

## Ombudsman's Determination

Applicant	Mr G
Scheme	Lloyds Bank Pension Scheme No 2 ( <b>the Scheme</b> )
Respondents	Lloyds Banking Group Pensions Trustees Limited ( <b>the Trustee</b> ) Willis Towers Watson ( <b>WTW</b> ) James Hay Partnership ( <b>James Hay</b> )

### Complaint Summary

Mr G has complained that delays by WTW and the Trustee or James Hay in: (a) effecting a transfer of his pension rights from the Scheme and (b) investing the cash equivalent transfer value (**CETV**) in accordance with his instructions in the James Hay Personal Pension Plan (**the SIPP**), have resulted in a lost investment return of £25,522. Mr G has also said that he has suffered considerable distress and inconvenience dealing with this matter for which he would like to be suitably compensated.

### Summary of the Ombudsman's Determination and reasons

The complaint is upheld against WTW and the Trustee, but not against James Hay, because the overall time taken by WTW, on behalf of the Trustee, to fully respond to James Hay's letter, dated 30 November 2016, was excessive. WTW's failure to provide the requested information in a timely manner prevented James Hay from investing the transfer payment received on 10 January 2017, in accordance with Mr G's instructions which has caused Mr G significant actual financial loss.

## Detailed Determination

### Material facts

1. On 26 September 2016, Equiniti, the former administrator of the Scheme, sent Mr G a transfer information pack (**the Pack**) showing a CETV of £1,490,918 which was guaranteed until 26 December 2016. It also provided a current AVC fund value of £2,879. The covering letter specified Equiniti's transfer requirements and clearly stipulated in bold that:

“Please note that a transfer cannot proceed until all relevant documents and information have been received.”
2. Mr G decided to transfer his pension rights in the Scheme to the SIPP with the assistance of his Independent Financial Adviser (**the IFA**). In his e-mail dated 16 November 2016 to the IFA, Mr G said that:

“In my SIPP I wish to have a National Savings Investment (**NSI**) income bond...I also need a Prudential trustee investment plan in which I intend to place two Prudential funds...

In terms of my pension transfer from Lloyds, also just to confirm I have two pots with them which I want to transfer, the amounts being £1,490,918 and £2,878 with the fee of £7,500 coming from my pension.”
3. On 16 November 2016, the IFA sent James Hay the “Transfer Out Authority Form” and “Pension Transfer Request – Member Questionnaire” for the Scheme which had been partially completed by Mr G on 30 October 2016. These forms were included in the Pack sent to Mr G on 26 September 2016.
4. In an e-mail dated 18 November 2016 to Mr G, the IFA said that:

“I also mentioned to James Hay your investment intentions and they said that once the SIPP was complete, you will be provided with online access and will be able to make all the necessary amendments to incorporate your investments then.”
5. James Hay sent Equiniti the fully completed discharge form and questionnaire with its letter dated 30 November 2016. This letter included details of James Hay's transfer requirements and under the section entitled “What is required by James Hay from you : Information we need to know” James Hay asked, in particular, for “Details of any court orders against the policy, i.e. divorce or bankruptcy.”
6. WTW took over the administration of the Scheme from Equiniti and received details of Mr G's transfer request on 9 December 2016.
7. As a precaution, Mr G sent James Hay copies of some of the documents in the Pack which partially covered the information it requested. James Hay received them on 12 December 2016.

8. On 19 December 2016, James Hay informed WTW by telephone that it required all the information which it had asked for in its letter of 30 November 2016. WTW replied that it would make a note of this request in its records for Mr G. According to its record of the telephone call, WTW said that:

“Confirmed we are disinvesting the funds at present and started on the 14/12. Please send all relevant info they request with the transfer.”

9. WTW sent James Hay a letter dated 29 December 2016 showing that a CETV of £1,493,768, including AVCs of £2,850 would be paid into the SIPP for Mr G “soon”. The requested information was not supplied with this letter.
10. James Hay received the transfer payment on 6 January 2017 and a letter from WTW confirming payment had been made on 9 January 2017.
11. James Hay notified WTW by telephone on 12 January 2017 that it had not received all the requisite information in order to invest the monies. According to a note made by James Hay of this call, it had told WTW that its failure was “delaying investment of £1.4M.”
12. On 16 January 2017, Mr G complained to WTW about its failure to provide James Hay with the necessary information which was preventing him from investing the transfer payment. He also sent WTW a copy of James Hay’s letter dated 30 November 2016 which WTW received on 20 January 2017.
13. After receiving several telephone and e-mail reminders from both Mr G and James Hay, WTW sent James Hay a letter on 23 February 2017 which answered all its questions and confirmed that there were no court orders against the CETV. It also apologised to James Hay for the delay to its response.
14. James Hay received this letter on 27 February 2017 and invested Mr G’s transfer payment in accordance with his instructions on 1 March 2017.
15. On 2 March 2017, Mr G invested £1,000,000 held in the SIPP in an NSI income bond paying interest of 1% gross per annum and a further £485,000 in Prudential’s “growth pension fund” on 16 March 2017.
16. In its letter dated 27 March 2017, WTW apologised to Mr G for the time it took to issue its response to his complaint which was caused by “unusually high volumes of work”. It also said that:-
- His transfer had been dealt with as a priority and payment of the CETV was made “well within both industry standards and legal disclosure requirements” which gave it six months from receiving the transfer request to pay the CETV.
  - Given the high value of the CETV, which required WTW to first ensure that the relevant funds were available for payment and the need to disinvest his “money purchase AVC benefits”, it was satisfied that the transfer had been completed on a timely basis.

- James Hay's letter dated 30 November 2017 was "a standard template letter" not tailored to Mr G's case and at no point did James Hay notify WTW that it would not be able "to complete investment without this additional information".
17. WTW offered Mr G an award of £150 in recognition that he had alerted them to the "urgency of the situation" in his various e-mails and telephone calls which was "not picked up". Mr G declined this goodwill payment for the distress and inconvenience which he had experienced dealing with this matter.
18. Mr G subsequently made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) which was not upheld at both stages of the IDRP in August and November 2017. At Stage Two IDRP, the Trustee offered Mr G an improved goodwill award of £250 which he has also rejected.

### **Summary of Mr G's position**

19. If WTW had provided the information James Hay asked for without undue delay, the CETV could have been invested in the SIPP on 10 January 2017 and, so, he should be compensated for the loss of investment return.
20. In his e-mail to WTW dated 9 March 2017, he provided details of how he calculated the compensation amount of £25,522 as follows:

"On 01/03/17, James Hay confirmed that they had received the paperwork and they could release my funds to invest.

...I have instructed James Hay to directly invest £1 million (in an NSI income bond), and my IFA to go ahead with the £485,000 into "Pru fund growth."

...if you had completed the transfer correctly, I would...have been invested as I wanted on 10/01/17.

I calculate my loss to be:

£1 million at 1% is £27 per day over 50 days is £1,350.

Pru unit price 10/01/17 – 215.2

Pru unit price 01/03/17 – 223.5

Increase of...3.85%

£485,000 invested at 3.85% is £18,672

Additionally, I now have the problem that I cannot get these monies into my pension.

I have Fixed Protection and CANNOT have any compensation paid into the pension (HMRC website).

As such I will now lose the tax-free growth on £20,022 for say the next 25 years.

To calculate this, I am using the Pru fund expected growth rate figures currently on their website.

If invested in this fund I currently would be receiving 6.2% in the pension.

If invested in the same fund outside of a pension I would be receiving 5.1%.

The difference is the tax.

Therefore, I would be 1.1% better off on £20,022 over say the next 25 years which is £220 per annum times 25 being £5,500.

So, I calculate the cost of me not being invested, due to your error, from 10/01/17 to 01/03/17 is £25,522."

21. He obtained the "Pru fund growth" unit prices from a regional manager at Prudential and has retained a copy of this e-mail showing them. These unit prices are also openly available from Prudential.
22. The NSI interest rates can be found on its website under historic rates. From 6 June 2016 to 1 May 2017 the NSI website shows the interest rate to be 1%.
23. Using UK national average figures for tax rates and mortality is "a reasonable way to calculate his future loss of the tax-free environment of the pension".

### **Summary of the position of the Trustee**

24. The Pack is the standard transfer pack that is used in all transfer out cases. It contains all the information that receiving schemes usually required in order to accept and invest a CETV payment.
25. In Mr G's case, all the information which James Hay required was covered in the Pack apart from confirmation that there were no court orders attached to his benefits. It is not standard practice for receiving schemes to require explicit confirmation of this. Generally, they take a "common sense approach" and assume that none are in place unless informed otherwise. It is industry practice that the absence of explicit confirmation should not delay or prevent investment of the transferred funds.
26. James Hay's letter of 30 November 2016 asked for "details of any court orders against the policy" which was not the same as asking "whether there are any court orders against the policy and if so, details of the same."
27. It was therefore understandable that WTW did not provide this explicit confirmation at the time the transfer was made and had assumed that the transfer payment would be invested on receipt.
28. At no stage did James Hay make clear to WTW what information was outstanding for Mr G. Its failure to clearly specify "the one item of outstanding information, either in

writing or in a phone call, was unhelpful and contributed significantly to the delay in issuing the court order confirmation”.

29. The absence of information about court orders should not have prevented the investment of Mr G’s CETV by James Hay. If it had been a matter of concern, the proper course of action for James Hay would have been to either (a) refuse to accept the CETV or (b) invest the CETV in accordance with Mr G’s instructions but refuse to pay any benefits from the SIPP until receipt of all its requirements. Having accepted the CETV payment, it is illogical for James Hay to not invest it. WTW should not be held responsible for James Hay’s failure to do this.
30. If James Hay had made WTW aware, in good time, that there was outstanding information preventing investment of the CETV, it would have delayed payment until this issue was resolved.
31. At no point after the CETV was paid did either Mr G or James Hay specify to WTW exactly what outstanding information was preventing investment.
32. WTW was experiencing exceptionally high work volumes at the time of James Hay’s request and its standard response time was around six to eight weeks. It accepts that Mr G’s follow up request made on 12 January 2017 should not have been categorised as non-critical for which it has already apologised. If WTW had treated this request as a priority case, it should have responded in five working days, that is, by 19 January 2017. WTW’s failure to prioritise the follow up request did not in any way prevented James Hay from investing the CETV on receipt though.
33. There was “no act, omission or maladministration on the part of WTW which should, on any objective basis, have prevented the investment of the transfer payment”. It does not therefore consider that it should be held responsible for compensating Mr G’s loss of investment opportunity.

### **Summary of the position of WTW**

34. Consideration should be given to the environment which WTW were working in at the time it received James Hay’s instruction to proceed with the transfer on 9 December 2016. When WTW took over the administration of the Scheme from Equiniti on 3 October 2016, it inherited a significant backlog of work that materially increased during the first few months after its appointment. Consequently, it was agreed with the Trustee that WTW’s usual target service level turnaround times would not apply at this time. Mr G and James Hay should have been aware of this. Its messaging service, automated e-mail acknowledgements and contact centre would have drawn to their attention that responses to their enquiries could take 6 to 8 weeks.
35. The standard industry practice for dealing with transfers is not documented. It has developed over time in response to guidance issued by a range of industry bodies and regulators. The standard industry practice is also different for defined benefit and defined contribution transfers between pension providers.

36. The basis accepted within the industry upon which WTW and other administrators of occupational pension schemes dealing with transfers of “safeguarded benefits”, such as Mr G’s is a two-stage process.
37. An initial transfer quotation, compliant with the Pensions Regulator’s published industry guidance, is provided to the member or his/her IFA. This quotation includes all the necessary information for the member to decide whether to proceed with a transfer after obtaining the requisite financial advice. The relevant discharge forms are supplied with the transfer quotation. If the member decides to proceed with the transfer, he/she would complete and return the discharge forms to the administrator of the ceding scheme. If the member or his/her IFA needed any additional information, they would need to request it before taking a decision. Only by doing so could the member then make an informed decision and his/her IFA provide full financial advice. The completed discharge forms should therefore only be returned to the ceding scheme once the member and his/her IFA have received all the information necessary to make an informed decision and/or provide the necessary financial advice.
38. Receipt of the completed discharge forms is the instruction to the ceding scheme to proceed with the payment of the CETV and discharges the scheme trustees of any further liability to pay benefits to the transferring member.
39. By sending its letter dated 30 November 2016 to Equiniti, James Hay had declared that it had received sufficient information to accept the transfer payment for Mr G.
40. On receipt of this letter, WTW had therefore been instructed by James Hay to carry out the transfer based on the information provided in the Pack sent to Mr G by Equiniti in September 2016.
41. James Hay’s letter was a standard one asking for information which mostly had already been supplied in the Pack issued to Mr G. This letter did not state specifically that the CETV could not be invested until James Hay had received all the information requested.
42. During the telephone calls with WTW James Hay continued to ask for information that had already been provided in the Pack.
43. WTW does not routinely complete transfer questionnaires sent by pension providers. It is industry standard practice to provide full details of a member’s benefits and the ceding scheme in the Pack.
44. It is reasonable to expect that Mr G or his IFA would have shared the information in the Pack with James Hay. WTW cannot be held responsible if they did not do this. It was unnecessary for James Hay to have requested this information again from WTW before investing the CETV payment.

45. Additional information is sometimes provided before a transfer request is made. It is unaware of any other case where “perceived missing information” meant that a CETV once paid into the receiving scheme could not be invested.
46. If the information provided in the Pack was insufficient, James Hay should have asked for the missing details from WTW before requesting the CETV and accepting payment on 6 January 2017. It should have explained to WTW in writing that this information was “time critical” and necessary to invest the CETV.
47. James Hay has accepted that a ceding scheme can only confirm the presence of a court order to the best of its knowledge. The Pack did not specify that there were no court orders. The information which James Hay asked for in its letter of 30 November 2016 was “details of any court orders against the policy” though. There were no such details. If there had been any, they would have been included in the Pack as “material information” which directly affected the calculation of the CETV. For example, had a Court Order been implemented between the quotation and the payment stage, the CETV would have had to be recalculated. WTW therefore disputes whether it was strictly necessary to provide an explicit response to this question.
48. James Hay could have asked Mr G or his IFA to answer the question about whether a court order applied to the benefits available to him from the Scheme.
49. It was reasonable for James Hay to have proceeded with the investment of the CETV on the basis that neither Equiniti nor WTW had specified that it was subject to a court order.
50. James Hay had also entered a contract with Mr G after accepting the CETV and should therefore have invested it upon receipt.
51. It would appear James Hay is willing to allow its customers to be “out of market” and this is an entirely unilateral decision on its part. WTW cannot be party to contractual provisions James Hay agrees with its customers or be held responsible for investment decisions entirely outside of its control.
52. As an “advised transfer”, required by statute, Mr G’s IFA was obliged to perform Know Your Customer (**KYC**) checks which would have revealed whether any court order was attached to the benefits. The IFA recommended the SIPP to Mr G as part of the advice provided and as such was obliged to ensure that it was suitable for his needs, including how his pension savings were invested at the point the transfer was made.
53. WTW says that:

“...it was entirely unreasonable for James Hay to delay the investment of Mr G’s transfer value. The “additional” information James Hay purports to have been required had previously been provided as part of the transfer pack sent in response to the initial request for a transfer quotation, which they would



reasonably have expected to have received as part of the transfer pack, supplied in line with industry standard practice operated by trust-based pension schemes. Based on the volume of transfers paid to them from occupational schemes administered by WTW alone, James Hay undoubtedly receive many transfer values from occupational pension schemes. They must, therefore, have been very familiar with the two-stage process...whereby full transfer information is provided at the quotation stage. Furthermore, it should have been apparent to them that Mr G would only have been in a position to decide to proceed with the transfer of his benefits, and complete the Scheme's necessary transfer agreement forms (having received the appropriate financial advice), if full information about his benefits in the ceding scheme had previously been provided, which they had.

...What James Hay seem to be suggesting is that they are unable or unwilling to tailor the processes they employ for flexible benefit (DC) transfers for transfers of safeguarded benefits from trust based occupational pension schemes. WTW would reiterate in the strongest terms that the loss suffered by Mr G is entirely attributable to James Hay's business practices, which do not align with the accepted approach in the industry for occupational pension schemes."

54. The additional £5,500 compensation which Mr G has calculated for "the loss of tax-free investment growth" is based on speculative tax and mortality rates.

### **Summary of James Hay's position**

55. James Hay did not accept Mr G's transfer request based on information supplied by Equiniti. It did not receive any transfer information from Equiniti for Mr G. It received the "normal paperwork required by any SIPP provider to proceed with a transfer-in request in November 2016, that is, its application form and Mr G's "discharge paperwork". Its application form asks for basic details of the pension rights that are to be transferred.
56. Its standard procedure for any possible transfer is firstly to request the relevant information from the transferring scheme on its headed paper. In Mr G's case, it asked for full CETV information from WTW in its letter dated 30 November 2016. Despite notifying WTW on 19 December 2016 that it required all the requested information and WTW having replied that it would provide the details, WTW failed to do this in its letter sent in January 2017 confirming that the CETV had been paid as one would reasonably expect.
57. The SIPP Terms and Conditions together with the completed SIPP Application Form (**the Form**) constitutes the contractual agreement between Mr G and James Hay.
58. The SIPP Terms and Conditions stated that it should be read in conjunction with the SIPP Trust Deed and Rules.

59. Under the section entitled “Investments” in the notes to the Form which Mr G and his IFA completed, it clearly stated that:

“We will require satisfactory transfer information from the transferring scheme administrator before investments can take place.”

60. By signing the declaration on the Form, Mr G authorised “any relevant third parties to release all necessary information” to James Hay and confirmed to James Hay he understood that:

“Until this application is accepted and complete, your responsibility is limited to the return of the total payment(s) to the provider(s) of the scheme(s) listed in this application”.

61. This express contractual term meant that at the point of sale, Mr G was made aware that James Hay would not accept investment instructions from him until satisfactory information had been received from WTW. Without it, the transfer was not complete, and the CETV could not be invested. In its view, this was standard industry practice. It is unaware of any Financial Conduct Authority (**FCA**) prohibition which prevented it from imposing and relying upon such a term.
62. It was prevented from completing Mr G’s transfer-in earlier by following its practices and procedures because of WTW’s failure to supply the transfer information requested in a timely manner. It had insisted, throughout the transfer process, on receiving all the transfer information requested in its letter of 30 November 2016. Until this was provided, the transfer could not be concluded.
63. WTW did not send a copy of the Pack to James Hay in response to its letter of 30 November 2016. Mr G sent some of the documents included in the Pack to it in December 2016 because he was concerned that Equiniti might not have provided WTW with them. The Pack did not contain all the information which it had requested though. Furthermore, it required confirmation in writing from WTW directly that there were not any court orders attached to Mr G’s CETV. James Hay quite rightly continued to chase for the full transfer information. It is perverse for the Trustee and WTW to rely on the Pack sent to Mr G as evidence of supplying the requested information.
64. The information which it asked for was not unusual and is commonly requested by pension firms in support of a transfer of pension rights. Until this information was provided, any transfer-in could not be deemed as complete. It could not proceed with the investment of Mr G’s CETV in line with his instructions until all the requested information had been provided by WTW “to confirm acceptance”. If it had invested Mr G’s CETV which subsequently proved to be unacceptable after receiving the requested information, it would then have had to sell the investment and returned it to the Scheme. If this occurred, there was always a risk that the value of the investment might have fallen and there would then not have been adequate funds to return to the Scheme.

65. WTW appear to consider the provision of information concerning court orders to be irrelevant and not to be a matter of concern. However, this is not the case.
66. The Form asked Mr G whether the CETV originated from a pension credit, that is, pension rights received as part of a divorce settlement, and if so, he should supply James Hay with certified copies of the court order, decree absolute and pension sharing annex.
67. It also needed to be made aware of any court orders that could have a prior claim on the pension monies before any transfer is accepted. To satisfy its due diligence, this confirmation must come from the administrators of the ceding scheme, WTW in this case, and would not be accepted from Mr G. No question on this issue therefore appeared on the Form.
68. In 2012, the Department for Work and Pensions (**DWP**) undertook a study on the processes and costs of transferring a pension scheme which included a section that said:

“Providers must also examine the member’s pension for any legal circumstances that could affect a transfer. According to providers only a small minority of cases were found to contain any legal detail which needed to be given special attention during the transfer process. Nevertheless, each transfer application still needs to be checked for relevant legislation such as court orders and divorce bankruptcy”.
69. This serves to reinforce the importance of this information having to be requested by James Hay, as a provider, during any transfer request.
70. It legitimately asked for “simple and industry standard” transfer information which WTW failed to supply in a timely manner. Its follow up request should have been treated as a priority but WTW failed to do so despite having been made aware that its failure to supply all this information was delaying the investment of the CETV received for Mr G. The Trustee has conceded that WTW failed to log this request as “a critical piece of work”.
71. There was no reason for it to refuse to accept Mr G’s CETV since he clearly wished to transfer to the SIPP.
72. In accordance with the SIPP Terms and Conditions, the CETV received was held in the SIPP bank account and attracted interest at an agreed rate, currently zero, until investment. It could not proceed to invest the CETV in line with Mr G’s instructions until it had received all the requisite information from WTW.
73. The Trustee and WTW are trying to avoid acceptance of its mistakes in this matter by looking for faults with James Hay’s normal business practices. It is unacceptable for them to make presumptions about another firm’s business practices. It is up to James Hay to decide what its internal processes and practices should be in order to comply with the requirements of operating within a regulated environment.

74. It has not acted unfairly or unreasonably. There is however clear evidence of multiple failures to act with due care and diligence on the part of WTW and the Trustee.
75. James Hay said that:

“Surely, the onus is with WTW to supply the information requested from them in a timely manner, and, if they are not prepared...to contact James Hay and advise them that they will not do so...I believe that WTW are suggesting that James Hay should have contacted them for the transfer information before requesting Mr G’s transfer-in. This is not industry practice and this could have opened up a whole different area of problems for Mr G (such as the expiry of any guarantee date which may have resulted in a fall in his transfer value) bearing in mind the apparent inability of WTW to answer simple industry standard questions within a timely manner.”

...

“Much of WTW’s argument seems to be based upon the assertion that James Hay should have had prior knowledge of their practices and procedures (as these are the same among the providers of occupational pension schemes) which include the provision of a transfer quotation to the customer which contained some of the transfer information James Hay required. James Hay does not dispute that WTW and other providers of occupational pension schemes are obliged to provide transfer quotations to their customers, however, it is unreasonable to assume that James Hay, or any other pension provider, should have detailed knowledge of individual providers’ procedures for providing this.....Each provider is likely to have its own additional requirements and/or steps as well as its own procedures which will be unique to that pension provider. It is not practicable or reasonable to expect James Hay staff to have in-depth knowledge of another pension providers’ practices or procedures. James Hay will comply any specific request that is made of it by a transferring scheme in relation to a transfer, but it is unreasonable to expect James Hay to make assumptions about another pension providers’ procedures.

The letter sent by James Hay to WTW ...requesting the transfer, is the standard letter which...has proved efficient for many years in obtaining the relevant information required to ensure that James Hay can appropriately handle the transfer monies once received.” Copies of replies to James Hay’s letter it has received from various other pension providers, around the same time as Mr G’s transfer, were provided to my Office. Included were ones from other occupational pension schemes who have provided the transfer information James Hay requested. Also provided to my Office was a copy of James Hay’s transfer information sheet which is given to all receiving scheme providers when a customer transfers away from James Hay. James Hay asserts that this is a further demonstration, that it is commonplace within the

industry for receiving schemes to request the same information which it has requested from WTW.

James Hay also stated that: "WTW did not inform James Hay that some of the transfer information that it sought was contained within the quotation provided to Mr G. WTW had opportunities to make James Hay aware of this in their letter dated 29 December 2016 or in the various phone calls James Hay had with them prior to them sending the transfer monies, and after when James Hay was expressly chasing the information.

In any event, James Hay could not have relied on the transfer quotation as this was issued to Mr G in September 2016 which was more than three months prior to the transfer monies being sent. Furthermore, it did not answer James Hay's question regarding court orders. James Hay requests that all transferring pension providers supply the necessary transfer information at the point of transfer, so that James Hay can be sure the information is up to date and accurate.

The suggestion by WTW that the absence of any mention of a court order in the transfer quotation should have been sufficient for James Hay is unconvincing. The absence of information cannot be construed as an express confirmation that a court order did not exist...

WTW assert that James Hay should not have accepted the transfer if this confirmation was necessary to invest the money. However, James Hay refutes this argument as the mere existence of a court order is not necessarily grounds to reject a transfer. However, if a court order does exist, James Hay must have the relevant details to ensure that it can comply with the terms of any such order. In any case, James Hay is not required to reject transfers and return monies to the transferring scheme where requested information has not been provided.

...The transfer quotation sent by WTW to Mr G is a matter of private correspondence between WTW and Mr G and is not relevant to James Hay. James Hay does not consider that it had any obligation to request a copy of this correspondence. James Hay requested the information it required directly from WTW and would not request copies of private correspondence between transferring schemes and its members to which it believes it has no right...WTW acknowledged in several telephone calls that the information had been requested by James Hay and that they would seek to provide it. The information was eventually provided in their letter dated 23 February 2017 along with a sincere apology for the delay."

## **Conclusions**

76. The SIPP Terms and Conditions and the Form constitute a contractual agreement between James Hay and Mr G. This agreement is between Mr G as the customer and James Hay as the SIPP provider. As a result, these contractual terms are only

enforceable between James Hay and Mr G. They are not enforceable against WTW as it was not a signatory to the agreement.

77. However, the contractual documentation establishes an obligation upon James Hay to ascertain all relevant and necessary information from WTW prior to investing Mr G's monies. It created an understanding that this would be the usual course of action taken by James Hay. Mr G could therefore expect that James Hay would undertake this work. Similarly, by signing the declaration on the Form Mr G confirmed he understood that James Hay would need to seek all relevant information it deemed necessary. To that extent, James Hay are entitled to rely on the contractual terms as agreed between it and Mr G. However, because the agreement does not create an enforceable obligation upon WTW to provide such information, James Hay have no ability to enforce compliance against WTW.
78. The contractual provisions can, however, be used as a barometer of reasonableness by which James Hay conducts its business and what it required of those that it undertook business with. As a good and proper scheme administrator, in my view, WTW ought to have complied with any reasonable request from James Hay for any outstanding information to allow it to complete the transfer and investment process for Mr G in a timely fashion.
79. James Hay and WTW have both said that they acted in accordance with standard industry practice dealing with Mr G's transfer. They have, however, also admitted that there is no evidence available to corroborate their statements.
80. James Hay is entitled, however, to exercise its own commercial judgment when deciding what its "internal processes and practices" should be in order to comply with the necessary requirements of operating within a regulated environment. On the completed Form, it is clearly stated that James Hay would require satisfactory transfer information from the transferring scheme administrator before any investments could take place.
81. James Hay can therefore rely on this agreement with Mr G which established an understanding that it would seek satisfactory transfer information from WTW before investing the CETV. I do not consider that James Hay had acted unreasonably or unfairly by insisting all its information requirements were met by WTW.
82. After carefully considering all the available evidence. it is my view that the overall time taken by WTW to fully respond to James Hay's letter dated 30 November 2016, was excessive.
83. Furthermore, I agree with James Hay that WTW and the Trustee cannot rely on the Pack which Equiniti sent Mr G on 26 September 2016, to demonstrate that it had provided all the information that James Hay required. For this argument to be valid, WTW should have sent James Hay a copy of the Pack directly. That Mr G supplied James Hay with copies of some of the documents in the Pack in December 2016 did not absolve WTW from doing this.

84. In any event, the Pack did not confirm that there were no court orders attached to Mr G's CETV. I also do not concur with WTW that the absence of any such qualification should have been accepted as an answer. I agree with James Hay that it was not until it had received WTW's letter of 23 February 2017 that all its transfer requirements had been met.
85. If WTW considered that a reply to James Hay's letter dated 30 November 2016, was not needed as all the necessary information had already been provided, it should have informed James Hay of this as soon as possible. By doing so, this would have given James Hay an opportunity to explain, during the telephone call on 19 December 2016, why it was vital that WTW supplied a full response to its questions and the consequences of failing to do so.
86. It is most regrettable that WTW did not provide this information to James Hay in either its letters dated 29 December 2016, or 9 January 2017, despite having told James Hay during the telephone call on 19 December 2016 that it would supply the information together with the payment. If WTW had done this, James Hay would have been able to invest the transfer payment on 10 January 2017 in accordance with Mr G's instructions. I find this oversight represents maladministration on the part of WTW.
87. It is also unfortunate that WTW did not treat James Hay's follow up request as urgent despite having clearly been told by both James Hay and Mr G that its failure to supply all the requested information was preventing investment of the CETV. That WTW was extremely busy at the time did not excuse it from failing to give this request priority and I find that this amounts to further maladministration on its part.
88. I cannot see any reason for James Hay to have refused to accept the transferred funds. The process required movement of money and information and could only be completed once both had been received.
89. I note WTW's argument that it was not told which specific item of information was outstanding, but I do not find that was a reason not to act on the repeated notification that the information was incomplete. It would have been a simple matter to have clarified what exactly was missing, if that was unclear.
90. I find that the maladministration identified above has caused Mr G actual financial loss because of the excessive amount of time during which his investments were out of the market.
91. The amount of compensation which Mr G is seeking from WTW for lost investment return during the period 10 January 2017 to 1 March 2017, of £20,022, follows the timeline which occurred once all the information was received by James Hay and mirrors the investment which occurred. I am satisfied that his calculation reflects what would have occurred if the information had been complete at the point when the money was transferred.

92. Mr G said that the compensation payment cannot now be paid into the SIPP as it would be deemed an unauthorised payment jeopardising his fixed protection status with HMRC. He refers to HMRC guidance to that effect.
93. To retain fixed protection, “benefit accrual” (which included money purchase contributions) is not permitted under any registered pension scheme after 5 April 2012. Unlike under enhanced protection, where relevant accrual in a defined benefit scheme can only occur when benefits are crystallised, under fixed protection benefit accrual can occur at any time. Registration for fixed protection was required by 5 April 2012.
94. I concur with Mr G that the compensation payment of £20,022 will most likely be deemed as “benefit accrual”. If this amount is paid into his SIPP, he will consequently lose his fixed protection status and incur a tax charge for any breach of his fixed protection lifetime allowance.
95. Mr G has estimated that he will suffer a loss of tax-free investment growth on the £20,022 in the region of £5,500 if he invested it in the “Pru fund growth” outside of the SIPP for the next 25 years. I find that the assumptions which Mr G has used in his calculation of this investment loss are credible and the total amount of compensation which he is seeking of £25,522 reflects his actual loss.
96. I also find that the mistakes made by WTW have caused Mr G significant distress and inconvenience. I note that the Trustee has offered Mr G an award of £250 in recognition of this which I consider to be lower than I would ordinarily direct the Trustee to pay Mr G for the level of non-financial injustice which he has suffered.
97. It is therefore my opinion that this complaint should be upheld against the Trustee and WTW and I make the appropriate directions below. The complaint against James Hay is not upheld.

### **Directions**

98. Within 28 days of the date of this Determination:
- WTW shall pay Mr G a compensation award of £25,522 in recognition of the investment loss of £20,022 and £5,500 estimated loss of tax-free growth on this amount; and
  - the Trustee shall award Mr G £500 for the significant distress and inconvenience which he has experienced in dealing with this matter.

**Anthony Arter**

Pensions Ombudsman  
8 December 2020