

## **Determination Mr N v Boal & Co – Deputy Pensions Ombudsman Isle of Man - 31 October 2018**

Applicant – **Mr N**

Pension Scheme – Synergy International Pension Scheme (the “**Scheme**”)

Respondent – Boal & Co as manager and administrator of the Scheme (“**Boal & Co**”)

### **Determination – Mr N v Boal & Co**

#### **1. Complaint Summary**

- 1.1 Mr N has complained about:
  - 1.1.1 alleged poor service levels by Boal & Co over a period from May 2016 to at least July 2017, including:
    - 1.1.1.1 the time taken to process a request for a second payment of his “drawdown pension” in 2017;
    - 1.1.1.2 the time taken to process Mr N’s request to take responsibility for choice of his investments under the Scheme from his independent financial adviser between 20 June 2017 and 31 July 2017;
    - 1.1.1.3 the time taken to provide a figure for the exit penalty which would be levied in response to a request for information from his financial advisers in May 2016;
    - 1.1.1.4 general delays and inadequacy in responding to his subsequent complaints and requests for explanations of the reasons for the delays, which Mr N considers together demonstrates systemic failures in the administrative systems of Boal & Co;
  - 1.1.2 the alleged lack of a proper apology for these delays; and
  - 1.1.3 alleged untruthful statements made by Boal & Co staff in their explanations for the delays and an alleged unjustified attempt to blame the Trustee of the Scheme (**BWCI**) for certain of the delays. Mr N alleges that the delays were caused by inaction by Boal & Co and were not due to delays by the Trustee.
- 1.2 For the reasons set out below:
  - 1.2.1 I uphold Mr N’s complaint of maladministration in relation to complaints 1.1.1.1, 1.1.1.2 and 1.1.1.3 above;
  - 1.2.2 I partially uphold his complaint in relation to 1.1.2 as the apology given only covered part of the reason for the delay in appointing Mr N to take over responsibility for the investment decisions; and
  - 1.2.3 I do not uphold complaints 1.1.1.4 and 1.1.3.

## 2 Background

- 2.1 The background to the allegations is set out in a detailed summary of Mr N's complaint (**Complaint Summary**) prepared by Mr N with accompanying documents referred to as Documents A to F in the Complaint Summary. I have not set all this information out again in full in the determination.
- 2.2 Mr N has also prepared a very detailed timeline of the email and other correspondence which I have referred to in reaching this determination. I have also obtained additional emails from Boal & Co which I have reviewed.
- 2.3 Mr O'Neill of Boal & Co responded originally to Mr N's allegations in an email dated 15 August 2018 (**Response**), which Mr N responded to with comments in red on 4 September 2018 and Boal & Co then commented on in green in an email response on 10 September 2018 (**Additional Response**).
- 2.4 Following the issue of my provisional determination, Mr N has made further representations, ("**Supplementary Representations**"), among other things, to the effect that in the period from 27 June 2017 to 25 July 2017 (a four week period) Boal & Co:
- 2.4.1 did not put BWCI's request for an indemnity from Mr N into a to do/action file;
  - 2.4.2 they did not send any indemnity to Mr N nor did they request Mr N to sign and return any form;
  - 2.4.3 they did not appear to have any "chase mechanism" in their procedures to follow up the original request in 1, 2,3 4 weeks;
  - 2.4.4 they don't appear to have any supervisory input to highlight processes that weren't taking place.
- Accordingly Mr N alleges that for 4 out of the 5 weeks for the delay in processing the request for the indemnity was caused by their maladministration.
- 2.5 Mr N then goes on to allege that in their response to Mr N Boal & Co was untruthful in blaming BWCI for the delay when Mr N considers the delay was entirely due to Boal & Co and Boal & Co untruthfully tried to shift the blame onto BWCI. Mr N further considers that the apology was inadequate as it included the explanation that "sometimes delays are unavoidable" when Mr N considers that 4 weeks of the delay was entirely due to actions by Boal & Co. I will consider both points further below.
- 2.6 In addition to various complaints referred to in Section 1 of this determination I will also, as these points have been specifically referred to by Boal & Co in the Additional Response, make some more general observations on the "Capstone allegations", the additional work carried out by Boal & Co and the trustees to assist Mr N.
- 2.7 I should perhaps note at this stage in the determination that Boal & Co have already apologised to Mr N in relation to certain delays referred below where it took Boal & Co longer than their service standards to deal with Mr N's requests, Boal & Co also have provided compensation for the distress caused by waiving 50% of their annual fee amounting to £665 which is what I would expect a good administrator to do in the circumstances. Mr N however does

not consider that the compensation provided and apologies received were adequate and has made the allegation that the apology was conditional and that certain Boal & Co responses made were untruthful.

2.8 It may also be helpful before looking at the specific complaints in more detail to consider what it is reasonable to expect in terms of service levels from a manager/administrator of a pension scheme such as the Scheme. I will then consider whether Boal & Co's service levels meet these standards.

2.9 I should also note that although Mr N's pension scheme is set up under Guernsey trusts I am satisfied I still have jurisdiction to consider the complaints against Boal & Co by virtue of the fact that Boal & Co is an Isle of Man manager and administrator of the Scheme. When commenting on the tax law issue in relation to drawdown it should be appreciated that Channel Islands tax law governs Mr N's ability to access his pension under drawdown.

### **3 What are reasonable service levels from a manager/administrator of a pension scheme such as the Scheme?**

3.1 A manager/ administrator of a pension scheme such as the Scheme, adopting good administrative practice, should have service levels in place in relation to the various tasks which need to be performed in relation to the pension scheme and systems in place to monitor performance against these service levels. The service levels will not generally require immediate turn-round of requests from members. Members do need to recognise that a manager/ administrator will deal with multiple requests from many members so not all requests can be turned round immediately.

3.2 I would also expect a good manager/ administrator to be pro-active if they are waiting for a response from a third party and not merely respond reactively as and when they are chased by members.

3.3 I would also expect a manager/ administrator to respond promptly to reasonable requests for information from members and deal with any complaints raised promptly and in accordance with an internal complaint procedure professionally and politely with a view to seeking to resolve the matter.

3.4 Members should also seek to deal with matters politely and in a measured and proportionate fashion. If allegations are made in a public forum then they need to be in a position to justify them on grounds of truth or fair comment.

### **4 Alleged Delayed Pension Payments and inability to access additional funds under the drawdown arrangements under the Scheme**

4.1 Mr N has complained about the delay in making a pension payment and his inability to access funds under the drawdown arrangements.

4.2 Mr N had been told previously, I understand, by his financial adviser, that he was able to take one pension payment before the beginning of one tax year and another at the beginning of the next tax year. The rules relating to pension drawdown in Channel Island schemes, I understand, had been, explained to Mr N and his adviser (a different individual to whom he had dealt with previously). The rules for pension drawdown under Guernsey law relate to a pension year not a tax year. The HMRC definition of a "pension year" under Guernsey tax requirements is "*The maximum amount of drawdown pension over a pension*

*year. A pension year for an arrangement runs for 12 months from the date the member first designates funds to provide drawdown pension under the arrangement. Each subsequent pension year follows from that date."*

- 4.3 I accept Boal & Co's explanation about the applicable tax rules in the Channel Islands relating to the circumstances in which the additional pension payment could be taken i.e. that under the drawdown regime to which he was subject the rules relate to "pension year", not a "tax year".
- 4.4 It took 13 working days to calculate the amount. Boal & Co have explained in their Response that the drawdown calculation in April 2017 was not processed in Boal & Co's standard turnaround time of 5 working days.
- 4.5 Boal & Co originally explained that the reason that it took 13 days to process the request was due to a delay in producing the actuarial drawdown figures. Boal & Co state that as well as standard Government Actuary's figures their actuarial team gather additional information specific to the member's scheme. The calculation includes known fees, and looks at the investment of the fund and uses assumptions for investment growth based on these investments. Boal & Co stated that they consider that this provides the member with a better indication of a pension level which could be sustained.
- 4.6 Mr N disputes that this was the actual explanation for the delay and notes that the only figure shown in the previous valuation was the GAD maximum figure and that Boal & Co already had all the information available to deal with the calculation. Mr N considers that the real reason for the delay was down to Boal & Co not dealing efficiently with his request. I agree that this is correct. Boal & Co did not deal efficiently with the request but this made no difference to his ability to access additional funds from his pension which was due to Guernsey tax law requirements.
- 4.7 Boal & Co did however effectively admit this later in their review of the complaint. When Mr Winrow reviews the complaint he states in his apology in his email of 7 September 2017

"Dear Mr [N]

After an independent review of your case **I would like to issue you with an apology** [emphasis in red by Deputy Pensions Ombudsman].

*On behalf of Boal & Co I want to extend **my sincere apologies** [Emphasis in red by Deputy Pensions Ombudsman] for the delays in communication with your in dealing with your queries. **In particular, 13 days is not an acceptable time to take to produce a drawdown calculation** [emphasis by Deputy Pensions Ombudsman] and the 5 weeks without communication regarding your options and your request to manage your own investments was also unacceptable. Occasionally delays are unavoidable, but our staff are trained to keep the customer informed of any possible delays and I am sorry that this was not the case for you.*

*I understand your frustration at not having received a timely follow up to your queries. At Boal & Co we pride ourselves on delivering high quality service and we work hard to deliver this. In your case, our delays in communication have let you down **and for that I am sorry** [emphasis in red by Deputy Pensions Ombudsman].*

- 4.8 On 7 September 2017 Boal & Co have therefore apologised and admitted that the 13 day delay was not an acceptable time to produce a drawdown calculation whatever has been said previously.
- 4.9 Mr N considers however that this apology was not adequate because of the statement in the apology that "Occasionally delays are unavoidable" which he takes to mean that Boal are saying in this case the 13 day delay was unavoidable. The wording of the apology is not perfect. However, in relation to the drawdown complaint in my view Boal & Co have apologised adequately for the delay in producing the calculation and not merely for communication delays – the reference to delays being sometimes unavoidable does not qualify this part of the apology. Boal & Co have said the 13 day delay was not acceptable and have apologised for it and in my view such an apology is adequate.

5. **Delays processing Mr N's request to take over responsibility for his investments and process the request for the indemnity**

- 5.1 Mr N has also complained about the turn-round time of 5 weeks in relation to dealing with the request to take over responsibility from his financial adviser for giving instructions in relation to his investments.
- 5.2 In my view there was maladministration on behalf of Boal & Co. About 4 weeks of this delay was due in part (but not entirely – see below) to Boal & Co failing to follow up a request for sign off from BWCI for authorisation for Mr N to take over responsibility for giving instructions on investments during the period 20 June and 25 July 2017 and missing an email request for an indemnity form from BWCI for a month from 17 June to 25 July. I would however note that BWCI did not, however, sign off on the request until 31 July 2017 and Mr N must also accept responsibility for part of the delay as he made an active decision not to chase as he wanted to see how quickly Boal & Co dealt with his request. This is not the best way to achieve adequate service levels from an administrator if the switch was important to Mr N. I also understand that once Mr N received the request for the indemnity he did not return the indemnity immediately which indicates that the timing of the change of investment adviser was not of vital importance to Mr N at this stage.
- 5.3 Boal & Co have also acknowledged in their apology that the 5 weeks turn round in relation to his request to manage his investments was unacceptable. As noted above Mr Winrow states:

"After an independent review of your **case I would like to issue you with an apology** [emphasis in red by Deputy Pensions Ombudsman].

*On behalf of Boal & Co I want to extend my sincere apologies for the delays in communication with your in dealing with your queries. In particular, 13 days is not an acceptable time to take to produce a drawdown calculation **and the 5 weeks without communication regarding your options and your request to manage your own investments was also unacceptable.** [emphasis in red by the Deputy Pensions Ombudsman] Occasionally delays are unavoidable, but our staff are trained to keep the customer informed of any possible delays **and I am sorry that this was not the case for you.**"*

- 5.5 Mr N considers again that the apology received was not an unqualified apology in the circumstances as it refers to the fact that occasionally there

are unavoidable delays (without giving an explanation as to why the delay was unavoidable) and in his view the delays were due to inaction not lack of communication by Boal & Co. Mr N alleges that the real reason for the delay was inaction by Boal & Co.

- 5.6 I agree that if the apology is read in this way the apology is not unqualified as the delay relates not merely to delays in communication about the investment options but also the failure to follow up with BWCI when they did not come back the next day and the failure to follow up BWCI's request for an indemnity when the indemnity was requested. The contrary argument is that the apology in relation to the 5 week delay relates both to delays in communication **and** for the 5 week delay itself. On balance I consider that on a reasonable interpretation of the apology wording all Boal & Co have apologised for in relation to the 5 week delay (although the contrary is not unarguable) is the communication delay. The apology is therefore not adequate in its current form and could have been worded better.

**6. Allegations that Boal & Co gave untruthful explanations for the reasons for the 5 week delay in changing financial adviser**

- 6.1 The 5 week delay has unfortunately taken on a significance to Mr N in subsequent communication between Mr N and Boal & Co out of all proportion to any impact the original delay had on Mr N. Mr N has made a number of serious allegations on many occasions that Boal & Co gave untruthful explanations of the reasons for the delay in obtaining a response from BWCI about his request to allow him to give instructions about investments and have wrongly blamed BWCI for the delay when it was entirely down to Boal & Co.

- 6.2 Mr N refers in particular to the explanations given of the reasons for the delays during the period from 20 June 2017 until 31 July 2017.

- 6.3 The sequence of events is broadly as follows.

- 6.3.1 On 20 June 2017 Mr N wrote to Mr Doyle of Boal & Co as follows

Hi Mark

Can you please send me contact details for BWCI in Guernsey as I want to change my advisors of the scheme and possibly appoint myself if they would allow it.

Can you also send me my policy details so that I may include them whilst writing?

- 6.3.2 On 20 June 2017 Mr Doyle of Boal & Co emailed Mr N advising him that

"If you wish to change your adviser to yourself to manage the investments directly, I can write to the trustees on your behalf for their prior agreement. Subject to this being granted, you will need to complete and sign a BWCI investment indemnity form. As such please let me know if you would like me to contact them in this regard?"

In other words Boal & Co are advising Mr N that if he wants to manage investments directly he will need permission from the Trustees and subject to the permission being granted an indemnity

form will be required. Mr N emails Boal & Co on 20 June saying "I'd appreciate it if you could do this on my behalf". This does seem to be an instruction to seek permission from BWCI to enable him to manage his investments directly although given the earlier email of 20 June it would appear that Mr N may not have made a final decision on whether he wanted to change advisor or appoint himself to take over responsibility for the investments himself – but he definitely wanted to know if this was possible.

- 6.3.2 There are then subsequent email exchanges between Boal & Co and BWCI on 20 June 2017 and 21 June 2017. The original email from Boal & Co to BWCI states that

"Synergy member, [Mr N] , has become unhappy with his existing investment adviser, Capstone Financial in Hong Kong, and wishes to remove them and manage his own self-directed investment mandate moving forward.

Please can you confirm that you are ok with this, subject to the member of course completing and signing the BWCI investment indemnity form? Thanks"

BWCI then ask Boal & Co for various information including a valuation of investments, certified proof of address and CDD. Boal & Co respond explaining to BWCI that this has already been provided. BWCI thank Boal & Co and indicate that they hope to respond on the investment question the following day. In other words on 21 June 2017 Boal & Co have not yet received approval from BWCI to Mr N being appointed to take over responsibility for his investments but are expecting a response the following day.

- 6.3.3 On 27 June 2017 Mr McLaughlin of BWCI asks Mr Doyle of Boal & Co for a copy of the BWCI Investment Indemnity as follows:

**Subject:** Fw: Synergy - Mr [N]

Hi Mark

Please could you forward a copy of the BWCI Investment Indemnity Form.

Cheers, Lian

**Lian McLaughlin**  
Manager, Trust Administration

for BWCI Trust Company Limited

- 6.3.4 There is a divergence of opinion between Mr N and Boal & Co about whether the request relates to a request for the standard indemnity form which BWCI already had or for a signed indemnity form. In my view this is not clear as the request could refer to either. What is more important is that the request unfortunately appears to have been missed by Boal & Co at the time and I would note that emails are sometimes missed given the volume of emails received. BWCI

had, however, in my view still not approved the in principle request for Mr N to take over responsibility for the investment decisions at this stage that had been sought in the earlier email. Mr N I think infers that this Mr McLaughlin has implicitly given this approval in principle in his email response on 27 June. My view is however that the email approval to the change in investment adviser was not given on 27 June (all it asks for is the BWCI Investment Indemnity Form). The approval to the change cannot be inferred from the email. On the evidence I have seen this approval was not given by BWCI until 31 July 2017. The subsequent determination of Mr N's original complaint under the internal disputes procedure by BWCI indicates that BWCI were in fact waiting for a response to this email before taking any further action in relation to the request for approval to the change of investment adviser. The BWCI email does not however say this.

- 6.3.4 Nothing then happens until 25 July 2017. Boal & Co did not follow up on the request for permission to allow Mr N to take over responsibility for his own investments made on 20 June 2017 or provide a copy of the indemnity requested on 27 June (although as noted by Boal & Co the indemnity form was based on a standard BWCI document which BWCI did have). Boal & Co have explained to me that they missed the email. This explanation is consistent with the subsequent email evidence.
- 6.3.5 On 25 July 2017 Mr N chases Boal & Co for a response (in his submissions Mr N states he deliberately waited to see if Boal & Co customer service had improved). The failure to follow up was therefore partially due to inaction by Mr N which really was not helpful in the circumstances. Also as noted by Boal & Co there was then a further delay from Mr N being told that an indemnity was needed to him providing the indemnity. The timing of the change of investment adviser in itself cannot therefore have been of crucial importance to Mr N by that time.
- 6.3.6 On 25 July 2017 Mr Doyle emails BWCI, having realised he had not responded to the request for the indemnity form:

"Hope all is well. Apologies, I'm not sure if I ever got back to you on the below.

See attached BWCI investment indemnity form. It has not yet been completed by the member but it was just an enquiry at this stage.

I trust it will be ok on this basis as long as the member signs the attached form?

As noted previously the original email dated 20 June from Mr N had indicated that Mr N wanted to consider this option as an alternative to appointing a new adviser if it could be established that this was acceptable to the BWCI. It is however debatable whether it is correct to say that this was just an enquiry given his subsequent request to Boal & Co to approach BWCI for permission.



6.3.7 On 25 July 2017 following the chasing email from Mr N, Mr Doyle attempts to contact Mr McLaughlin at BWCI and receives an out of office reply so seeks to contact Michael McKay of BWCI and states

"Hi Michael

Trust all is well.

Are you able to please pick up the below in Lian's absence. Thanks."

6.3.8 Mr McKay of BWCI responds

"That should be fine, how is the members plan currently invested."

I would note here that BWCI already have this information on the investments held in Mr N's pension plan but asks for it again. BWCI would therefore still appear on the evidence not to have agreed to the request to allow Mr N to take over responsibility for his investments.

6.3.9 Mr Doyle of Boal & Co responds sending the valuation information again

"Hi Michael

Please see attached current valuation.

If you can let me know if it is ok to proceed with this then I will arrange for the member to sign the relevant indemnity form. Thanks"

6.3.10 On 27 July 2017 Boal & Co email Mr N as follows

"Apologies for the delay on this. It is not standard for a member to have no financial adviser on the plan so the trustees would be making an exception in this instance. They have also been reviewing the current portfolio position. I attach a copy of the recent FPI valuation for your reference. The trustees will require the attached BWCI indemnity form completed and signed. Please scan a copy to me in the first instance with the original to follow in the post to our Isle of Man address."

6.3.11 On 31 July 2017 10.22 BWCI emails back to Boal & Co in relation to the investment indemnity form (which as Boal & Co note they already had) to confirm that

"Thanks, I think will be fine.

I will just double check as there have been a couple of changes in our Regulations as at 30 June, and we could require an update to the form."

6.3.12 On 31 July 2017 12.21 Boal & Co email BWCI again

"Hi Lian

Thanks for coming back to me.

The member unfortunately is very unhappy. It started with a complaint against his IFA hence him wanting to manage his own investments and then he go on to us regarding a delay in paying his annual pension.

He is now aggrieved at the time delay in obtaining a response as to whether or not he can manage his own investments portfolio within the scheme. I sent the member's request through to you on 20 June and you responded asking for a valuation and the member's CDD on 21 June which I subsequently sent through to you on the same day. You also advised on 21 June that you would be speaking to Michael regarding the investment query and that he may raise this when he visited our offices but we didn't specifically talk about the case. I note that you requested a copy of the investment indemnity form from me on 27 June and I seemed to have missed the email so only sent this through more recently. Can I just check that BWCI do not have a copy of the Synergy literature on your records.

The content of the member's latest email is below for reference (this will be referencing the delay in paying the pension which, as above, our compliance team do not believe is justified).

I am not sure how best to respond given the above. I was off Thursday and Friday last week on annual leave but sent a holding note to the member on Wednesday to inform that as it was not standard for a member to have no financial adviser on the plan the trustees would be making an exception in this instance and so are still considering the request. I also noted that you were reviewing the current portfolio position.

Do you have an approximate timescale as to when a decision will be made on this Thanks

Best regards

Mark Doyle"

- 6.3.13 There are then further email exchanges between BWCI and Boal & Co including one on 31 July 2017 asking for confirmation that there are other individuals making their own investment decisions and asking for an example to demonstrate that a precedent had been set.
- 6.3.14 Boal & Co email back on 31 July 2017 at 14.31 confirming that there are other Synergy members making their own investment decisions.
- 6.3.15 On 31 July 2017 BWCI email Boal as follows:

"The Trustees agree to this member making his own investment decisions however they would like a sight of the amendment to the text.

I've found the original word document and amended clause 3B, please use this template for all future requests.

With regard to the other points, this should be responded to by Boal & Co.

We agree that the issue surrounding the pension delay is as a result of the member not responding to earlier requests for CDD and is therefore not justified, and that it is perfectly reasonable for the Trustee to consider the ramifications of an individual directing his own

personal pension as opposed to the norm of having appointed an IFA.”

6.4 On the evidence I have seen BWCI did not confirm their agreement to the request to Mr N making his investment decisions until 31 July 2017 – I do not consider that this can be inferred from the 27 June 2017 email. Boal & Co should, however, in the meantime have chased for a response to their original request before 25 July 2017 and also responded to the request to provide the indemnity. I agree with Mr N that failure to do so amounts to maladministration (see above) although the delay does not appear to have been of particular importance to Mr N as he was deliberately waiting to see if Boal & Co would respond.

6.5 Mr N has specially alleged that the statement in the email to him from Boal & Co on 27 July 2017:

“I have been in touch with the trustees and I hope to receive a response shortly. I do not see any reason why a request should not be granted. Subject to their approval they will definitely require the attached BWCI Investment Indemnity form signed so it may be worth you arranging for this in the meantime.”

Is untruthful.

6.6 Mr N alleges among other things in relation to the email trail that “Here come the excuses, we now know it was caused by their not responding to BWCI’s request for the indemnity form. A FORM THEY ONLY SEND WITH THE EMAIL. The valuation is just a smokescreen to make it look like they had been doing something.”

6.7 Mr N also infers from the email trail that “They probably called BWCI and couldn’t get an immediate answer. BWCI probably told them they were waiting for the indemnity form before they looked at it and asked Boal why they hadn’t sent it so Boal said it was merely an enquiry at the time.”

6.8 Mr N further alleges that the timeline shows that Boal & Co blamed the delays on the trustees reviewing the funds. Mr N alleges this is untruthful as “they knew the delay had been down to them not actioning the request for an Indemnity Form and the trustees were sitting waiting for the indemnity form before they did anything. This was all down to AVOIDABLE maladministration on the part of Boal but they tried to divert blame onto the trustees which I believe is inexcusable on their part.”

6.9 On the basis of the evidence I have seen BWCI did not respond to the request from Boal & Co for approval in principle to Mr N taking over responsibility for giving investment instructions made on 20 June 2017 until 31 July 2017. The delay was not, as inferred by Mr N, caused solely by the failure to provide the indemnity. BWCI also clearly considered a review of the investments to be relevant to the decision to allow Mr N to take over responsibility for investments as they asked for this information twice – the second time on 26 July 2017. Boal & Co’s response does not mention that Boal & Co had not either chased for a response to their original request during the period 20 June to 25 July or failed to respond to BWCI’s later request for the indemnity form on 27 June. These omissions do not however make the statements in the email dated 27 July 2017 untruthful even if they

do not set out the full email trail. The statements are consistent with the facts as evidenced by the email trail.

6.10 I do not uphold Mr N's complaint that the explanations given for the delays were untruthful.

**7. Additional points raised in complaint with regards to the Capstone allegations**

7.1 Mr N refers to an email from Capstone when Capstone allege, in relation to a separate complaint brought by Mr N against Capstone in relation to advice given by Capstone on his drawdown options that the delay was in part down to Boal & Co delays. I can only look at this aspect of the complaint to the extent that any alleged delay in providing a response to Capstone could be regarded as maladministration by Boal & Co as manager and administrator of the Scheme. It is not within my remit to comment on Mr N's separate complaint against Capstone who are not party to this complaint.

7.2 I would also note that the allegation of delays relates to an earlier period to the period of the other complaints about the alleged delays in relation to the drawdown calculation and the alleged delays relating to the appointment of Mr N to take over responsibility for giving instructions with regard to investments occurred. Mr N has argued however that the earlier instance provides evidence of systemic failure by Boal & Co in their administrative systems.

7.3 I have been provided me with an email trail showing various requests for information from Capstone to Boal & Co. This email trail is broadly as follows:

Date	Parties	
22 March 2016	Mr S of Boal & Co to Mr P of Capstone and Mr B of Boal & Co	Email answers earlier questions from Capstone confirming that Boal & Co did not believe the 3 year drawdown period could be rolled over and taken over and other related issues in connection with drawdown
4 May 2016	MR P of Capstone to Mr S of Boal & Co	Requests details of BWCI exit penalty
4 May 2016	Mr S of Boal & Co to Mr B of Boal & Co copying in Mr P of Capstone	Requests Mr B of Boal & Co to answer Mr P's question on the drawdown penalty
4 May 2016	Mr B of Boal & Co to Mr S of Boal & Co and Mr P	Please confirm member's name

	of Capstone	
4 May 2016	Mr P of Capstone to Mr B of Boal & Co	Confirms member is Mr N
4 May 2016	Mr B of Boal & Co	confirms exit fee based on annual fee of 0.65% taken in arrears and would be taken on a pro rata basis in arrears and raises other issues about fees and lack of funds to pay them
5 May 2016	Mr P of Capstone to Mr B of Boal & Co	Deals with recovery of fees and asks for clarification of what the fee would be in monetary terms
9 May 2016	Mr P of Capstone to Mr B	Chases for a response from Boal & Co
17 May 2016	Mr P of Capstone to Mr B and Mr S of Boal & Co	<p>Further chaser for a response</p> <p>It is now 2 weeks since requesting the figure and we still do not have it. We have a mutual client who has requested the information and I for one am embarrassed as how long it is taking to get him the answer! It is 8 days since my last email to you has gone unanswered and I really need to get back to the client with a figure as this is becoming unfair.</p>
17 May 2016	Mr S of Boal & Co to Mr P of Capstone	I am sorry for the delay. No excuse. I will speak to [M] tonight and one of us will get back to you

17 May 2018	Boal & Co provide information requested	
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- 7.4 The email trail demonstrates that on 22 March 2016 Boal & Co did seek to assist in answering questions on drawdown options. The detail of the exit penalty was not requested by Capstone until 4 May 2016 and Boal & Co did explain how in general terms this figure was calculated on 4 May 2016. This request was followed up on 5 May 2016 by a request by Capstone for a request for a monetary figure for the exit penalty. There was then a delay in supplying this information, Capstone chased for a response on 9 May and again on 17 May. On 17 May 2016 Boal & Co apologised for the delay and said there was no excuse (i.e. gave an unqualified apology) and the information was provided on 17 May 2016. Accordingly although there was about a two week delay which arguably amounted to maladministration. Boal & Co then sought to address the issue as I would expect an administrator to do so in the circumstances and also provided an unqualified apology in relation to this delay.
- 7.5 I do not accept Mr N's arguments that it is possible to extrapolate from this example to demonstrate that there are systemic failures in Boal & Co's administrative systems. It is only appropriate for me to consider specific and evidenced allegations of maladministration.

## **8. General alleged delays in responding to Mr N's various complaints**

- 8.1 Having reviewed the Complaint, Response, Additional Response, Chronology and underlying email trails my conclusion is that Boal & Co have throughout made genuine attempts to respond to Mr N's various complaints and resolve them with him. The turn round time for responding may not have been as quick as it should have been on all occasions but it was not always clear from some of Mr N's later emails exactly what he was seeking.
- 8.2 Boal & Co did escalate the complaints internally and instigate an internal review of Mr N's complaints. The review was carried out by Boal & Co Director Mr Winrow (so it may be argued that this is not completely independent but this is an internal complaints procedure). Mr Winrow is a senior Boal & Co employee and the response does indicate there was a genuine consideration of the issues raised by Mr N. As a result of the internal review Boal & Co did apologise (see above comments on the adequacy of the apology) and agreed to waive 50% of the Boal & Co annual fee amounting to £665.
- 8.3 It is apparent from the correspondence, however, that as a result of the early problems, Mr N had unfortunately by then completely lost confidence in the ability of Boal & Co to perform in accordance with its agreed service standards and lost confidence that the answers they gave to his questions were accurate. This coloured the tone of Mr N's emails to Boal & Co which were not always as measured as they should have been or always proportionate to the matters complained of, when he did not receive a response as quickly or in the form he was seeking. The apology from Boal & Co in relation to the 2017 delays failed unfortunately to resolve matters as Mr N did not consider the apology sufficiently unqualified.

## **9. Alleged refusal to apologise or to offer compensation for delays and subsequent efforts by Boal & Co to assist Mr N**

- 9.1 Boal & Co have apologised already for the delays relating to the 13 day period for producing the drawdown calculation and also the 5 week period for actioning the request for Mr N to take over responsibility for investments.
- 9.2 For the reasons set out above I consider that the apology in relation to the 13 day delay was adequate and sufficient. I do not uphold Mr N's complaint in relation to the inadequacy of the apology for the 13 day delay.
- 9.3 In relation to the 5 week delay in relation to granting Mr N permission to manage his own investments on a reasonable interpretation the apology given already by Boal & Co arguably relates solely to the communication delays and not the failure to follow up the original request or action the request for the indemnity (although the contrary is not unarguable). Given the importance Mr N attaches to this in his complaint I am going to direct that Boal & Co makes a further more complete apology covering all three issues.
- 9.4 The apology in relation to the earlier delay in 2016 in relation to providing information on the exit penalty was completely unqualified and is adequate and sufficient. I do not uphold Mr N's complaint in relation to the adequacy of the apology in relation to the exit penalty.
- 9.5 Boal & Co have already made an offer of compensation for the delays by waiving half the annual fee in relation to the later instances of maladministration (I will consider whether this is sufficient below). No offer of compensation was made for the earlier 2016 delay in relation to providing the figure for the exit penalty. However, in my view the apology offered was sufficient (it was completely unqualified) and when chased the second time Boal & Co did provide this information.
- 9.6 I also recognise on the basis of other documents supplied in the Response (which I have not set out in the determination) that Boal & Co later did later make significant efforts to assist Mr N on his flexible drawdown options if he were to transfer his benefits out of the Scheme to another jurisdiction which Mr N did thank Boal & Co for.
- 9.7 Mr N notes that this assistance was after the delays in customer service. However, it must be recognised that Boal & Co were trying to help Mr N in circumstances which went well beyond their usual remit and sought in this way to make redress for the problems Mr N had faced earlier.

## **10.Virtual Media Activity**

- 10.1 Boal & Co are very upset about Mr N's social media activity in relation to his various complaints and do not consider his use of social media justified. Mr N considers that his use of social media was an entirely justified way of obtaining a response from Boal & Co to his various complaints which he considered had not been adequately answered in direct communication. Boal & Co do not consider this justified.
- 10.2 This issue is essentially a complaint by Boal & Co against Mr N. I am therefore not going to comment on whether the use of social media was justified or not.

## **11. Level of Compensation for Non-Financial Loss/Distress and Inconvenience**

- 11.1 As deputy pensions ombudsman I have power to make awards for non-financial injustice (i.e. for distress and inconvenience) where I consider that there has been maladministration resulting in injustice to a beneficiary even where there is no proven financial loss for which a Court of Law in the Isle of Man would make an award of damages.
- 11.2 There is no direct binding authority yet in the Isle of Man on the level of this type of award. If this matter was ever determined by the Isle of Man Court it is likely that the Court (while not bound to do so) would take a similar approach to the courts in the United Kingdom in relation to the UK Ombudsman's jurisdiction. The powers of the UK Ombudsman are virtually identical to that of the Isle of Man Ombudsman as his jurisdiction is governed by virtually the same statutory provisions.
- 11.3 The UK courts confirmed a while ago that generally an award for maladministration in relation to non-financial injustice should be reasonable and generally not exceed £1000 and a more recent case up to about £1625 (ie the figure of £1000 increased by inflation since the earlier case) other than in exceptional cases. UK awards have for many years tended to be in the order of a £250 to £500 hundred pounds and not generally above £1000 other than cases of more serious injustice where awards of £4000 or £5000 have been made in cases of exceptional inconvenience.
- 11.4 In 2015 the UK ombudsman reviewed the level of appropriate awards and has more recently started awarding higher awards with £500 being a typical base level award. There is also a very recent Court case in the UK which indicates that awards for non-financial injustice should now other than in exceptional cases not generally exceed circa £1625 (the earlier figure of £1000 rebased by inflation). Also a further case indicates that in cases of persistent or multiple instances of maladministration multiple awards or higher awards may be appropriate. The UK ombudsman has also issued his own revised guidelines in September 2018 which indicate that higher awards may now be appropriate following the recent cases (up to £2000 in non-exceptional cases). I am not bound in any way by this guidance but clearly the direction of awards is upwards
- 11.5 The waiver of 50% of the Boal & Co's fee of £665 is in the order of what I would have awarded for maladministration for non-financial injustice. I propose to give Boal & Co credit for this fee waiver and do not consider it appropriate to direct that any further award is made for non-financial injustice having regard to the overall circumstances of the case. In relation to the complaint about the delay in providing Capstone with information about the exit penalty levied I consider that the apology offered was sufficient.

## **12. Findings of Fact and Law**

- 12.1 I make the following findings in relation to Mr N's complaints.
- 12.2 In relation to Mr N's complaints about the alleged poor service levels by Boal & Co in relation to the time taken to provide the drawdown calculation (13 days) and the time taken to action the request to change advisers (5 weeks), I uphold Mr N's complaints. There was maladministration both in relation to the delays it took to provide the drawdown calculation **and** also dealing with



the request for approval in principle from BWCI for him to be appointed to give instructions on investments in the place of his existing investment adviser. This maladministration resulted distress and inconvenience (non financial injustice) to Mr N but I have no evidence of financial loss resulting from the maladministration.

- 12.3 In relation to the delay in providing a specific figure for the exit penalty in May 2016 I also uphold Mr N's complaint of maladministration but I have no evidence of any legal loss flowing from this.
- 12.4 In relation to the allegations of maladministration to the complaints process I do not uphold this aspect of the complaint as I consider that Boal & Co were making genuine attempts to resolve the matter.
- 12.5 In relation to the alleged lack of a proper apology for these delays I do not uphold Mr N's complaint in relation to the apologies for the 13 day delays relating to the drawdown calculation or providing information about the exit penalty to Capstone. In relation to the 5 week delay relating to obtain approval in principle to Mr N taking over responsibility for his investments on a reasonable interpretation it is arguable that the apology only covers the delays in communication and not the failure to follow up with BWCI or respond to the request for an indemnity. I therefore partially uphold this complaint.
- 12.6 In relation to the alleged untruthful statements made by Boal & Co staff in their explanations for the delays I do not uphold Mr N's complaint.

13. **Directions**

- 13.1 I direct that a director of Boal & Co make the following additional apology to Mr N:

Dear Mr [N]

I would like to issue you with a further apology.

On behalf of Boal & Co I want to extend my sincere further apologies for the delays in dealing with your request to manage your own investments during the period 21 June 2017 and 25 July 2017. This was unacceptable. We recognise that we should have kept you informed during this period about how the request was progressing and also have followed up earlier on our request to BWCI on 21 June 2017 for approval to your request and responded earlier to BWCI's request for an indemnity on 27 June 2017.

Yours [ ]

- 13.2 Once the above further apology is given in accordance with my directions, I would hope very much that Mr N will now be able to put the matter behind him and not let it colour any future dealings with Boal & Co who I understand are still administering his pension arrangement.

**Ian Greenstreet**

**Deputy Pensions Ombudsman**

**31 October 2018**