

Ombudsman's Determination

Applicant	Mr N
Scheme	PJS Pension Fund (the Scheme)
Respondents	Talbot and Muir Limited (T&M)

Outcome

1. Mr N's complaint is upheld and to put matters right T&M should pay compensation to Mr N.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained that T&M delayed in processing a disinvestment of his pension funds and in passing on the resulting proceeds for re-investment, causing him financial loss.

Background information, including submissions from the parties

4. Mr N and his brother were both members of the Scheme, a small self-administered pension scheme administered by T&M. Mr N and his brother were also co-trustees of the Scheme with TM Trustees Ltd, a subsidiary company of T&M.
5. In May 2014, the trustees instructed the Scheme's investment managers, namely Aviva Investors (**Aviva**), BNY Mellon Fund Managers (**BNY**), Jupiter Unit Trust Managers (**Jupiter**) and Schroder Investments Ltd (**Schroder**), to disinvest their existing funds held by the Scheme and to send the proceeds to TM Trustees Ltd, so they could be re-invested in a discretionary managed fund to be managed by Brooks Macdonald (**BMac**).
6. BNY sent a bank transfer for £36,628.90 to T&M on 18 June 2014.
7. Aviva sent a cheque for £40,382.82 to TM Trustees Ltd on 8 July 2014, payable to TM Trustees Ltd, Mr N and his brother. The cheque had to be reissued by Aviva on 5 September 2014 in the name of the Scheme. Aviva apologised to T&M for the delay in reissuing the cheque.

8. Jupiter told Mr N that in order to pay into the Scheme's bank account, as had been requested, it would need to see a copy of the trust deed governing the Scheme. After that document was provided Jupiter sent T&M a bank transfer for £156,873.15 on 15 July 2014.
9. Schroder's contract note said that in the absence of a specified bank account its payment would have to be made by cheque. Schroder's letter of 17 June 2014, to TM Trustees Ltd, said that it could not pay into a third party bank account as had been requested. Schroder sent TM Trustees a cheque for £47,187.15 on 18 June 2014, payable to TM Trustees Ltd, Mr N and his brother. On 30 July 2014, Schroder told TM Trustees Ltd that it could not reissue its cheque to the Scheme, as was requested by TM Trustees Ltd on 28 July 2014. On 6 February 2015, the trustees of the Scheme asked Schroder to reissue its cheque in Mr N's name. Schroder's cheque was reissued on 26 February 2015. In the meantime, Schroder held the funds in an account which did not pay interest.
10. On 18 November 2014, T&M was given details of the BMac investment account that had been opened, but T&M was not instructed until later to move any funds into it. After further discussions a transfer of funds was made to BMac on 15 January 2015.
11. Mr N complained to us that he had lost money because of the delays, and that part of the delay was caused by T&M. He is also pursuing a separate claim against Bellpenny (his financial adviser) through the Financial Ombudsman Service.
12. In its formal response, T&M accepted that it could have acted more quickly in respect of the Schroder transfer, but not in respect of the other transfers. In a letter dated 1 April 2015, T&M offered to pay Mr N compensation of £1,472.24. This amount was calculated by reference to the amount of the Schroder transfer and the investment performance of WMA Balanced TR (BMac's benchmark for a medium risk portfolio) over the period between 18 November 2014 (when TM was given details of the BMac bank account) and 10 March 2015 (when the reinvestments were made). BMac explained that it could not replicate the investments actually made because under a discretionary portfolio the day to day investment decisions might not have been the same. Furthermore, the money probably would have been drip-fed into the market over a period of time, and not invested 100% immediately.

Adjudicator's Opinion

13. Mr N's complaint was considered by one of our Adjudicators, who concluded that if T&M paid Mr N the compensation that it had offered no further action would be required by T&M. The Adjudicator's findings are summarised briefly below:
 - The BNY and Jupiter transfers were completed quickly enough, in June and July 2014 respectively. The Aviva transfer was not completed until September 2014, but that was mainly because Aviva had to reissue the cheque. That was not the fault of T&M. However, T&M was partly responsible for the longer delay

relating to the Schroder transfer. In particular, there was a delay of about seven months between 30 July 2014 (when T&M became aware that Schroder's cheque could not be issued to its preferred payee) and 26 February 2015 (when the correctly addressed cheque was received). The Adjudicator considered that this delay amounted to maladministration, for which Mr N should be compensated.

- T&M's compensation offer was based on the performance of a medium risk portfolio over a specific reference period, as suggested by BMac. Mr N did not put forward any evidence to support the use of an alternative portfolio or a different reference period.
- Our service has limited resources, and our investigations are evidence-based, so it would not be a proportionate use of our time to devise, and compare the performance of, an alternative investment portfolio that Mr N had not put forward.
- The Adjudicator accepted Bmac's comments that in calculating hypothetical loss under a discretionary managed portfolio it is not appropriate to seek to replicate the actual investments that were eventually made, and that it would have been very likely that the money received would have been reinvested gradually over a period of time, instead of in one lump sum at the outset. This would be expected to reduce the overall investment return significantly. Therefore, the compensation that had been proposed by T&M in this case seemed reasonable in the circumstances.
- The Scheme was a trust-based arrangement, so the trustees were ultimately responsible for making investments. Mr N was a co-trustee himself, so he shouldered some of that responsibility. The trustees could have opened an interest-bearing account to hold the proceeds before they were reinvested in the market, but they chose not to do so. That was not T&M's fault. Therefore, the Adjudicator considered that I would not require TM to pay Mr N any additional compensation for the financial loss arising from the delay in reinvesting the Aviva, BNY and Jupiter proceeds.
- Although the delays arising had been a source of frustration for Mr N, the Adjudicator took the view that I would not consider that Mr N had suffered significant injustice, and therefore I would not award him any compensation for distress and inconvenience.

14. Mr N did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr N and T&M provided their further comments, many of 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 N and T&M for completeness.

Ombudsman's decision

15. In his comments on the Opinion, Mr N complained that T&M had wasted time by unnecessarily asking for signed forms of authority to transfer funds, because T&M already had all the forms of authority that it required. However, T&M disputed that it already had all the necessary documentation. To form a view on this it is necessary to review some of the transfer process.
16. Before the funds could be transferred to BMac, the Scheme's existing fund managers had to complete a disinvestment process. This started when they were instructed by the trustees of the Scheme in May 2014. It is clear that there were no significant delays in respect of the BNY and Jupiter disinvestments as these were completed in June and July 2014 respectively. The Aviva disinvestment was delayed until September 2014, but that was because Aviva had to reissue the cheque that it originally issued in July 2014; Aviva apologised to T&M for the time that the reissuing process took.
17. There was a more significant delay, until February 2015, in respect of the Schroder disinvestment. T&M admitted partial responsibility for that delay and offered compensation for the relevant period, calculated by reference to BMac's benchmark index for a medium risk portfolio. As the trustees' application form indicated that they would accept a medium level of risk I consider that the amount of compensation offered by T&M for that delay is reasonable in the circumstances.
18. When the funds had been disinvested, they could not be transferred to BMac until its investment account had been opened and all the trustees of the Scheme had been given the new account details and had signed authorities to transfer money to that account. Bellpenny emailed details of the BMac account to T&M on 18 November 2014, saying that they were not sure whether the details had previously been provided to T&M. No evidence has been submitted to show that T&M had previous knowledge of those details, so I take the view that no transfer could have been made before 18 November 2014. It is not clear why Bellpenny did not set up the account more quickly and inform T&M of the details.
19. When the trustees' bank told T&M that Schroder's cheque was still outstanding, T&M asked Bellpenny, on 9 January 2015, if the bulk of the disinvested assets could be paid into the BMac account ahead of the Schroder transfer, and told BMac that it still needed to obtain Mr N's signature on some transfer forms. Mr N signed the two CHAPS transfer request forms on 15 January 2015. T&M sent those forms to the trustees' bank on 19 January 2015. The money was transferred to the BMac account the following day, although BMac did not inform T&M until 9 February 2015 that the account had been credited with the initial payments.
20. It seems clear from this chronology that T&M did not receive all the signed forms it needed until the middle of January 2015, so the money could not have been transferred to BMac before then.

21. T&M's role as Scheme administrator was to act on the written instructions given to it by the trustees and by Bellpenny as Mr N's financial adviser. It was not T&M's duty to take the lead on divesting and reinvesting Scheme assets. Furthermore, as a co-trustee of the Scheme, Mr N shared a responsibility with his co-trustees to ensure that all necessary documentation was executed in good time so the Scheme could operate smoothly. Therefore, I do not consider that the points raised by Mr N should cause me to make an award to him which is more generous than that expressed in the Opinion.
22. Therefore, I uphold Mr N's complaint.

Directions

23. To put matters right, within 28 days of the date of this determination TM shall pay Mr N £1,472.24 plus interest on that sum calculated in accordance with the reference banks from 1 April 2015 to the date of payment.

Anthony Arter

Pensions Ombudsman
24 June 2016