DRN-3451684

The complaint

Mr K complains that the transfer of his pension from Zurich Assurance Ltd (Zurich) to James Hay was delayed and as such caused Mr K a financial loss.

What happened

In February 2020 Mr K made a large single premium contribution to his Zurich pension. The size of this contribution meant that Zurich required additional information about the source of the funds to ensure they were complying with the relevant financial crime regulations. Zurich's communication confirmed that if the appropriate information was not provided, Zurich would not be able to retain the monies and they would be returned to Mr K.

Mr K provided the relevant information to Zurich in April 2020. No confirmation or follow up request was sent by Zurich with the funds remaining invested in Mr K's pension.

In October 2020, through his financial advisers, Mr K submitted a request to transfer his pension from Zurich to James Hay. The request was submitted via the online Origo system on 5 October 2020.

On 7 October 2020 Zurich responded to the transfer request stating that they required more information regarding the source of the funds for the February 2020 contribution. The transfer was placed on hold until this information was provided.

Mr K again provided the information requested on 13 October 2020 with Zurich confirming all their requirements had been met on 14 October 2020.

During this time Zurich had also written to Mr K regarding his annual allowance. This letter was sent in error, with Zurich subsequently confirming in November 2020 that Mr K did not need to take any action. Given the time which had passed since the initial Origo transfer request was made, a second transfer request was required – this was completed on 1 December 2020.

On 8 December 2020 Zurich wrote to Mr K to confirm that the transfer had been completed and an amount of around £516,000 had been sent to James Hay.

At this point Mr K questioned the transfer value with Zurich. He had been monitoring the value of the pension over the delay period and had noted the value had been much higher just prior to transfer.

This £516,000 value was subsequently confirmed to be the value of the pension as at 14 October 2020 – the date at which Zurich had all the required information to allow them to process the transfer. Given the amount transferred was much lower than the value of the pension in December 2020, and much lower than he was expecting, Mr K complained.

Zurich upheld the complaint, apologised for the delay and the incorrect information given to Mr K and offered £100 as compensation.

This offer was rejected, and the complaint was forwarded to this service.

Our investigator looked into things and concluded there had been an undue delay to the transfer.

The investigator said that the delay had been caused by the missing source of funds information which should have been resolved much sooner, and certainly well before the first transfer request was submitted on 5 October 2020. Had the correct process been followed following Mr K's February 2020 contribution, there would have been no outstanding information when the 5 October 2020 request was made. Rather than re-requesting source of funds information on 7 October 2020, Zurich could simply have processed the transfer request.

Had this been the case our investigator concluded that Mr K's funds would have been encashed on 7 October 2020 and would then have been transferred to James Hay five working days later on 14 October 2020.

As such the investigator recommended redress that requested Zurich calculate the encashment value of Mr K's pension as at 7 October 2020 and then remodel the James Hay pension on the basis that this earlier value would have been received – and then subsequently invested – on 14 October 2020.

The investigator also recommended an increased payment of £250 to cover the distress and inconvenience caused to Mr K's retirement planning.

Initially both Zurich and Mr K accepted the findings issued.

Zurich's offer to Mr K used a different redress methodology based on calculating the values of the pension in October and December 2020, and then adding interest on the difference from December 2020 onwards.

The offer was rejected by Mr K who noted that the redress was not calculated in the way recommended by the investigator and questioned the fund values used in the calculation. After being questioned on their offer by our investigator, Zurich accepted that the fund values used in their calculation were incorrect and offered to re-calculate the redress using the correct fund values but still using their own methodology.

As no agreement was reached, the case has been passed 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.

The overall sequence of events laid out by our investigator as described above has not been challenged by either party. Additionally, all parties have accepted that the transfer from Zurich to James Hay should have been completed sooner.

The findings issued by the investigator concluded that without the initial errors in finalising the source of funds issue in February 2020, there would have been no delays or additional administration required once the original Origo transfer request was received on 5 October 2020. This would then have allowed Mr K's pension to be encashed on 7 October 2020 and the funds then transferred to James Hay on 14 October 2020.

Neither Mr K nor Zurich have challenged these dates or the reasoning the investigator has used to calculate them, however I have still gone on to consider whether these are appropriate.

It is impossible to know exactly what would have happened if Zurich had completed their administration closer to the February 2020 contribution date, however, having looked at all of the documentation on file I can find no reason to disagree with the dates laid out by our investigator and consider them a reasonable approximation of what would most likely have occurred.

The first Origo request was made on 5 October 2020. Zurich asked for further information about this on 7 October 2020 so it is reasonable to conclude that if nothing had been outstanding it is this date upon which the transfer request would have been actioned.

The second transfer request – made on 1 December 2020 – resulted in the funds being transferred to James Hay on 8 December 2020, five working days later. As such it is reasonable to use this same five working day turnaround time to calculate that the from the 7 October 2020 it would have been 14 October 2020 when funds would have been sent to James Hay.

Having come to the same conclusions as our investigator around the dates which should be used within the redress calculations, I have gone on to consider whether the redress recommendations made by the investigator are appropriate or whether Zurich's amended approach is more reasonable.

The purpose of any redress instruction I give is to ensure the consumer is returned to the position they would most likely find themselves in, had a business error not occurred.

The methodology proposed by Zurich looks at the different transfer values of Mr K's pension in October 2020 – when it should have been transferred, and in December 2020 – when it was actually transferred, and then adds interest to the difference between the two in order to compensate for ongoing investment loss on this amount over time.

Whilst I can see why Zurich have used this method, the redress recommendations made by the investigator are a closer match to what would most likely have happened. Mr K's pension monies would most likely have been transferred to James Hay in October 2020 and then invested. James Hay can provide information on what investments were subsequently made by Mr K and this information can then be used to calculate what the pension would now actually be worth had the monies been received earlier. I consider this a more accurate method of calculating Mr K's losses rather than simply adding an interest rate.

As such I agree with the redress recommendations made by the investigator. Redress should be calculated as I have laid out below.

I would note here that in reaching this decision I have not considered which of the redress methodologies would result in a higher payment to Mr K. To be fair to both Mr K and Zurich I have focussed solely on which calculation would best return Mr K to the position he would most likely now be in, rather than which would result in the highest redress.

Putting things right

My aim is that Mr K should be put as closely as possible into the position he would probably now be in if he had the delay not occurred.

I take the view that Mr K would have invested within the James Hay pension earlier than he actually did. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr K's circumstances and objectives when he invested.

What must Zurich do?

To compensate Mr K fairly, Zurich must:

- Compare the value of Mr K's James Hay pension at the date of this final decision with its value had the Zurich pension been encashed on 7 October 2020 and then transferred to James Hay on 14 October 2020. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

- Zurich should add interest as set out below:

- Zurich should pay into Mr K's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Zurich is unable to pay the total amount into Mr K's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr K won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr K's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr K is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr K would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mr K £250 for to cover the distress and inconvenience to his retirement planning.

Income tax may be payable on any interest paid. If Zurich deducts income tax from the interest it should tell Mr K how much has been taken off. Zurich should give Mr K a tax deduction certificate in respect of interest if Mr K asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
James Hay Pension	Still exists and liquid	Investment made within the James Hay pension.	14 October 2020	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's

					acceptance)

Actual value

This means the actual value of the James Hay SIPP at the end date.

Fair value

This is what the James Hay SIPP would have been worth had the Zurich pension been encashed on 7 October 2020 with the proceeds transferred to James Hay on 14 October 2020.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the James Hay SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Zurich totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr K wanted to transfer his Zurich pension to James Hay. This should have been completed sooner and in line with the dates detailed above.

Zurich has already calculated the value of Mr K's pension on 7 October 2020 and James Hay (or Mr K's advisers) should be able to calculate what this value would be worth at the date of my final decision if it had been invested on 14 October 2020 in line with the performance of the underlying investments actually made by Mr K within his James Hay pension.

My final decision

I uphold the complaint. My decision is that Zurich Assurance Ltd should pay the amount calculated as set out above.

Zurich Assurance Ltd should provide details of its calculation to Mr K in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 January 2023.

John Rogowski
Ombudsman