

Ombudsman's Determination

Applicant	Mr R
Scheme	Flower & Hayes Limited Executive Pension Scheme (the Scheme)
Respondents	WestBridge SSAS (WestBridge), formerly Union Pension Trustees Limited, trading as James Hay Partnership (JHP)

Outcome

1. I do not uphold Mr R's complaint, and no further action is required by WestBridge.

Complaint summary

2. Mr R has complained that WestBridge did not facilitate the in-specie transfer of two commercial properties into the Scheme and did not communicate effectively with the Scheme's lawyer.
3. Mr R said that this had delayed the overall closing of the Scheme and had resulted in him not being able to access his benefits. Mr R stated that he had needed to make other financial plans, and the process had caused him stress.

Background information, including submissions from the parties

4. Mr R was a member and trustee of the Scheme, a Small Self-Administered Scheme (**SSAS**), and JHP was the Scheme's administrator and professional trustee at the time Mr R made his complaint.
5. WestBridge purchased JHP in March 2021. Although the timeline of events below starts before the purchase, for consistency, the Scheme's administrator and professional trustee is referred to as WestBridge. Quality Solicitors Gould & Swayne (**G&S**) was the Scheme's lawyer and Mr R's representative for his complaint.
6. On 25 April 2013, WestBridge was informed of the death of one of the Scheme's members, who had died on 9 February 2013. The Expression of Wish (**EoW**) for this member was dated 1987. Given how old the EoW was, WestBridge requested further confirmation of the beneficiaries from the Scheme's Trustees (**the Trustees**).

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7. WestBridge has said that this information was not received, and that on 21 November 2016, Mr R indicated that the Trustees would confirm the deceased member's beneficiaries when the Scheme's accounts were up to date.
8. The Scheme held a 30% shareholding in a private company (**the Company**) that was being wound up. The Company's assets were valued at £1.8 million, so the Scheme's share of the assets was £0.54 million. The Company held two commercial properties (**the Properties**) valued at £0.7 million. The Trustees wanted to transfer the Properties in-specie into the Scheme. The difference in value of £0.16 million was to be paid back from the Scheme to the Company in cash.
9. On 16 November 2018, G&S wrote to WestBridge and informed it of the planned transfer of the Properties. Relevant documentation was enclosed. The letter asked whether there was sufficient cash in the Scheme to make the £0.16 million payment back to the Company, and if not, whether a loan from one of the Trustees was acceptable.
10. On 19 November 2018, WestBridge asked G&S why the Properties were not being sold and the cash proceeds transferred to the Scheme instead. On 20 November 2018, G&S confirmed that the Trustees wanted the Properties held in the Scheme.
11. On 23 November 2018, 6 December 2018, 17 January 2019 and 31 January 2019, G&S chased WestBridge for the required transaction documentation.
12. On 4 February 2019, G&S complained to WestBridge on behalf of Mr R.
13. On 11 February 2019, WestBridge acknowledged the complaint, and said that it would advise G&S of the result of the investigation within eight weeks.
14. On 4 March 2019, WestBridge said that it could not yet respond to the complaint, and it would endeavour to respond within four weeks.
15. On 1 April 2019, WestBridge wrote to Mr R and apologised for the delay in responding to his initial request, and for its subsequent poor communications. WestBridge said that before any decision could be made about the transfer of the Properties, it needed to review the deceased member's beneficiaries. WestBridge stated that it was investigating the issue and would update Mr R as soon as it had been completed.
16. On 30 July 2019, G&S requested an update from WestBridge.
17. WestBridge has said that, other than dealing with regular pension administration matters, it did not communicate with G&S or Mr R during the period August 2019 to June 2020.
18. On 15 July 2020, G&S advised WestBridge that the Trustees wanted to wind-up the Scheme, and asked what was required to achieve this.
19. On 25 August 2020, WestBridge told G&S that up-to-date valuations of the Scheme's three existing commercial properties (**the Scheme's Properties**) would be required.

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20. On 11 September 2020, G&S asked WestBridge how to wind-up the Scheme and pay benefits to the Scheme's members. On 22 September 2020, WestBridge provided a summary of the process.
21. On 1 October 2020, G&S suggested that the Scheme's Properties could be transferred in-specie to members, rather than selling them. It confirmed that it would arrange the valuations and requested that WestBridge provide the split of assets between the members.
22. On 2 October 2020, WestBridge asked G&S for more information on how the in-specie transfer to members would be implemented. It pointed out that outstanding actions needed to be completed, such as confirming the deceased member's beneficiaries, and conducting the valuations for the Scheme's Properties and its share of the Company.
23. On 2 November 2020, WestBridge confirmed that the Scheme's Properties would need to be sold at the current market price.
24. On 19 December 2020, G&S asked Westbridge what was required to progress the sale of the Scheme's share of the Company, and on 23 December 2020, WestBridge confirmed the requirements.
25. On 7 July 2021, Mr R confirmed to WestBridge that the Trustees wanted to wind-up the Scheme.
26. On 16 July 2021, WestBridge told Mr R that it was looking into the outstanding issues, as WestBridge had purchased JHP in March 2021. On the same date, Mr R confirmed that valuations for the Scheme's Properties had been carried out in March 2021, and they would be forwarded to WestBridge.
27. On 26 July 2021, G&S sent two of the three valuations for the Scheme's Properties and said that the third one would follow. G&S set out a proposal for the Scheme's sponsoring employer, Flower & Hayes Limited (**Flower & Hayes**) to purchase the Scheme's Properties and share of the Company. G&S confirmed that Mr R wanted to receive his 25% Pension Commencement Lump Sum (**PCLS**).
28. On 24 August 2021, WestBridge received the third valuation.
29. On 29 August 2021, WestBridge received property disposal forms and title deeds for the Scheme's Properties.
30. On 23 September 2021, Mr R chased WestBridge for the members' fund splits.
31. On 5 October 2021, Mr R requested a timescale for winding up the Scheme and said that he wanted it completed by the end of the year.
32. On 15 October 2021, WestBridge told Mr R that further work was required before members' fund splits could be provided. It suggested a Trustee meeting could be arranged to discuss the outstanding issues.

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33. On 29 October 2021, WestBridge queried an outstanding loan from the Scheme to Flower & Hayes and requested an estimate of the value of the Scheme's share of the Company. It also queried the lease on one of the Scheme's Properties that had expired in 2011.
34. On 1 November 2021, Mr R provided WestBridge with the Scheme's 2016 accounts.
35. On 9 November 2021, G&S provided WestBridge with amended property sale forms, which had been requested. It asked for Mr R's PCLS amount.
36. On 22 November 2021, G&S sent draft sale contracts to WestBridge for approval. Updated versions were sent on 24 November 2021.
37. On 10 December 2021, Westbridge emailed G&S requesting invoices for the valuations of the Scheme's Properties, and a summary of any additional costs, which G&S had submitted would not have been incurred if WestBridge had not caused delays. WestBridge has said that these were never received.
38. Westbridge confirmed that the members' fund splits were being investigated, but it was unable to provide a timescale due to the number of matters that were still outstanding.
39. On 15 December 2021, G&S chased WestBridge for the fund splits, as it believed they were straight forward to provide.
40. During a telephone call on 20 December 2021, G&S and WestBridge discussed the outstanding matters.
41. On 21 December 2021, WestBridge attempted to telephone Mr R to provide an update.
42. On 1 February 2022, WestBridge attempted to telephone G&S to provide an update on the members' fund splits. On the same date, G&S emailed WestBridge requesting an update, which WestBridge provided on 2 February 2022.
43. On 7 February 2022, WestBridge confirmed the following to G&S:-
 - Rent on one of the Scheme's Properties occupied by Flower & Hayes had not been paid since November 2013. A rent review should have been carried out in March 2008, and subsequently every four years, but none had taken place. The lease had expired in March 2011, and had not been renewed, but the terms of the lease had continued, as Flower & Hayes had continued to occupy the property. Market rental valuations were required as at March 2008, March 2011, March 2015 and March 2019. Once these were received, WestBridge would calculate the amount of outstanding rent due to the Scheme.
 - The valuation carried out in 2021 had been on the basis that it was unoccupied. WestBridge needed the valuation to reflect the fact that it was currently occupied.

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- The deceased member's death benefits still needed to be calculated. This required WestBridge to carry out an up-to-date fund split after the outstanding rent had been determined.
 - There had been payments made from the Scheme's bank accounts that needed to be queried.
 - A loan of £150,000 from the Scheme to Flower & Hayes was outstanding.
44. G&S proposed that the Scheme would lend £1.15 million to Flower & Hayes. This would be used to repay the £150,000 loan plus interest and pay for some of the amount for the sale of the Company and the purchase of the Scheme's Properties. G&S also said that the outstanding rent would be paid when Mr R crystallised his benefits. It said that Mr R would instruct the outstanding valuations.
45. On 14 February 2022, WestBridge emailed G&S with the following comments:-
- A loan of £1.15 million was not possible as the amount exceeded 50% of the net asset value of the Scheme and there was already an outstanding loan to Flower & Hayes that had been in default since 2013. WestBridge would find it extremely difficult to justify to HM Revenue & Customs (**HMRC**) a further loan when the existing loan was in default and Flower & Hayes owed the Scheme a substantial amount of outstanding rent.
 - The outstanding rent would need to be paid to the Scheme before the crystallisation of Mr R's benefits.
 - WestBridge asked to attend a meeting with Mr R to discuss the outstanding issues and agree an action plan. WestBridge offered to travel to Mr R for the meeting.
46. On 17 February 2022, G&S emailed WestBridge as follows:-
- It requested the net asset value of the Scheme and a timescale for when Mr R's benefits would be crystallised.
 - A meeting would only be of benefit if it resolved specific issues. It asked for confirmation that WestBridge would not charge for a meeting.
47. On 3 March 2022, WestBridge confirmed that the value of the Scheme's assets was circa £1,832,000 and that there would be no charge for a meeting.
48. On 11 May 2022, WestBridge again requested a meeting with Mr R.
49. On 27 May 2022, WestBridge provided G&S with a summary of events and outstanding actions.
50. On 22 June 2022, G&S stated the following to WestBridge:-
- The £150,000 loan to Flower & Hayes had been settled.

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- The Scheme was only entitled to receive contractual rent during the term of the lease of the Scheme's Property, and the passing rent payable after the lease's expiry continued at the same fixed level. Therefore, there was no point in seeking rental valuations after the expiry of the lease in 2011.
 - A meeting with Mr R was refused.
51. On 4 July 2022, WestBridge informed G&S that Flower & Hayes continued to be bound by the terms of the original lease, and that the lease had been holding over on the original lease terms. Under the lease terms the rent should have been reviewed every four years. Therefore, the rental valuations were still required.
52. On 25 July 2022, G&S stated the following to WestBridge:-
- The expired lease had stated that the rent review was on the fourth anniversary of the lease's commencement date, which meant that the only rent review date was in March 2008.
 - There were no other rent review dates specified. Therefore, there was no contractual right to review the rent on a date other than in March 2008.
53. On 26 July 2022, WestBridge stated the following to G&S:-
- WestBridge's interpretation of the terms of the rent review was that it should take place every four years from the commencement date of the lease and rent reviews would not cease on expiry of the lease.
 - Where a connected tenant was holding over on a lease, WestBridge needed to ensure that it complied with HMRC legislation, which meant treating the transaction at "arm's length". This was to ensure that neither party was seen to benefit from the amount of rent being paid, which could lead to unauthorised payment tax charges being applied by HMRC.
 - WestBridge accepted that it should have notified parties that the rental reviews were due, but the individual member Trustees also had responsibility to ensure that the Scheme was administered in accordance with HMRC regulations.
54. G&S said that Mr R as a Director of Flower & Hayes was required to act in the best interests of the sponsoring employer, and it was not in its best interest to pay a higher level of rent than it was contractually required to do so.
55. In reply, WestBridge stated again that HMRC required all connected tenants to operate at "arm's length", which meant the payment of open market rent.
56. On 27 July 2022, G&S stated that Flower & Hayes could not be forced to pay rent that it was not contractually liable to pay.
57. On 4 August 2022, G&S provided the outstanding rental valuations.

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58. On 5 August 2022, WestBridge acknowledged the rental valuations and said that it would provide an up-to-date fund split around mid-late September 2022.
59. On 23 September 2022, WestBridge provided G&S with the fund split.
60. During the investigation by The Pensions Ombudsman (**TPO**), WestBridge confirmed the following:-
 - After Mr R had submitted his complaint to TPO, the Trustees had requested that the deceased member's benefits were paid from the Scheme, and all of the Scheme's remaining assets were transferred out.
 - As the Scheme was already invested mostly in commercial properties, there had been insufficient liquidity to meet the Trustees' requests. The Trustees had instructed G&S to arrange the sale of the Scheme's Properties to Flower & Hayes, and WestBridge had issued appropriate instructions to G&S.
 - Payment of the deceased member's benefits could only be completed once the Scheme's assets had been sold. This was intended to be completed in October 2022, but WestBridge had not received confirmation from the Trustees to proceed. There was currently a dispute with another shareholder about the value of the Company, which had resulted in the delay in liquidating the Scheme's assets.
 - WestBridge was now acting in accordance with the Trustees' instructions.
 - The Trustees no longer wanted the Properties transferred into the Scheme, and so WestBridge had expected Mr R to withdraw his complaint to TPO.

Adjudicator's Opinion

61. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by WestBridge. The Adjudicator's findings are summarised briefly below:-
 - G&S first sent transaction documents to WestBridge on 16 November 2018. Despite G&S chasing several times during the period November 2018 to January 2019, and then complaining on 4 February 2019, WestBridge did not respond until 11 February 2019.
 - It was only on 1 April 2019, that WestBridge informed G&S that before any decision could be made about the transfer of the Properties, it needed to review the beneficiaries of the deceased member.
 - Four months later, after receiving no further update, G&S chased WestBridge again.

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- WestBridge said that it did not receive information about the value of the deceased member's share of the Scheme after the member died. However, WestBridge had several years to review the deceased member's beneficiaries before the transfer of the Properties was requested in 2018. So, WestBridge could have avoided the delay if it had completed the review sooner after the member's death.
 - WestBridge acknowledged the delays it caused and that it had not communicated effectively with G&S, so there was no dispute that there had been a problem. This amounted to maladministration.
 - The Adjudicator acknowledged that Mr R said that the delay resulted in him needing to make other financial plans. However, the Trustees subsequently decided not to go ahead with the transfer of the Properties, and the sale of the Scheme's assets was delayed significantly longer whilst the value of the assets was agreed, and the outstanding rent was paid into the Scheme. Therefore, the main reasons for the Scheme's assets not being sold were outside of WestBridge's control.
 - Mr R did not provide any evidence to suggest that he had suffered financial loss from WestBridge's contribution to the delay. So, redress in relation to financial injustice did not need to be considered.
 - Whilst there had been maladministration by WestBridge, any non- financial injustice suffered was not sufficient to warrant an award, and therefore it was unlikely that an award would be made if the complaint was referred to an Ombudsman for final decision.
62. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R's representative provided further comments which are summarised below:-
- Given the delays, Mr R had decided to liquidate the Scheme. He requested details of his share of the Scheme, and for the Scheme to be liquidated. These requests were not dealt with, and as a result, Mr R decided that Flower & Hayes would purchase the Scheme's Properties, which was now proceeding.
 - As a result of WestBridge's maladministration, Mr R had paid additional legal costs in having to change his plans twice. He had numerous valuations carried out, which had expired owing to the delays. Mr R had not been able to retire and draw his benefits, as WestBridge had not carried out regular reviews of the Scheme.
 - It was not until 23 September 2022 that Mr R was provided with details of his share of the Scheme.
63. Mr R's comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

64. Mr R complained that WestBridge did not facilitate an in-specie transfer of the Properties into the Scheme and it did not communicate effectively with G&S. Mr R said that this had delayed the overall closing of the Scheme and had resulted in him not being able to access his benefits.
65. WestBridge took over four months to inform G&S that before any decision could be made about the transfer of the Properties, it needed to review an issue about the beneficiaries of the member who had died in 2013. Having not received any further updates for four months, G&S chased WestBridge for a response. There was then a period between August 2019 and June 2020, when WestBridge did not pursue the issue nor update G&S with progress. While also neither Mr R nor G&S pursued the issue, I find that these delays by WestBridge amounted to maladministration.
66. Mr R has said that this caused the delay in the closure of the Scheme and resulted in him not being able to retire and draw his benefits. On 15 July 2020, G&S informed WestBridge that the Trustees wanted to wind-up the Scheme. However, before selling the Scheme's assets, the assets needed to be valued. WestBridge informed G&S of this on 25 August 2020. Valuations for the Scheme's Properties were provided almost a year later, on 26 July 2021 and 24 August 2021.
67. Rent on one of the Scheme's Properties occupied by Flower & Hayes had not been paid since November 2013. Therefore, rental valuations and payment of the outstanding rent were also required before the Scheme's assets could be valued, and the Scheme wound up. WestBridge informed G&S of this on 14 February 2022. I accept that WestBridge should have informed G&S of this sooner, but Mr R would already have been aware of the rent situation in his role as a Director of Flower & Hayes.
68. Mr R would also have been aware of the outstanding loan to Flower & Hayes, and it was not until 22 June 2022 that G&S confirmed that the loan had been repaid to the Scheme. WestBridge did not receive the rental valuations until 4 August 2022, and then it provided the Scheme's valuation and fund split on 23 September 2022.
69. I find that while WestBridge did cause some delays, the main reasons for the Scheme's assets not being valued and subsequently sold were outside of WestBridge's control. On this basis, I do not agree that WestBridge was the cause of Mr R having to pay additional legal and valuation costs.
70. I appreciate that WestBridge's delays may have caused Mr R some nominal distress, but I do not consider that it reached the minimum threshold to warrant that I direct WestBridge to make a distress and inconvenience award.

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71. I do not uphold Mr R's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
8 August 2023