

## Ombudsman's Determination

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|-------------|--|
| Applicant   | Mr E   |
| Scheme      | James Hay Modular Self-Invested Personal Pension ( <b>the SIPP</b> ) |
| Respondents | James Hay Partnership ( <b>James Hay</b> )                           |

## Outcome

1. I do not uphold Mr E's complaint and no further action is required by James Hay.

## Complaint summary

2. Mr E complained that James Hay delayed the investment of his transfer value from the HSBC Pension Scheme (**the ceding scheme**). As a result of the delay, he has suffered a loss of potential investment growth. He has experienced distress as a result of the significant amount of time and effort in trying to resolve his complaint with James Hay.

## Background information, including submissions from the parties

3. 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.
4. On 5 May 2020, James Hay received a request to accept the cash equivalent transfer value (**the CETV**) of the pension rights Mr H had accrued under the ceding scheme. The request was accompanied by a Section 48 declaration confirming that Mr E had taken appropriate financial advice in relation to the transfer.
5. On 7 May 2020, James Hay wrote (**the 7 May 2020 letter**) to the administrator of the ceding scheme, Willis Towers Watson (**WTW**), to request the transfer and to inform WTW of its conditions and requirements, which were:

Conditions:-

- The transfer must be in the form of cash.
- If any Pension Commencement Lump Sum (**PCLS**) had already been paid to Mr E, the residual fund had to be converted to a drawdown fund prior to transfer.

- If the ceding scheme was an Overseas Pension Scheme, the transfer could only be accepted if the ceding scheme was registered with HMRC as a Qualifying Recognised Overseas Pension Scheme.

Requirements:-

- Was the ceding scheme registered with HMRC?
  - Type of scheme.
  - Were any safeguarded benefits included?
  - Were any court orders recorded against the value being transferred?
  - Did any restrictions apply to any PCLS that could be paid to Mr E?
  - Additional information required only if Mr E had already drawn his retirement benefits under the ceding scheme.
6. On 12 May 2020, Wren Sterling, Mr E's Independent Financial Adviser (**the IFA**), asked James Hay to email a copy of the 7 May 2020 letter to WTW, which it did on 13 May 2020 with a copy also emailed to the IFA.
  7. James Hay received the transfer value of £977,705 from the ceding scheme on 22 May 2020. It then received written confirmation of the transfer on 28 May 2020, but the information requested in the 7 May 2020 letter was not provided.
  8. Also on 28 May 2020, the IFA emailed James Hay to ask when it would receive payment of the adviser charge in relation to the transfer.
  9. On 29 May 2020, James Hay paid the adviser charge to the IFA and sent its first reminder email to WTW for the information it had requested in the 7 May 2020 letter.
  10. On 2 June 2020, the IFA contacted James Hay by secure message to find out why Mr E's transfer value was not yet available for investment. On the same day, James Hay advised the IFA that the information it requested in the 7 May 2020 letter had not been provided, so the transfer value could not be applied to the SIPP.
  11. On 5 June 2020, the IFA emailed a copy of the transfer information pack, dated 27 February 2020, it had received from WTW, to James Hay. James Hay's normal practice was to obtain information about the ceding scheme directly from the ceding scheme or its administrator. On this occasion, it accepted the IFA's correspondence, applied the transfer value to the SIPP and emailed the IFA to confirm the transfer value was available for investment.
  12. The transfer value was invested on the next working day, 8 June 2020.
  13. On 11 June 2020, James Hay sent a second reminder to WTW for the information requested in the 7 May 2020 letter. James Hay received the information on 12 June 2020.

## **Adjudicator's Opinion**

14. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by James Hay. The Adjudicator's findings are summarised in paragraphs 15 to 21, below.
15. There were no specific time limits for James Hay's execution of investment instructions following receipt of a transfer value, although it would be expected to use its best endeavours to execute instructions without undue delay.
16. James Hay clearly outlined to WTW the information that it required to accept Mr E's transfer value, but the information was not provided when the transfer value payment was sent. James Hay was not in a position to apply the transfer value to the SIPP for investment until the information was received.
17. Payment of the adviser charge to the IFA by James Hay on 29 May 2020 was not its normal procedure and did not infer that the transfer value should be available for investment. WTW needed to confirm that James Hay's conditions and requirements had been met before it could accept the transfer value and apply it to the SIPP. The Adjudicator gave examples of why the conditions and requirements could not be waived. There were no such reasons why James Hay could not decide to pay the IFA's adviser charge pending confirmation that the transfer value could be accepted.
18. James Hay followed the industry standard practice for the administration of transfers and acted within acceptable timescales. It also agreed to apply the transfer value to the SIPP before it had received the necessary information from WTW, by accepting information provided by the IFA.
19. As Mr E's transfer value was a significant sum, the effect of investment market movements could also have been expected to be significant. It was therefore in Mr E's best interests to ensure the transfer and its subsequent investment was concluded as quickly as possible. There was no evidence that Mr E or the IFA sought to agree non-standard administration procedures with James Hay. So, it was not unreasonable for James Hay to follow the standard transfer administration process. This included allowing a reasonable time for transfer paperwork, providing the information it had requested, to arrive by post. James Hay was not responsible for WTW's failure to provide the necessary transfer information in the paperwork and there was no evidence that Mr E or the IFA took any action to ensure that the correspondence sent by WTW complied with James Hay's requirements.
20. There was no requirement for James Hay to provide Mr E with a loss calculation as it was not responsible for the alleged loss.
21. James Hay could not be held responsible if Mr E decided to expend time and effort on his own loss calculations before he knew if they were required.

22. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr E.

### **Mr E's additional comments**

23. Mr E has said that:-

- Payment of the adviser charge by James Hay to the IFA on 29 May 2020 indicated that James Hay had satisfied itself regarding ownership of the transfer value, so the transfer value must also have been available for investment at the same time. He questioned how James Hay could have paid the adviser charge if it was not certain the transfer value would be accepted.
- James Hay should have done more regarding the information outstanding from WTW when it received the transfer value on 22 May 2020. Four business days to take action was neither acceptable nor normal practice.

### **Ombudsman's decision**

24. Mr E's transfer value of £977,705 was such a significant amount that Mr E and the IFA should reasonably have anticipated that even short-term movements in investment market conditions could have a significant impact on its investment in the SIPP. The size of the transfer value might have represented a reasonable basis on which to agree specific service standards with James Hay, but there is no evidence that Mr E or the IFA sought any such agreement.

25. While James Hay was aware that the value transferred was substantial and could have escalated the priority of obtaining the information outstanding from the ceding scheme, it was under no obligation to do so.

26. So, I do not find that it amounted to maladministration for James Hay to follow its standard administration process and service standards.

27. James Hay requested the transfer value from WTW and outlined its requirements on 7 May 2020. It was not until 22 May 2020 that it received the transfer value from the ceding scheme. It was not unusual for the ceding scheme to send transfer confirmation by post following a transfer, along with any information requested by the receiving scheme, in this case, James Hay. So, I find it was not unreasonable for James Hay to await receipt of that correspondence for four days until 28 May 2020, before taking appropriate action, particularly as it had not agreed any alternative service standards with Mr E.

28. From 7 May 2020, when James Hay requested the transfer value from the ceding scheme to 28 May 2020, when James Hay received the transfer confirmation correspondence from WTW (but not all of the information required to complete the transfer), was 14 business days, allowing for one bank holiday. This initial period

where Mr E was unable to invest the transfer value, was outside the control of James Hay.

29. This transfer administration period was extended by a further six business days, by WTW's omission of the information requested in the 7 May 2020 letter. Receipt of this information was, as James Hay made clear, a condition of the transfer – and, at the point that the funds were received, that condition had not yet been fulfilled. James Hay took action to obtain the missing information within one business day, sending a reminder for the outstanding information to WTW on 29 May 2020. Ultimately, WTW did not provide the outstanding information to James Hay until 12 June 2020, following a second reminder from James Hay on 11 June 2020.
30. Although WTW did not provide the information James Hay requested until 12 June 2020, James Hay departed from its standard process of requiring information to be provided directly by the ceding scheme, and acted on the ceding scheme information provided by the IFA. It was this concession that allowed Mr E's transfer value to be applied to the SIPP on 5 June 2020, rather than 12 June 2020.
31. So, I find that James Hay cannot be held responsible for WTW's omission to provide the information requested by James Hay in the 7 May 2020 letter. How James Hay responded to WTW's omission did not amount to maladministration.
32. Mr E disagrees with the Adjudicator's Opinion that James Hay's payment of the adviser charge to the IFA did not infer that it was in a position to apply the transfer value to the SIPP.
33. James Hay's requirements to accept the transfer value and apply it to the SIPP were adequately outlined in the 7 May 2020 letter. The purpose of these requirements was to meet James Hay's regulatory and reporting obligations before applying the transfer value to the SIPP. This included, among other things, satisfying itself that the ceding scheme was registered with HM Revenue & Customs and of a type that the Rules of the SIPP permitted it to accept.
34. James Hay has said it was unusual for it to pay the adviser charge to the IFA before the transfer value had been accepted. On this occasion, James Hay paid the adviser charge, in response to a message from the IFA, on 28 May 2020 before it received the information it required to accept the transfer value.
35. Ultimately, James Hay set out its requirements for the transfer value to be accepted clearly in the 7 May 2020 letter but the requirements were not met. Payment of the adviser charge was reversible in the event that the transfer value could not be accepted, so its payment did not constitute James Hay's acceptance of the transfer value. I find that it did not amount to maladministration for James Hay to delay applying the transfer value to the SIPP until its requirements had been met.
36. Therefore, I do not uphold Mr E's complaint.

CAS-60018-C4V2

**Dominic Harris**

Pensions Ombudsman

26 March 2024