

## Ombudsman's Determination

Applicant	Mr U
Scheme	PIMCO Europe Ltd DC Pension Plan ( <b>the Plan</b> )
Respondent	PTL Governance Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr U complains that he was not given sufficient time to consider his options after being informed that his Plan investments were being switched to a new fund.
3. As a result of the switch, he says he was unable to transfer his Plan investment, and this has resulted in an investment loss of around £17,000. Mr U would like to be compensated for this.

## Background information, including submissions from the parties

4. Following a review in 2017 the employer, the Trustee and its investment advisers decided to introduce a new default fund. Although the Trustee originally intended to inform all members of the change in December 2017, only active members were told at that time. Deferred members, including Mr U, were informed of the change on 10 January 2018.
5. The email Mr U received on 10 January 2018 explained that members' investments would be automatically moved from the Zurich L & G UK Equity Fund (**the L&G Fund**) to the Zurich Aquila UK Equity Index Fund (**the Aquila Fund**) unless members informed the Trustee of an alternative new fund choice by midnight on 10 January 2018.
6. Mr U responded to the email on 10 January to complain about the short notice he had been given about the changes. He also said that because he had received the email at 18:30, he was unable to contact Zurich to discuss the change. Mr U asked for his investments to remain in the L&G Fund.

7. In response, the employer apologised for the short notice he had been given and explained that the Trustee had decided to make changes to the Fund's investment options.
8. After further exchanges of correspondence, Mr U complained under the Plan's Internal Dispute Resolution Procedure (**IDRP**) about the late communication of the fund switch. Mr U also requested further information about the difference between the value of his investment in the L&G and the Aquila Funds.
9. Mr U was provided with the following information about the value of his Plan investments.

<b>Investment value</b>	<b>L&amp;G Fund</b>	<b>Aquila Fund</b>
Before the switch on 15 January 2018	£189,789.26	
When the switch occurred on 25 January 2018	£187,957.10	£187,957.10
After the switch on 9 February 2019	£175,396.16	£176,494.23

Mr U was also informed that the UK equity market fell by 8% over the period the switch had taken place.

10. In its IDR stage one response, the Trustee said that:-
  - It had acted in accordance with the Plan's Trust Deed and Rules which allowed fund switches without member consent as long as it is in the best interest of members.
  - It had taken regulated investment advice and believed that the fund switch to one with lower investment charges would benefit its members.
  - Rule 13.2 Investment of Member's Account Part 5d of the Plan Trust Deed and Rules state that,
 

"Where, in the opinion of the Trustees, the circumstances so require, they shall notify Members affected by any such variation or termination but the absence of notification (including the inadvertent failure to notify any individual or category of individuals) shall not invalidate any such variation or termination."
11. Mr U appealed the decision as he was not satisfied that the Trustee had answered his complaint properly. He maintained that the fund switch was communicated to him too late for him to make a considered decision about the changes.
12. In its IDR stage two response, the Trustee said that:-
  - It decided in 2017 that a new default fund option would be provided.

- The rules allowed changes to be made as long as they were in the best interest of the members.
  - It had considered the best interests of the members by choosing a fund with a lower investment charge.
  - The January 2018 email was issued too late for deferred members to be able to make changes to their investments ahead of the blackout period on 11 January 2018. During the blackout period no changes to investments could be made.
  - It had considered delaying the 'blackout period' but decided it would not be in the best interests of all members.
  - Mr U was unable to trade during the 'blackout period'. However, this was necessary for the changes to the fund to take place.
  - Mr U had requested his investment remained in the L&G Fund but as it was being closed the investments had to be moved to the equivalent Aquila Fund.
  - Mr U's fund value decreased after the transfer. This was due to the decline of the UK equity market over the relevant period.
  - In recognition of the late communication, it offered Mr U £500 for the significant distress and inconvenience caused.
13. Unhappy with the Trustee's response, Mr U referred the complaint to us.
14. The Trustee said, in its response to Mr U's complaint, that:-
- The decision to switch funds was made in 2017, after seeking appropriate, professional advice. The intention was to inform all members of the change in December 2017, but only active members were informed at that time. Deferred members were not informed until 10 January 2018.
  - It accepted that the information regarding the change was not provided in a timely fashion and members were not allowed to make any decisions regarding their investment ahead of the 'blackout window' that started on 11 January 2018.
  - It had decided with its investment advisers that it was not in the interest of members to delay the switch.
  - The Trustee remained of the view that it was appropriate to proceed with the change as the switch to the new fund was in the best interests of the membership.
  - Mr U had not demonstrated that had he received the information regarding the investment changes in December 2017 rather than January 2018, he would have acted differently. Therefore, no further compensation for financial loss was warranted.

- It had recognised that Mr U had suffered distress and inconvenience as a result of the delay in providing information about the change. Its offer of £500 in recognition of this was fair.

15. Mr U provided the following additional comments:-

- The Trustee had not confirmed whether it had taken further advice after recognising the communication had been sent late. If it had he was confident that its adviser would have allowed members like himself an opportunity to consider their options.
- It was impossible to prove with certainty that he would have traded differently had he received the information earlier.
- Mr U provided statements to show that he had sold his shares in another retirement account on 20 November 2017, as evidence to show the likelihood that he would have traded differently if he had time to consider the changes.
- He had immediately requested to keep his investments in the L&G fund which also supported the likelihood that he would have acted differently if he had been given the opportunity to properly consider the change.

## **Adjudicator's Opinion**

16. Mr U's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- The Trustee had acted in accordance with the Plan Rules. The Rules allow the Trustee to change the investment fund and to decide whether to notify members of the change. The Rules also state that in the absence of notifying members of the change, the change is not invalidated.
- Mr U's investments had to be moved to the Aquila Fund as the L&G Fund was being closed.
- The Adjudicator did not agree that Mr U would have acted differently if he had been provided with the information about the fund switch earlier.
- The Trustee had offered Mr U £500 in recognition of distress and inconvenience caused by the late notification of the fund switch. As the Trustee had acted in accordance to the Plan Rules when making changes to the fund, the Adjudicator considered the £500 offered was sufficient.

17. Mr U did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr U provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr U for completeness.

18. Mr U provided the following comments in response to the Adjudicator's Opinion. He said that:-

- He was unhappy with the Trustee's decision to continue with the fund switch after identifying that it had not notified deferred members in advance. This had resulted in the funds being frozen while the switch occurred.
- We should request the actuarial advice the Trustee received after noticing the error as this would show there was no requirement to implement the fund switch immediately.
- There should be a reasonable basis for supporting the decision to make the change rather than referring to the Plan Rules to support an unprofessional decision.
- It was not possible to evidence conclusively that he would have traded differently as the Plan did not allow any changes to be made during the black out period. He would not have contacted the Plan as often as he had during the blackout period if he was not intending to transfer his funds out of the Plan.

### **Ombudsman's decision**

19. It is unfortunate that the Trustee's intended communication regarding the fund switch did not reach Mr U until the day before the switch occurred. However, the Plan Rules allow the Trustee to proceed with the fund switch in absence of prior notification to members.
20. Mr U has asked us to request copies of the actuarial advice the Trustee received. As the Trustee has shown that it has acted in accordance to the Trust Deed and Plan Rules that govern the Plan, I do not feel this is necessary.
21. Mr U has said as a direct result of the fund switch, he was unable to transfer his Plan investments and that this has resulted in financial loss of around £17,000. It appears that Mr U has identified his loss to be £17,000 as this is the amount that his investment value had reduced by following the switch. However, had the switch not occurred Mr U's fund investment would have had a lower value if it had remained in the L&G Fund.
22. The Trustee had intended to inform members of the fund switch in December 2017. However, Mr U was not informed of the change until the day before the switch on 10 January 2018. Mr U did not have the opportunity to consider his options before the fund switch occurred. There is insufficient evidence to persuade me that had he been informed of the change in December he would have transferred his fund prior to the blackout period starting on 11 January 2018 and there is no evidence that he is now worse off as a result of not being able to make a different investment.

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23. The Trustee has offered Mr U £500 for the distress and inconvenience caused by the late notification of the fund switch. This is in line with what I would offer in this instance.

24. Therefore, I do not uphold Mr U's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
26 September 2019