

## The complaint

Ms R says that James Hay Administration Company Ltd (James Hay) was responsible for substantial delays in effecting the transfer of her money purchase (defined contribution) occupational pension to a Self-invested Personal Pension (SIPP). She says this caused her significant financial detriment.

## What happened

In December 2019 Ms R says she initiated the transfer of two of her pensions. She wanted to consolidate her funds into a James Hay SIPP. One of the switches happened within two weeks. But the move of her Accenture Retirement Savings Plan (ARP), which was administered by Willis Towers Watson (WTW), suffered delays.

It's helpful in cases like Ms R's to review the chronology of events, which has been constructed from evidence provided by James Hay, WTW and Ms R.

19 December 2019 – Ms R signed paperwork expressing her wish to transfer her defined contribution (DC) pension away from ARP. This was a WTW form, which she sent to James Hay, presumably for it to complete the relevant section as the receiving scheme. Ms R also completed a James Hay form requesting the switch of her Additional Voluntary Contributions (AVC) plan as cash into a James Hay SIPP. The paperwork she submitted wasn't complete.

20 December 2019 – WTW issued Ms R with a transfer quotation pack. This included paperwork for her and James Hay to complete. It says it received her completed Identity Verification form and copy of her passport four days later.

30 December 2019 – James Hay acknowledged receipt of the paperwork Ms R had signed on 19 December 2019. It said she'd also need to complete a cash transfer in form for her ARP. It enclosed the form.

7 January 2020 – the funds from Ms R's AVC plan were received by James Hay.

14 January 2020 – Ms R signed the cash transfer in form for her ARP. She provided various information about her pension, including that it didn't contain any safeguarded benefits. She also confirmed that she hadn't received any financial advice. The form included the following guidance which was pertinent to her situation:

*"For all transfers from ...any occupational money purchase (defined contribution) schemes that contain safeguarded benefits, we will require evidence from your financial adviser that they have advised you in respect of this transfer and recommended that you proceed with the transfer...."*

*"If you have not received financial advice and wish to transfer from an occupational money purchase ...scheme, we may accept the transfer provided we receive written confirmation from the ceding scheme that there are no safeguarded benefits."*

15 January 2020 – James Hay sent Ms R another set of transfer forms, presumably because it wasn't yet aware she'd signed the forms the previous day.

17 January 2020 – James Hay received a request to transfer in form for Ms R's ARP from WTW. The transaction was shown as a non-advised transfer.

21 January 2020 - James Hay sent a letter to WTW requesting information about whether her ARP had any safeguarded benefits. Along with the request, James Hay included a letter of authority (LOA) to permit information to be released.

27 January 2020 – WTW received the correspondence from James Hay. But the LOA it had provided was invalid. Specifically, it didn't include her last notified address.

3 February 2020 – WTW received a call from Ms R about progress with the transfer. It said it was yet to receive the completed discharge pack. She asked it to respond to James Hay concerning its LOA requirements.

7 February 2020 – James Hay sent a new LOA to WTW. It also attached documents such as the cash transfer in form Ms R had completed.

13 February 2020 - WTW said it had received some paperwork from James Hay, but not its completed discharge forms. The same day it resent the discharge forms, and also provided information about Ms R's ARP. It noted this had a non-guaranteed value of about £281,000. The realised value would be dependent on when the transaction was given effect.

WTW confirmed Ms R had a protected tax-free cash entitlement in 2006 of about £49,000 which was larger than 25% of her pension benefits of about £134,000 at that time. It noted that if she transferred her pension she would lose this protection. It went on to say:

*"If Ms R has enhanced or fixed protection on any of her benefits she may lose her protection if she transfers her benefits to another plan. She will have applied and received a certificate from HM Revenue & Customs showing her enhanced or fixed protection."*

*"If Miss R thinks she has protected benefits she should speak to a registered financial adviser before going ahead."*

In the pack WTW sent to James Hay, it also set out its requirements for the switch to go ahead. And it said that once it got all the documents it needed, it estimated it could take up to 20 working days to complete the transfer.

19 February 2020 – James Hay received the information from WTW.

23 February 2020 – Ms R called WTW requesting an update. She said she'd been informed by James Hay that the ball was in its court. But it informed her it was still unable to proceed without the completed discharge forms.

26 February 2020 – An internal James Hay file note suggests that it was preparing to decline Ms R's request for transfer because her ARP contained safeguarded benefits. The letter was placed on pending for a week – but no explanation has been provided as to why that was.

20 February-15 March 2020 – James Hay accepts it failed to act on the information it was provided by WTW on 19 February. It says this caused a delay of 18 working days.

16 March 2020 – Ms R asked James Hay for an update. It seems to have decided at this point the transfer could go ahead and it issued the transfer discharge forms to WTW by

recorded delivery. But at the same time internal notes indicated that it still hadn't obtained the assurance it required about safeguarded benefits. It says moving ahead with the pension transfer without this was another error on its part.

18 March 2020 – James Hay has provided evidence showing WTW signed for receipt of the papers it sent on 16 March 2020.

23 March 2020 – The Government announces the first COVID lockdown in the UK.

29 March 2020 – Ms R complained to James Hay and WTW about how long it was taking to effect the transfer of her ARP.

1 April 2020 – WTW set out a timeline for Ms R showing its involvement to date and suggesting issues with James Hay's service. It told her it had still not received the pension discharge forms.

2 April 2020 – Ms R contacted James Hay to inform it that WTW still hadn't received the discharge paperwork.

3 April 2020 – James Hay reissued the discharge forms by email. But WTW said it didn't receive all the required forms.

8 April 2020 – James Hay apologised and emailed all the forms to WTW.

9 April 2020 - WTW told Ms R, the value of her pension had dropped by more than 10% since the last valuation provided. It was now worth around £243,000. So it asked her if she still wanted to proceed.

13 April 2020 – Ms R confirms she wanted to go ahead with the transfer of her ARP funds. WTW said it started the sale of her pension fund on 14 April 2020. It said this could take five to ten working days, after which it would send her money to James Hay.

24 April 2020 – James Hay received Ms R's funds.

Ms R complained to James Hay about what had happened. She raised several concerns, which she summarised in the following terms:

*"I want to know why it took 6 months for the process to be carried out? Why it took James Hay six months to complete and pass over the standard required forms? Why despite my constant phone calls nobody in James Hay did anything to expedite a process that was clearly stalled? And finally what James Hay will do to compensate me."*

In responding to Ms R in October 2020 (after she'd already approached this Service), James Hay accepted that it had got some things wrong in the transaction. In particular it said it had failed to respond to WTW's communication of 13 February 2020 in good time. It said it had caused a delay of 18 working days and action was only prompted by Ms R's intervention.

But it went on to set out why it believed the delay it had caused wouldn't have resulted in a financial loss to Ms R. It noted the information WTW had provided about her ARP plan should have led to it conducting further work. It said:

*"...the letter from Willis Towers Watson mentioned you may have been entitled to enhanced tax-free cash but excluded assurance as to whether any other enhanced benefits applied to the scheme they administered. Upon receiving this letter, James Hay were obligated to*

*carry out additional due diligence checks to establish if there was a possibility of you losing any valuable benefits on transfer.”*

*“I would have expected this to involve further correspondence with Willis Towers Watson to once again establish the specifics of the scheme and Willis Towers Watson would have been asked to calculate your current tax-free cash entitlement. If this calculation confirmed you were entitled to more than 25% tax-free cash, this benefit is likely to have been lost upon transfer to James Hay. In this event, James Hay should have sought confirmation from you as to whether you were still happy to continue with these facts in mind. This hypothetical enhanced tax-free cash entitlement could be considered a valuable benefit, and James Hay were required to seek your agreement before this benefit is abandoned.”*

*“I am in no doubt that the correct due diligence checks I have proposed would have extended to, and likely exceeded the delay of 18 working days caused by James Hay’s dormancy upon receiving the letter of 19 February 2020.”*

James Hay said it would investigate whether Ms R had lost any valuable benefits as a result of the transfer. It said:

*“We will now need to gather more information as to those benefits. To this end, we will contact Willis Towers Watson to establish all the benefits you held, and also to request your entitlement to tax-free cash to be calculated. In the event you were indeed entitled to more than the standard 25%, and this benefit has been lost due to transfer, James Hay will seek to cover any additional tax liability caused. I will write to you further once this review has been completed.”*

Although I know WTW provided further information to James Hay about the features of her ARP, it’s not clear from the paperwork I’ve seen whether it has ever notified Ms R of the outcome of its further review. If it hasn’t, it should do so now.

The Investigator upheld Ms R’s complaint. He agreed that James Hay had caused delays, and he found these went beyond the lack of action in relation to WTW’s letter of 13 February 2020. He didn’t accept what it said about how long it would’ve taken to conduct the necessary due diligence in relation to protections and guarantees related to her ARP. James Hay disagreed.

As both parties couldn’t agree with the Investigator’s findings and conclusions, Ms R’s case was passed to me to review afresh as the final stage of our involvement. I issued my provisional decision in June. Neither party has provided any new evidence or arguments for me to consider. As such I see no reason to depart from my initial findings and conclusions.

## **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.

Where there’s conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what’s most likely to have happened.

I’ve not provided a detailed response to all the points raised in this case. That’s deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I’ve taken into account all submissions, I’ve concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Ms R's complaint. I'll explain why.

*How does the regulatory framework inform the consideration of Ms R's case?*

The first thing I've considered is the extensive regulation around transactions like those performed by James Hay for Ms R. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like James Hay. As such, I need to have regard to them in deciding Ms R's complaint.

I note that when Ms R brought her case to this Service she identified there'd been a delay of six months in effecting the transfer of her ARP plan. From the available evidence, I can't conclude her assertion is correct.

That said, I don't think either James Hay or WTW can mount a strong argument that it was fair and reasonable to Ms R that the transfer of her ARP funds into her SIPP which was effectively initiated in January 2020, took until towards the end of April 2020 to conclude.

I note both firms allude to failures with each other's organisations as the cause of some of the delays Ms R experienced. These problems are reasonably clear from the timeline I've reconstructed.

I'm mindful Ms R has brought her complaint against James Hay. I'm not considering a complaint against WTW. So, while it's not appropriate to make findings or conclusions in relation to any acts and omissions by WTW, it's clear it does have a case to answer in respect of its handling of the transaction, including in respect of the following matters:

- The letter it sent to James Hay on 13 February 2020 in respect of her ARP guarantees and protected benefits, which was arguably incomplete and ambiguous. This required further investigation by the receiving provider to establish the actual position (albeit James Hay failed to take this action).
- Evidence provided by James Hay which shows WTW signed for receipt of the discharge documentation on 18 March 2020. The apparent loss of those papers is not something I hold James Hay responsible for. Based on the evidence, it seems more likely than not WTW did receive them.

Turning to James Hay. I think it was responsible for:

- Sending an invalid LOA to WTW, which meant it couldn't provide James Hay with information about Ms R's pension as soon as that request was received.
- A failure to act on the information WTW provided on 13 February 2020. James Hay has accepted it was responsible for the resulting 18 days of delay.

- Sending incomplete discharge forms to WTW on 3 April 2020 and needing to resend the pack on 8 April 2020.

James Hay only accepted responsibility for the failure to act on the information provided by WTW on 13 February 2020. But it said because the information it had been sent was incomplete, had it done things properly it would've done further due diligence to establish what guarantees and protections Ms R's ARP provided.

I think there's merit in James Hay's basic argument. We can't have a situation where this Service requires firms to conduct proper checks in important transactions like those it was carrying out for Ms R, but then penalises it for doing so. However, I'm not persuaded by James Hay's argument when it said the further work required would've taken up at least as much time as the delay it caused.

I think the issues to be investigated by James Hay were bounded and relatively straightforward to bottom with WTW. And so I don't think that allowing a standard 5 days for each element of its process and that of WTW is appropriate. I'm mindful how far matters were advanced by this time. And also how quickly both parties could act when focussed on what needed to be done – as we saw towards the end of the process.

Further, even if I thought the Investigator hadn't allowed enough for the due diligence checks to be undertaken in his assessment, it's also the case he didn't take into account other areas of James Hay's acts and omissions that led to delay.

I think the transfer of Ms R's ARP funds to her SIPP was delayed as a result of the acts and omissions of the firms involved. I find that the way WTW and James Hay worked together to give effect to the transfer of her pension was disjointed and inefficient. There were examples of poor communication and handling. This, together with the issues I've set out, led to a significant delay in the transfer of her funds.

The Investigator concluded that James Hay had been responsible for around 17 days of delay. The assessment of how many days Ms R's switch was delayed isn't a matter of science. It's not possible to say with certainty what the effect of any failing by one firm was on the other, and vice versa. And the issues arising happened at various stages as each firm passed the baton back and forth.

It's a matter of considering what's fair and reasonable in the circumstances. As such, I find that the Investigator's estimate of the impact of James Hay's failings to have been about right, and I see no strong argument to propose an alternative.

### **Putting things right**

I'm upholding Ms R's case. So, she needs to be returned to the position she would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold James Hay Administration Company Ltd responsible for.

I understand that Ms R moved her pension funds away from her James Hay SIPP to a new provider in October 2020.

As such I require James Hay Administration Company Ltd to:

1. Determine the transfer value of Ms R's ARP pension fund investments had they been sold 17 working days earlier.
2. Work out the fair value of Ms R's James Hay SIPP at the date she transferred it to another provider had (1) been transferred into it.

3. Compare the value of Ms R's James Hay SIPP at the date it was transferred to another provider with (2). If there is a loss, James Hay should pay into Ms R's pension plan, to increase its value by the amount of the compensation.
  4. Any additional contributions paid into Ms R's James Hay SIPP should be added to the calculation from the point in time when they were actually paid in.
  5. Any withdrawals, income or other distribution out of Ms R's James Hay SIPP should be deducted from the calculation at the point they were actually paid so they cease 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 James Hay totals all those payments and deducts that figure at the end instead of deducting periodically.
  6. If there is a loss, add interest at 8% simple per annum to that sum, from the date that Ms R's James Hay SIPP funds were transferred until it settles.
  7. Payment should allow for the effect of charges and any available tax relief. James Hay shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
  8. If James Hay is unable to pay the compensation into Ms R's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.
  9. The notional allowance should be calculated using Ms R's actual or expected marginal rate of tax at her selected retirement age. For example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Ms R would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
  10. Provide the details of the calculations to Ms R in a clear, simple format.
- James Hay Administration Company Ltd should also pay Ms R £100 for the distress and inconvenience caused by its failings in the transaction to transfer her ARP funds.

### **My final decision**

For the reasons I've already set out, I'm upholding Ms R's complaint, and I require James Hay Administration Company Ltd to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 9 August 2022.

Kevin Williamson  
**Ombudsman**