

## The complaint

Mr R says James Hay Administration Company Ltd ('JH') is responsible for the delay in transferring his Scottish Widows ('SW') pension – from SW to JH – in 2020; and for financial losses resulting from the delay.

## What happened

One of our investigators looked into the complaint and concluded it should be upheld. In the main, JH agreed with the investigator's findings. However, the matter has been referred to an ombudsman because Mr R seeks more in redress than the investigator proposed. The investigator mainly said:

- Mr R held an Appropriate Personal Pension ('APP') with SW. In July 2020 he instructed the in-specie transfer of the APP to a JH Self-Invested Personal Pension ('SIPP'). Prior to this, and in early 2020, he (through his financial adviser) had sought to withdraw a tax free Pension Commencement Lump Sum ('PCLS') from the APP, which he wanted to use to pay off his residential mortgage. The withdrawal was not possible without first liquidating a commercial property holding within the APP, which he did not want to do. The alternative he opted for was the transfer of the APP to the JH SIPP, after confirmation that he could thereafter access the PCLS (in the SIPP) without having to sell the commercial property holding. The transfer process began on 13 July 2020, was delayed and did not conclude until 15 June 2021 – and the PCLS was paid to Mr R on 23 June 2021.
- Mr R claims compensation for financial losses resulting from the delay – monthly mortgage payments he had to continue making during the delay; additional tax charges caused by those payments being made from his business' funds; legal and accountants fees in excess of what they would have been but for the delay. He also seeks compensation for JH's failure of service to him and the overall stress and inconvenience he was caused.
- JH concedes the complaint with regards to the delayed transfer process and on the following specific basis – it accepts responsibility for delaying the process by a total of 12 weeks; first, an issue about leases (for the property holding) in the process was addressed by 13 September 2020, it then took too long to instruct solicitors to progress the matter, and it did not do so until 6 November 2020; and then, once particular issues with VAT submissions (relevant to the process) were completed on 22 April 2021 it took too long to pay out the PCLS and it did not do so until 23 June 2021. Other than these periods, JH says time was consumed by reasonable processing matters (including waiting for actions by third parties) and that but for the delays in these periods the PCLS would have been paid out by the end of March 2021.
- The chronology of events in the process supports JH's conclusions. Due to the nature and contents of the overall transfer there were multiple participants within it (including solicitors, HMRC and the land registry), all of whom had to liaise with each other during the process. In such circumstances, it is unlikely that a single party can

be completely responsible for delays, and JH had no control over or responsibility for third parties.

- The transfer of a property holding within a pension can be lengthy and complex, even in ideal circumstances. Transfer related documents forewarned Mr R about this. In his case, the commercial property was divided into multiple units and there were issues with their leases even before the transfer. They had to merged into a single master lease and there was also an issue to be addressed with regards to the property's Energy Performance Certificate ('EPC') rating. The transfer would have always taken a significant amount of time, for these reasons, so even without any delays Mr R would still have needed to pay his mortgage for longer than he had perhaps planned.
- Mr R should be compensated by JH for being deprived of the PCLS between April and June 2021, for any additional legal and accountants fees that he incurred during these months (and that he can evidence) and for any additional personal tax charge he incurred (and can evidence) due to using his business' funds to pay his mortgage during these months. JH should also pay him £150 compensation for its contribution towards the distress and inconvenience he faced in the process.

JH said it agrees to compensate Mr R – through payment of interest at 8% simple – for being deprived of the PCLS during the 85 days between 31 March and 23 June 2021; that it also agrees to pay him £150 for distress and inconvenience; and that it agrees to consider payment of compensation in the other two areas proposed by the investigator but it is important for Mr R to ensure that the evidence he provides in those respects is clarified.

Mr R initially rejected the investigator's proposed redress, and said he would settle for no less than compensation (with interest) for six months' worth of his mortgage payments plus compensation for the additional tax and fees he incurred. The investigator referred to his finding on the 12 weeks of delay caused by JH and he explained that redress is meant to put Mr R back into the position he would have been in had JH not caused that delay. In this context, he also explained that, without the delay, the mortgage liability remained the same and the only difference caused by the delay was the additional mortgage interest (and associated fees) incurred during the delay.

In response, Mr R first said he wished to avoid contesting matters further and drawing out the complaint, so he was prepared to accept the investigator's proposed redress. He then withdrew his acceptance. He disagrees with redress being limited to mortgage interest/fees only for the relevant three months – instead, he says, all his mortgage payments during the period (around £2,000 per month) should be compensated for. The matter was then referred to me.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I have reached the same conclusions that the investigator expressed, for broadly the same reasons he gave. For this reason, I endorse and incorporate his findings into this decision.

The key facts and chronology of events do not appear to be in dispute, so I do not consider it necessary to set out details of them in this decision. Like the investigator said, multiple parties were involved in the overall transfer process – including those (like, but not limited to, SW, JH, Mr R and his financial adviser) who were immediately involved in it, and then those

involved because of the commercial property element within the transfer and the move towards consolidating a set of individual leases into a master lease, and even, it appears, extending to the tenants of the commercial property and their representatives. Each party retained its responsibility for its actions (or inaction) and I have not seen evidence that JH shared or undertook another party's responsibility.

Furthermore, the investigator was also correct in highlighting notices and forewarnings given about the likely complexities that can arise in an in-specie pension transfer involving a property holding(s) and the additional time consumption these complexities can cause – mainly due to the particular steps and requirements in the transfer and re-registration of property ownership within the wider transfer process. Some of these warnings were borne out in the process that followed in Mr R's case.

Available evidence supports the conclusion that, in any case and for the aforementioned reasons, the transfer was more likely (than not) to take more time than Mr R might have anticipated. I am mindful of his objective at the time – to release the PCLS and use it to pay off his mortgage. I understand why he would have wanted to achieve this without delay, and therefore avoid servicing the mortgage for longer than he wanted to. However, the present complaint is about JH and its role in the overall process, so it would not be fair or reasonable to lose sight of the need to establish its liability within the remit of that role, and not beyond that. A complaint about SW's role in the process appears to have been pursued separately, with, it appears, separate payment offered to Mr R for distress and inconvenience resulting from that. This lends itself to illustrating what I said above about the involvement of multiple parties, about each retaining responsibility for its actions and my view about JH's role defining the limit to its liability in the matter. It cannot reasonably be held responsible for issues outside its role over which it had no control.

Overall and on balance, beyond the delays that JH and the investigator have identified – the delay, between September and November 2020, in instructing solicitors (which Mr R highlighted in his complaint) and then the delay, between April and June 2021, in paying out the PCLS – I am not persuaded that any other tangible delay in the process has been established as JH's sole or main responsibility. I appreciate that Mr R's pursuit began in early 2020 but the same does not apply to JH's responsibility. In the context of the complaint about the delayed transfer, its responsibility began when the transfer was initiated in July 2020. The transfer was completed around 11 months thereafter and JH caused (and accepts responsibility for) a total delay of around three months within that. I could make observations about events in which others appear to have caused delays of their own but I do not consider such observations to be called for in the present complaint about JH. It is enough to say that JH's main faults were the two periods of delay cited above.

Most recently, the dispute between the parties (and between Mr R and the investigator) has moved to the calculation of redress.

I understand where Mr R is coming from in his pursuit of compensation for what he considers to be mortgage payments he made which would have been avoided but for JH's delay. As I said above, paying off the mortgage with the PCLS and ending his mortgage servicing obligation was his underlying objective, so I can see why he considers that the additional servicing payments he made because of the delay should be compensated for.

However, this position overlooks the point that the investigator made and explained to him. The mortgage liability remained what it was, with or without the delay caused by JH. It was a repayment mortgage. The liability remained either in terms of the outstanding capital amount to be paid off, or in terms of the capital element of the remaining monthly repayments. Where those monthly repayments continued for longer than Mr R wished, because of the delays in the transfer process (including release of the PCLS), the added and avoidable

costs to him were not the mortgage's monthly capital repayments – which were always going to be due – instead, the additional and avoidable costs to him were any interest and fee charges associated with the monthly repayments that would not have arisen if the mortgage was paid off.

As the investigator said, we apply redress with the aim of putting a complainant into the position they would have been in but for a firm's wrongdoing. We do not seek to put the complainant into a better position. In Mr R's case, compensating him for the repayment of mortgage capital that was always his responsibility to repay, regardless of JH's delay, would put him in a better position. We would not do that. However, compensation for the mortgage repayment interest/fees he incurred, during the period identified above, that he would have avoided but for JH's delay fits our aim for redress in a case.

### **Putting things right**

In deciding what is fair my aim is to put Mr R as close as I can to the position he would probably be in, but for the 12 weeks of delay caused by JH. I have addressed above our service's rationale behind this approach. There is no claim for, or evidence of, investment/reinvestment related loss in this case, the APP was transferred to the SIPP in specie and the objective was withdrawal of the PCLS in order to pay off Mr R's mortgage, so this defines the scope for redress. On this basis, I order as follows:

- JH must pay Mr R interest on the PCLS amount, at the rate of 8% simple per year, for the period between 31 March 2021 and 23 June 2021, during which he was deprived of the use of the PCLS because of the total delay caused by JH. This is redress for both the loss of use of the PCLS and for what I explained earlier about the mortgage interest/fees incurred during this period that would have been avoided without the delay.
- If Mr R has or retains a claim for compensation for additional legal and/or accountants fees he incurred for legal and/or accountancy work (relevant to the transfer and/or his mortgage repayment) conducted between 31 March 2021 and 23 June 2021 that would not have arisen if the transfer was completed and the PCLS payment had been made by 31 March 2021, he must present specific documentary evidence of those fees to JH. He must also provide a meaningful explanation (from him and/or his solicitors and accountants) of the contents of those documents. Upon receipt of these, JH must compensate Mr R for the total of the fees that have been evidenced.
- If Mr R has or retains a claim for compensation for personal tax he incurred because his business' funds were used to make mortgage repayments between 31 March 2021 and 23 June 2021 and because such personal tax would not have arisen if the transfer was completed and the PCLS payment had been made by 31 March 2021, he must present to JH specific documentary evidence of the relevant tax liability. He must also present evidence of the tax liability resulting directly from the use of his business' funds to make mortgage repayments between 31 March 2021 and 23 June 2021. Upon receipt of these, JH must compensate Mr R for the total of the tax liability that has been evidenced.
- JH must pay Mr R £150 for its contribution, through its delay, to the trouble and upset caused to him in the transfer process. I consider this a fair level of award for this purpose given that JH's responsibility is limited, for the reasons I explained earlier.

### **compensation limit**

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr R's case, the complaint event occurred after 1 April 2019 (it began in 2020) and the complaint was referred to us after 1 April 2020 (it was referred to us in 2021), so the applicable compensation limit would be £355,000.

### **My final decision**

For the reasons given above, I uphold Mr R's complaint. My orders for redress, from James Hay Administration Company Ltd to him, are as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 December 2022.

Roy Kuku  
**Ombudsman**