

Ombudsman's Determination

Applicant	Mr N
Scheme	The Blackwell 1965 Ltd Executive Pension Scheme (the Scheme)
Respondents	Rowanmoor Group plc (Rowanmoor), including specifically its subsidiary, Rowanmoor Trustees Limited (RTL)

Complaint Summary

Mr N has complained that Rowanmoor failed to perform sufficient due diligence in relation to his proposed investments in The Resort Group (**TRG**). He says these investments were high risk and not suitable for him. He would like Rowanmoor to put him back into the position he would have been in had the investments never occurred.

Summary of the Ombudsman's Determination and reasons

The complaint is not upheld against Rowanmoor as Administrator, as it was not its responsibility to carry out the level of due diligence suggested by Mr N, and because it fulfilled the duties it did have in relation to the Scheme adequately.

However, the complaint is upheld against RTL because it did not fulfil its duties as a trustee of the Scheme. As a part of these duties, it had a responsibility to consider whether the investment in TRG was appropriate in the circumstances. However, it failed to do so, the investment was not appropriate and thereby its actions caused the financial loss incurred by Mr N.

Detailed Determination

Material facts

1. 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.
2. Mr N was advised by an unregulated introducer, First Review Pension Services (**FRPS**), to invest in TRG. FRPS also recommended that he invest via a Small Self-Administered Scheme (**SSAS**) with Rowanmoor.
3. A SSAS is a type of Occupational Pension Scheme with fewer than 12 members, all of whom are trustees and take responsibility (together with any professional trustees appointed through the Scheme's Trust Deed and Rules) for how scheme funds should be invested in accordance with the Scheme's Rules.
4. On 28 September 2015, Mr N completed an application to establish the Scheme with Rowanmoor (the **Application**). Mr N is the only member of the Scheme.
5. The application showed that an unregulated investment adviser, Broadwood Assets Ltd (**Broadwood**) was providing advice to Mr N in his role as the Member Trustee. The proposed investment was shown as a fractional ownership of a hotel suite in Cape Verde made by way of membership of a UK Limited-by-Guarantee Company (the **LBG Company**).
6. Also on 28 September 2015, Mr N completed a Property Development Information Schedule which confirmed that he intended to purchase a 25% share in a plot which was part of a hotel development in Cape Verde offered by TRG. The purchase price was noted as £46,800 and was to be funded by the transfer of £56,732.85 from Mr N's existing pension arrangement with Prudential.
7. On 23 December 2015, RTL joined the Member Trustee in the transaction to invest by entering into an Agreement for the Sale of Membership of a Company (in this case the LBG Company). The investment was made by way of a fractional ownership certificate relating to a hotel property in Cape Verde offered by TRG. The purchase was to be financed through the Scheme, following transfers from other pension arrangements.
8. The Foreign and Commonwealth Office has since at least April 2013 warned of the risks of purchasing property in Cape Verde: "Many British nationals have experienced serious problems when buying property in Cape Verde. Before buying property anywhere on the islands, you should seek independent qualified legal advice".
9. The Scheme was established by an Interim Deed. This appointed RTL as the first Trustee. A subsequent Deed of Appointment and Amendment, and Definitive Trust Deed and Rules (**TD&R**) appointed Mr N as Member Trustee, alongside RTL as the 'continuing trustee'. The TD&R was signed by Mr N, both in his role as the sole director of the principal employer and in his individual capacity as the Member Trustee, and RTL as the continuing

Independent Trustee. The TD&R replaced the Interim Deed as the governing documentation of the Scheme.

10. On 19 October 2015, Rowanmoor wrote to Mr N regarding his proposed investment (the **Reason Why Letter**). Rowanmoor said that it understood that Mr N wished to invest in a fractional ownership certificate relating to property in Cape Verde. It said:-

“Whilst we are able to inform you of the eligibility of such an investment under current pension legislation and the Trust Deed and Rules of the pension scheme, we do not endorse or recommend the services of any particular investment company, nor can we advise on the suitability of and risks attached to the proposed investment. In addition we cannot advise on the complexities of the legal process of acquiring property in an overseas territory or in relation to the contractual documentation. Nor are we able to advise on the developer’s title to the land.

As with all complex investments we would strongly recommend that before proceeding you take appropriate legal and other professional advice in the matter, as this may prevent issues going forward and reduce the possibility of incurring unnecessary costs in the future. You should also ensure that before proceeding you have seen and read the purchase contract and associated documentation related to the investment...

...Rowanmoor Group excludes, to the maximum extent permissible by law, all liability in connection with your proposed purchase of the investment or resulting from such purchase, having drawn your attention in this letter to potential issues involved.”

11. It is not clear to me whether this was written by Rowanmoor as Administrator, in respect of RTL’s role as Independent Trustee, or was intended to cover all aspects of Rowanmoor’s involvement. Certainly there was no indication in the letter that any of the issues raised might also be something that should be considered by RTL as co-trustee.
12. On 27 October 2015, Mr N completed and signed an acknowledgement to the Reason Why Letter in which he confirmed that he understood that there were risks inherent in the proposed investment and that Rowanmoor would not be liable. Mr N confirmed that he did not wish to appoint legal advisers.
13. Mr N, as the Client, then signed a Client Agreement (**the Client Agreement**) and this, in turn, was signed by Rowanmoor and RTL. The Client Agreement set out, amongst other things, the services to be provided to Mr N. As well as those services to be provided by Rowanmoor, RTL would also provide “trustee services” including specifically ongoing “professional responsibility as Independent Trustee for the Scheme.”
14. As explained in paragraph 9 above, the Scheme is governed by the TD&R. The TD&R defines ‘Independent Trustee’ as RTL and ‘Member Trustees’ as the trustees of the Scheme other than the Independent Trustee. In this case the only Member Trustee was Mr N. The meaning given to ‘Trustees’ is “the Member Trustees and the Independent Trustee collectively for the time being appointed.”

PO-28733

15. Clause 3 of the TD&R appoints Rowanmoor Group plc as the sole Administrator of the Scheme.
16. Mr N has complained that the investment is not generating adequate returns, and it is illiquid. He says other investors who have tried to sell their investments have been unable to do so and in terms of being an asset with which to fund retirement, it is effectively worthless.
17. Mr N accordingly believes he has lost his pension fund.

Summary of Rowanmoor's position

18. The facts of this case and the roles of Rowanmoor as Administrator and Independent Trustee in relation to the Scheme are substantially the same as those in the case of PO-25984 which was issued in February 2024. As Rowanmoor has not provided any further explanation of its position in relation to this specific case, I have proceeded on the basis that its explanation of its position remains as stated in paragraphs 26-35 of PO-25984 and I have decided this case accordingly.

Lead case – and incorporation of other complaints that share material facts

19. Case PO-25984 set out my detailed analysis of the role and responsibilities of Rowanmoor and RTL as Administrator and Trustee respectively (some of which I repeat below), in relation to the correct approach to a decision to make an investment in accordance with the rules of that scheme, overriding legislation and relevant case law. That case also dealt with an investment in TRG. It was one of a number of complaints that my office has received in relation to SSASs where Rowanmoor and RTL act as Administrator and Trustee, although many have different underlying investments that resulted in that complaint being made.
20. As a result, there are a considerable number of cases which share material facts, such that a decision to uphold the complaint in one would mean that the others in that category would also be upheld. Here, the cases listed in the Appendix all involved investments in TRG and share key, material facts.
21. Accordingly, the outcome of this case shall also apply to those cases listed in the Appendix to this Determination.

Conclusions

Rowanmoor as Administrator

22. The TD&R states that “Rowanmoor Group plc will be the sole Administrator with effect from the Commencement Date”, while the Client Agreement entered into between Mr N, Rowanmoor and RTL states that Rowanmoor will provide administration services. I shall therefore address my conclusions as to the role of the Administrator to Rowanmoor.

23. Under the terms of the Client Agreement, “RGPLC shall provide establishment, actuarial, administrative and consultancy services and RTL shall provide trustee services to the Client. These services are specified in Schedules 1 and 2.”
24. Schedule 1 of the Client Agreement sets out the services included in the establishment of the Scheme; Schedule 2 details the services included in the Annual Administration Fee; and Schedule 3 specifies the Additional Services not covered by that fee.
25. The Annual Administration Fee in Schedule 2 covers:
 - “Ongoing responsibility as the Independent Trustee for the Scheme.
 - Ongoing responsibility as Scheme Administrator.
 - Routine administration of the Scheme including executing allowable investment instructions...
 - Processing a request to make a direct investment (basic)...
 - Guidance on the day to day running of the Scheme, the acceptability of investments (other than those to be held offshore or overseas), interpretation of the Trust Deed and HMRC practice...”
26. Having carefully considered the role and responsibilities of the Administrator under the Client Agreement and the TD&R, for the reasons set out in PO-25984 I find that Rowanmoor discharged its responsibilities in this aspect in a broadly satisfactory manner, and I therefore do not uphold Mr N’s complaint against Rowanmoor insofar as it relates to the overall administration of the Scheme.

RTL as Trustee

27. However, in this case, there is more than just the role of Administrator to consider.
28. Mr N has also complained about the suitability of investments chosen and held by the Scheme, which is the responsibility of the Trustees. In this case, Mr N is not the sole trustee. Rather, he and RTL are the joint Trustees of the Scheme.
29. The Pensions Ombudsman has seen a number of complaints from individuals who have transferred their pensions into SSASs where the member is the sole trustee and thus solely responsible for investment decisions. The only other entities involved are unregulated advisers and administrators – the former falling outside of my remit, while the latter have limited duties in respect of due diligence etc (see my predecessor’s decision in PO-16688 from January 2022).
30. Here a different model and set of responsibilities arise. Although it was under no obligation to do so, RTL has installed itself as a joint Trustee. RTL was providing its professional services as an “Independent Trustee” to this Scheme for a fee. Therefore, it was also, in

my view, acting as a professional trustee, which brings with it added responsibilities and duties (and I explore this further below).

31. With that in mind, I must judge the actions of RTL against the obligations it assumed under the TD&R (as well as any other contractual provisions), together with the legislative requirements and standards expected of a professional pension scheme trustee, at the time that the relevant investments were made, taking into account the applicable case law.

The role and duties of RTL as Independent Trustee under the TD&R

32. In PO-25984, I set out the legislative obligations, and the common law duties and standards expected of an independent trustee such as RTL, and then analysed whether RTL had achieved these. After careful consideration, I concluded that it had not. My reasoning for this conclusion was set out in paragraphs 71-90 of that Determination. Given that the facts of this case, the role of RTL and the Scheme documentation are to all intents and purposes the same as in PO-25984, I have applied the same reasoning and have reached the same conclusion; that RTL has not met its legislative obligations, common law duties and standards expected of an independent trustee.

Investment loss

33. Having found that RTL has not fulfilled the duties and obligations that attach to it as a Trustee of the Scheme, I will also consider whether Mr N has suffered any loss. As a part of this, it is necessary to consider whether or not the actual investment made was one which no other reasonable trustee might make (*Nestle v National Westminster Bank PLC 1993, 1WLR 1260*).
34. In my view, there are a number of reasons why (which are again set out in detail in PO-25984), in the circumstances of this case, had RTL properly applied itself to its trustee duties, it, and no other reasonable trustee, would have made the investment in TRG. As such, it was in breach of the duty of care owed by RTL as Trustee and fell below the standard of care owed by RTL to Mr N.
35. Firstly, as with any assessment of this type, it is necessary to look at the economic and factual circumstances of the time. Although the risks of TRG are well known now, it would be wrong to apply that knowledge with hindsight to an investment made at the time in question.
36. To assist with this, I have considered what knowledge was available at the time the investment was made.
37. In deciding whether this amounted to a reasonable investment, one should consider the context – and in particular, the circumstances of the individual member and the nature of a pension scheme. One should also have regard to the requirement to consider diversification of investments.

38. In my view, the level of diversification was such that the risk attached to the portfolio as a whole was very, and unacceptably, high – to the extent that, again, I find that no reasonable trustee would have made such a decision.
39. Furthermore, the circumstances of Mr N are such that, in my view, a trustee exercising its powers in the best financial interests of the (sole) beneficiary would not have invested in TRG. In my view speculative investments of this type, having regard to those circumstances, were clearly inappropriate.
40. As a result, I find that investing the bulk of the Scheme's assets in TRG was very high-risk and speculative in nature. Having regard to the circumstances of the member, the lack of diversification of investment and the knowledge of the time, I find that the investment was one which no reasonable trustee would have made and was in breach of the standard of care in relation to investments owed by RTL, as a trustee, to Mr N. It showed a lack of regard for the member's financial interests and amounted to a failure to avoid hazardous investments, contrary to the requirements imposed on trustees by *Cowan v Scargill* [1984] 2 All ER 750 and *Learoyd v Whiteley* [1887] 12 AC 727, amongst others.

Where liability rests

41. Having now decided that RTL failed to meet its obligations as Independent Trustee, by failing to perform its duties or meet the standard of care required of it and having found that the investment in TRG was one that no reasonable trustee would have made, it is now necessary to decide where the liability for those errors sits.
42. Although Mr N is bringing his complaint as the beneficiary of the Scheme, he is also the Member Trustee. RTL and Mr N are jointly the Trustees and exercise the power of investment together. So, in order for Mr N to succeed with his complaint, he needs to be able to sue/hold liable the professional trustee in relation to an investment he agreed to make; and any resulting redress must either be directed on a joint and several basis against the trustees (including, of course, himself) or apportioned between them.
43. In PO-25984, at paragraphs 108-126, I examined the issues outlined in the preceding paragraph, and I concluded that I have the power to direct a specific apportioned contribution by a trustee responsible for breach of trust, and not simply fall back on the joint and several liability between trustees. The position of the parties in this case is substantially the same as that in PO-25984, and therefore apportionment of contributions, rather than joint and several liability, is accordingly appropriate in this case as well.

Exonerations and Indemnities

44. Having found the Trustees in breach, we should now turn to whether they are afforded any protection. In particular, the Trustees benefit from exoneration and indemnity provisions in the TD&R. The substantive provisions of the TD&R in this case are identical to those in PO-25984, and from my perusal of those TD&R I concluded at paragraphs 127-136 that the exoneration and indemnity provisions in respect of the Trustees (or RTL specifically under the Reason Why Letter) were not effective in relation to that case, and so by extension they are not effective here.

Quantification of the loss

45. The final issue to address is whether Mr N has suffered a quantifiable loss which is capable of remedy and apportionment.
46. The investment in TRG appears to have been lost in its entirety. RTL as co-trustee and a professional trustee, for reasons given previously, had a duty to ensure that the investment was suitable and should not have agreed to it if it found it was not. RTL failed to do so, and I find this to be a breach of duty and maladministration.
47. However, I am mindful of the fact that Mr N is a co-trustee of the Scheme, and as the sole member, he is required to agree to any proposed investment and so I must consider whether an apportionment of liability for any loss that Mr N has suffered is appropriate.
48. Despite Mr N's position as a co-trustee, and the need for him to agree to investment choices as Member under the TD&R, had RTL fulfilled its professional trustee responsibilities in an appropriate manner, it would have been fully engaged in the process of selecting Scheme investments, and would have liaised with Mr N as co-trustee in the process. Had it done so, it would have become apparent at a very early stage that this was an inappropriate investment in all the circumstances.
49. Given this, and the fact that under Clause 8 of the TD&R "Decisions at Trustee meetings must be unanimous", RTL was uniquely placed, both in terms of its being able to apply its professional judgment as to the suitability of the proposed investment for the Member, and to prevent the investment from proceeding in the event that it determined that it was not suitable. Although Mr N was of course also a trustee, he was not in a position and did not have the knowledge and understanding to be able to appropriately assess the suitability or otherwise of the proposed investment, and so I do not consider that he should be deemed equally responsible for the position he now finds himself in.
50. Furthermore, this is not a case where RTL tried but failed to do enough to fulfil its duties; rather it seems to me that it failed to understand its duties and make any attempt to meet them, notwithstanding that it appeared to continue to charge for those services.
51. To conclude, having considered all the evidence and relevant case law, I find that the appropriate apportionment of responsibility – taking into account RTL's status as a professional trustee with considerable experience of SSAS management and trusteeship – to be 80% for RTL and 20% for Mr N.
52. I therefore uphold Mr N's complaint against RTL.

Directions

53. My intention in these Directions is to, as far as possible, put Mr N back into the position he would have been in had the investment in TRG not taken place, recognising Mr N's partial liability as a trustee of the Scheme. As a part of that, Mr N should largely recover the costs and taxes paid in respect of that investment and should not be left with any ongoing liability for costs and charges relating to the TRG investment in the future. Furthermore, its continued presence as an investment in the Scheme should not in any way prevent or

delay Mr N's ability to transfer his funds away from the Scheme to another arrangement, should he wish to do so.

54. Within 28 days of the date of this Determination, RTL shall contact Prudential to obtain a notional value for Mr N's former policies as at the date of this Determination, assuming that: (i) they continued to be invested in the same funds that they were at the point they were transferred out, (ii) charges continued to be deducted from the funds, The figure produced shall be the "**Notional Value**". Although I am unable to direct Mr N, as an applicant, to take any particular steps, I am sure he will appreciate that he may be asked to give RTL his authority to enable it to obtain this information to assist in assessing his loss.
55. The actual value of the Scheme shall be calculated as at the date of this Determination by including the TRG investment, any investments other than TRG, any amounts arising under paragraphs 56 to 57 below, any cash sum held within the Scheme and any sums already received by Mr N or transferred elsewhere, less any contributions or transfers made into the Scheme after the investment into TRG and any currently outstanding administration charges yet to be applied to the Scheme (**the Actual Value**). This sum should be deducted from the Notional Value to arrive at Mr N's initial loss amount (**the Initial Loss Amount**). RTL shall then establish the commercial value of the TRG investment from TRG, and pay that sum into the Scheme, with RTL taking ownership of the investment.
56. If a valuation cannot be reached, the TRG investment shall be valued at £1 and purchased by RTL. That £1 shall be paid into the Scheme.
57. If RTL is unable to purchase the TRG investment, then it may seek to sell it on the open market, with any proceeds of the sold investment being paid into the Scheme.
58. If RTL elects not to or is unable to sell the TRG investment on the open market within 90 days of the date of this Determination, then it shall value the investment at nil in calculating Mr N's loss and take such steps as may be required to ensure that neither the Scheme nor Mr N personally incurs any further costs, charges, expenses or other liabilities in relation to the investment.
59. Whichever option is followed, if the Actual Value, including any amount paid in under paragraphs 56 to 57 is less than the Notional Value, RTL shall pay into the Scheme a sum equivalent to 80% of the Initial Loss Amount. The payment should also allow for any available tax relief, subject to the sum actually paid into the Scheme equating precisely to the sum equivalent to 80% of the Initial Loss Amount.
60. A representative of certain complaints listed in the Appendix has argued for redress to be paid directly to the Applicant. I have considered this argument, but I find that payment of redress is to be made to the Scheme (and not direct to Mr N) in order to put him, as near as possible, back into the position he would have been in had RTL's breach of duty and maladministration not occurred. I am satisfied that this approach is appropriate in the circumstances.

PO-28733

61. Finally, RTL shall pay Mr N the sum of £1,000 to reflect the materially significant distress and inconvenience that he has suffered as a result of its failure to discharge its duties as co-trustee in relation to the selection of suitable investments. This is the same sum as I awarded in the similar case of PO-25984 in February 2024. It might be argued that Mr N has not encountered the same level of distress and inconvenience as the Applicant in that case, but given RTL's failure to apply the principles that I clearly established in PO-25984 to other similarly impacted customers, I consider the award appropriate in the circumstances.

Dominic Harris

Pensions Ombudsman
14 November 2024

Appendix

Mr N's complaint is the lead case for a group of linked cases listed below, where each applicant transferred their pension to a Rowanmoor SSAS, and then incurred financial loss as a consequence of investing in high-risk investments. The material facts of the cases are very similar, such that if I were to determine each one separately, I would uphold them on the same basis as the present case. As such, my findings and directions in this case apply equally to all the cases listed below (although, of course, RTL will need to contact different transferring arrangements, in order to ascertain the Notional Value for the purposes of paragraph 54 above), and RTL shall apply the appropriate remedy for each.

Case reference	Applicant	Details
CAS-58152-J6Z0	Mr S	Three transfers to Rowanmoor SSAS on 06/01/2016 (L&G), 27/01/2016 (Royal London) and 15/04/2016 (B&CE). Invested in TRG Llana Beach.
CAS-62345-P4G7	Mr R	Transfer to Rowanmoor SSAS on 21/12/2015. Invested in TRG Llana Beach.
CAS-57911-X4H2	Mrs R	Transfer to Rowanmoor SSAS on 16/11/2015. Invested in TRG Llana Beach.
CAS-27463-T0C6	Mrs N	Transfer to Rowanmoor SSAS in November 2015. Invested in TRG Llana Beach.
CAS-70874-R9V6	Mr E	Two transfers to Rowanmoor SSAS on 08/10/2015 (Standard Life) and 09/11/2015 (Royal London). Invested in TRG Llana Beach.
CAS-87888-Z8G8	Mr N	Transfer to Rowanmoor SSAS on 27/07/2015. Invested in TRG Llana Beach.
CAS-30150-H7Z8	Mr E	Two transfers to Rowanmoor SSAS on 07/08/2015 (Old Mutual) and 27/08/2015 (Aegon). Invested in TRG Llana Beach.
CAS-57979-G4S6	Mr N	Transfer to Rowanmoor SSAS on 16/07/2015. Invested in TRG Llana Beach.
CAS-36844-N7B6	Ms L	Transfer to Rowanmoor SSAS in July 2015. Invested in TRG Llana Beach.
CAS-58146-V7J5	Mr E	Transfer to Rowanmoor SSAS on 02/07/2015. Invested in TRG Llana Beach.
CAS-55269-Y9M4	Mr H	Transfer to Rowanmoor SSAS in February 2015. Invested in TRG White Sands Beach
CAS-57878-X6Z9	Miss H	Transfer to Rowanmoor SSAS on 20/02/2015. Invested in TRG Llana Beach.
CAS-58064-G4K9	Mr S	Two transfers to Rowanmoor SSAS from Old Mutual and Zurich in February 2015. Invested in TRG White Sands Beach
CAS-57905-V9L7	Mr N	Transfer to Rowanmoor SSAS in February 2015. Invested in TRG White Sands Beach
CAS-64871-H0N9	Mr N	Transfer to Rowanmoor SSAS on 19 December 2014. Invested in TRG White Sands Beach

CAS-88248-P3W2	Mr N	Two transfers to Rowanmoor SSAS in December 2014 and February 2015. Invested in TRG Dunas Beach. Mr N and TRG entered a Revocation Agreement on 11/10/2019 but Mr N has not received payment.
CAS-85091-Q7D6	Mr N	Two transfers to Rowanmoor SSAS on 24/03/2014 (Prudential and 25/06/2014 (Friends Life). Invested in TRG Dunas Beach
CAS-73984-V7Y6	Mr H	Transfer to Rowanmoor SSAS in April 2014. Three investments in TRG Llana Beach totalling £58,500 ¹
CAS-51852-C2B8	Mr S	Transfer to Rowanmoor SSAS on 27 May 2014. Two investments in TRG White Sands Beach totalling £85,112.50
CAS-52880-X1S0	Mr N	Transfer to Rowanmoor SSAS on 1 April 2014. Invested in TRG Llana Beach ²
CAS-57891-W4K9	Mr S	Two transfers to Rowanmoor SSAS on 03/02/2014 and 19/05/2014 (LV) and 25/02/2014 (Zurich). Invested in TRG Dunas Beach
CAS-70659-N3X8	Mr T	Transfer to Rowanmoor SSAS on 07/02/2014. Invested in TRG Dunas Beach
CAS-34192-G2P3	Mr S	Two transfers to Rowanmoor SSAS from Scottish Widows and Prudential in January 2014. Invested in TRG Llana Beach
CAS-105088-W5R7	Mr T	Transfer to Rowanmoor SSAS on 06/05/2014. Invested in TRG Dunas Beach

¹ Known to have been partially compensated by FSCS for advice.

² Known to have been partially compensated by FSCS for advice and to have had complaint to FOS against Phoenix (AXA ceding scheme) upheld in principle but not yet compensated.