from the members concerning the impact on the Fund; the Trustees were in a “no win situation.”
107. When the First IFA advised the Trustees that they “had all the information they needed,” the Trustees accepted this as confirmation that they would complete the Questionnaire. However, in June/July 2015 it became apparent that the Questionnaire needed to be completed by all the members. The Trustees consider that they are being held responsible for the fact that the First IFA initially misunderstood the position.
108. The Trustees do not accept that they repeatedly reassured Mrs D that they would act quickly. The Trustees informed Mrs D that the matter was complex and that she could engage her own IFA and transfer out of the Fund at any time.
109. The Trustees accept that more frequent contact with its professional advisers could potentially have achieved a positive outcome. In their professional experience “frequent contact does not always yield results and can instead lead to disengagement or outright resignation of professional advisers.”
110. The Trustees do not agree that Mrs D took reasonable steps to mitigate her financial position. The fact that a member, who was also in receipt of a dependent’s pension in 2016, withdrew her funds, provides “firm evidence” that Mrs D could have acted at an earlier stage.
111. The member concerned was provided with the same information as Mrs D. She had no personal experience of investing or pension knowledge and was a young widow who independently sought financial advice. Mrs D had the support of her sons, who have some financial experience in making decisions regarding the Fund. They attended meetings with the Trustees and Rowanmoor.
112. The Trustees disagree that it would have been more cost effective if they had set up investment platforms for the members. In recent years, certainly since 2015, it has

become relatively easy to set up a SIPP. Particularly, as only the requirements of an individual member needs to be considered.

113. The Trustees do not agree that a transfer to a SIPP should be considered a last resort. Each individual should be responsible for making their own financial decisions. After three years of the Fund achieving no investment returns, one of the members transferred out their share of the Fund. Consequently, it is unreasonable to expect the Trustees to compensate Mrs D for loss of investment returns in respect of the period after 2016.
114. One of the Trustees was overseas during the transfer process. So, there was a minor delay in some of the documents being signed. However, the Trustees do not accept that they were responsible for the transfer delay.
115. Rowanmoor was responsible for ensuring that the transfer was progressed promptly. All the transactions involving Rowanmoor were “slow, prone to administrative error and frustrating.” Some of the delays were caused by Rowanmoor posting documents to the wrong address, despite the fact the Trustees had provided the correct information.
116. The Trustees do not accept that it took eight months to complete Mrs D’s transfer: it was completed within four months. However, they acknowledge that there were “minor administrative delays” during this period, due to issues with the postal service and the bank. Neither Rowanmoor nor the member trustees had any control over these. “Reasonable allowance must be made for small hiccups such as these, without assigning liability.”
117. The transfer process took place between September 2017 and January 2018. The Trustees question whether they could reasonably have done any more to progress matters. Hilside Investment agreed to work unpaid on the day to day administration of the SSAS to expedite the transfer. Mrs D saw the benefit of this as lower costs were applied to the SSAS during a period “when even her own fund saw significant volatility, and only minimal net growth.”
118. Mrs D has “cherry-picked” a benchmark fund with the benefit of hindsight. The Multi Asset Fund is only available through an IFA. Mrs D’s calculations do not take into account the SSAS fees, or the additional fees, which would have been chargeable had the SSAS funds been so invested. The fees should be taken into account in the calculation of any redress.
119. The member trustees have limited personal funds. They may suffer financial detriment if Mrs D is awarded any redress in connection with this matter.

Adjudicator's Opinion

The first Adjudicator's Opinion

120. The Adjudicator initially assigned to this case (the **First Adjudicator**) considered that Mrs D's complaint should be upheld. The First Adjudicator recommended that the Trustees remedy any investment loss Mrs D had suffered between 1 March 2015 and 4 January 2018. Briefly, she said that the Trustees should have taken steps to ensure that Mrs D's funds were achieving some level of return while they were seeking advice in connection with the SSAS.

The second Adjudicator's Opinion

121. Mrs D's complaint was subsequently considered by a second Adjudicator (the **Second Adjudicator**) who concluded that the complaint should only be partly upheld, as there were significant time issues with Mrs D's main complaint. The Second Adjudicator's findings are summarised in paragraphs 122 to 131 below.
122. The Second Adjudicator highlighted that Regulation 5 (**Regulation 5**) of The Personal and Occupational Pension Schemes (Pension Ombudsman) Regulations 1996 (SI 1996 No. 2475), (the **Regulations**), sets time limits on the matters TPO can investigate. Regulation 5 provides that a dispute must be referred within three years of the "events" that gave rise to the applicant's complaint. If, in the opinion of the Pensions Ombudsman, the applicant was "unaware of the act or omission," within three years of the date that the applicant became aware of it, or ought to have been aware of it. If an application is received outside the three-year time limit, TPO cannot investigate the complaint under part 5(1) of the Regulations.
123. The Second Adjudicator said that in some cases, TPO can exercise discretion to investigate a complaint that is brought outside the three-year time limit. TPO would usually only exercise this discretion where any relevant delay is beyond the applicant's control. For example, where the referral to TPO is held up by another organisation's complaint process, or by ill health, or family matters, which has reasonably prevented the applicant contacting TPO.
124. The Second Adjudicator did not consider that TPO could investigate Mrs D's complaint in its entirety because her application was received outside the three-year time limit under part 5(1) of the Regulations.
125. The Second Adjudicator noted that the Trustees had informed Mrs D in February 2014, that they were in the process of reinvesting the funds and expected to recoup the loss in the value of the Fund following the sale of the Property. The Adjudicator considered that this likely reassured Mrs D that the Trustees were progressing matters. However, it was not until June 2019, that Mrs D complained to TPO regarding the delays in the Trustees investing her funds.

126. The Second Adjudicator said that for TPO to exercise its discretion in this case, all of the time dating from when Mrs D became aware of the “events,” to the date of her application to TPO, needed to be accounted for.
127. The Second Adjudicator did not consider that there were compelling personal circumstances that prevented Mrs D from contacting TPO when the monies had not been invested three years later. The Second Adjudicator said the evidence did not support the view that Mrs D had taken steps in connection with the matter until 18 May 2018, when she complained to the Trustees. In the absence of anything that would explain why the complaint could not be brought to TPO by February 2017, the delay in Mrs D’s referring the matter was not reasonable in the circumstances. TPO could only look at Mrs D’s complaint concerning the transfer delay.
128. The Second Adjudicator pointed out that trustees can appoint third parties to administer the scheme, but they ultimately remain responsible for the scheme in question. The timeline supported the view that the transfer process began in September 2017 and was completed in January 2018. The Pensions Regulator would expect Rowanmoor to show a greater level of knowledge and meet higher standards than the other trustees. The Pensions Ombudsman would more likely take a similar view.
129. The Second Adjudicator said that TPO would consider whether the time taken at each step of the transfer process was justified by the tasks that had to be carried out. TPO would also consider the standard that could reasonably be expected of a scheme administrator in similar circumstances.
130. The Second Adjudicator said that she was not persuaded, on reviewing the evidence, that it should have taken the Trustees four months to complete Mrs D’s transfer. She had considered the fact that the Fund is a money purchase arrangement. Also, that the Trustees did not have to disinvest any assets before issuing the payment.
131. The Second Adjudicator noted that the average industry standard for dealing with a transfer payment range between 10 and 20 days. So even allowing for any unforeseen issues, staff absences, or additional paperwork, two months should have been sufficient, as priority should always be given to actual payments as best practice. Rowanmoor should provide sufficient redress to increase the number of units in Mrs D’s SIPP, to the level they would have been, had the transfer payment been allocated on 4 November 2017. In addition, Rowanmoor should pay Mrs D £500, for the significant distress and inconvenience she has suffered.
132. Following the Second Adjudicator’s Opinion, the Representative provided Rowanmoor with a copy of the Contract Note to enable it to carry out a loss assessment.
133. Rowanmoor has calculated the units Mrs D would otherwise have secured on 6 November 2017, the next working day after 4 November 2017. It has compared this with the units Mrs D purchased on 22 January 2018. Based on its calculations, Mrs D

would have purchased additional units valued at £1,578.76. The calculations were then shared with the Representative.

134. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Representative provided further comments which do not change the outcome. I agree with the Second Adjudicator's Opinion and note the additional points raised by the Representative on behalf of Mrs D.
135. The Representative agreed that Rowanmoor should be held accountable for any losses resulting from a delay in completing the transfer of Mrs D's funds to Standard Life. However, he considered that it played a very minor role in the matter.
136. The Representative has questioned whether the Trustees' further submissions, in response to the First Adjudicator's Opinion, were considered by the Second Adjudicator. The Representative has highlighted that the Trustees did not raise Regulation 5 as a reason why they believe that the First Adjudicator's Opinion "should no longer stand".
137. The Representative has explained that Mrs D's case concerns the "ongoing lack of investment" in the period between the sale of the Property and when the Trustees received an instruction to transfer. He asserts that if a "specific incident" has to be used "to start a 3-year clock," then it should not be the point at which the Trustees announced that they were looking at alternative investment options. In his view, there was no issue at that time for Mrs D to be concerned about.
138. The Representative has asserted that the lack of positive action, on the part of the Trustees, started in February 2014. However, Mrs D's awareness of any serious issue with the Review process did not occur until well into 2015/2016. By which time, the Trustees had failed to progress matters any further. For the purposes of Regulation 5, he considers that it would be more appropriate to pick a start date within this latter period when Mrs D would have become aware that a potential problem existed.
139. The Representative has said that this places Mrs D's complaint "well within the three year time window." Particularly, when viewed within the context of the date of his initial dealings with Mrs D, the Trustees, and Rowanmoor.
140. The Representative has explained that he first met Mrs D in April 2017, after her son-in-law became concerned that her pension was not being correctly managed. The Representative has also explained that it took almost three months for Rowanmoor to provide him with the information that he needed to fully assess Mrs D's situation and make his recommendations.
141. The Representative has said that it was during the course of his analysis, that it became clear that the Trustees had not dealt with the reinvestment of the proceeds of the Property sale in a timely manner. It also became clear to him that this had resulted in an "excessive erosion" of Mrs D's share of the Fund. At that point, his initial priority was to prevent any further capital erosion. In early August 2017, he

recommended a transfer from the SSAS and into a SIPP that offered “flexi access drawdown”.

142. The Representative has explained that later that same month, Mrs D agreed to his recommendation and in early September 2017, they sent instructions to the Trustees/Rowanmoor to facilitate the transfer. However, it then took a further five months to complete the transfer.
143. The Representative has said that it was only once the transfer process was complete that they contacted the Trustees regarding their concerns. They subsequently referred the matter to TPO when they were unable to reach a resolution. Consequently, they consider that Mrs D’s complaint was submitted within the appropriate time limits. The Trustees should be held accountable for any investment loss she has suffered as a consequence of the delays in the Trustees reinvesting the proceeds of the Property sale.

Ombudsman’s decision

144. Mrs D’s main complaint against the Trustees concerns the lack of investment activity following the sale of the Property. I note that the Representative has said that Mrs D was unaware of any serious issues until sometime towards the end of 2015/2016.
145. The decision to proceed with an applicant’s complaint (or parts of it) may be looked at again during the course of TPO’s investigation. I am satisfied on reviewing the evidence that the Second Adjudicator took an appropriate course of action by revisiting the matter of jurisdiction.
146. The exact date of Mrs D’s awareness is open to interpretation. I agree with the Representative that 14 February 2014 was not the point at which Mrs D was likely to have been aware of any failure on the part of the Trustees to reinvest the trust monies. However, on reviewing the evidence, I find that it is reasonable to conclude, on the balance of probability, that Mrs D was aware of the ongoing failure to invest the funds by around mid-2015, at the latest. However, it was not until 2019, more than three years later, that the matter was referred to TPO.
147. I find that Mrs D’s main complaint of financial loss, caused by the alleged lack of the Trustee’s investment activity, is not within TPO’s jurisdiction having been made outside of the time limits set out in Regulation 5. I cannot consider this aspect of Mrs D’s complaint because it is out of time. Consequently, I make no comment or any findings on the merits of that part of the complaint.
148. I appreciate this is not the outcome that Mrs D is seeking. However, the circumstances that the Representative has described do not amount to extenuating circumstances that would warrant me to exercise discretion to investigate the complaint in its entirety. In taking this view, I have considered the fact that Mrs D could have sought assistance from TPO at a much earlier stage at no cost to her.

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149. I note that the parties have accepted that Rowanmoor unreasonably delayed the transfer process. In the circumstances I do not consider that it is necessary to revisit this point.

150. The calculations undertaken by Rowanmoor support the view that Mrs D has suffered a financial detriment as a consequence of the transfer delay. It shall pay sufficient redress to increase Mrs D's units to the level they would have been had the transfer payment been allocated on 6 November 2017 (the **Additional Units**). Rowanmoor shall also pay £500 to Mrs D, in respect of the significant non-financial injustice she has suffered.

151. I partly uphold Mrs D's complaint.

Directions

152. Within 28 days of the date of this Determination, Rowanmoor shall pay:

- (i) the monies required into Mrs D's SIPP in order to purchase the Additional Units;
and
- (ii) Mrs D £500, as an award for the significant distress and inconvenience she has suffered.

Anthony Arter

Pensions Ombudsman
28 September 2022