DRN-3712891

The complaint

Mr J complains about delays caused by James Hay Administration Company Ltd (JH) in transferring his SIPP funds to enable him to set up his annuity.

What happened

Mr J said he took financial advice and set up two Self-invested Personal Pensions (SIPPS) with JH in the period from 2006 to 2019. In 2019 he decided he wanted to move into annuities instead and gave instructions to accept an insurance company quote issued in May 2019 (with a guarantee period until 15 July 2019).The insurance company said it received his application and sent a request for funds to JH on 6 June 2019.

Mr J said no action was taken by JH for six weeks from 6 June to 18 July and in the end, it took 12 weeks and 14 weeks respectively for each SIPP to be processed.

JH accepted it had caused a delay in not sending on their open market annuity request form at the start. But it said the pay out from a property investment fund could not have been completed sooner as it was illiquid so it would never have been possible to meet the deadline of 15 July 2019 to capture the higher annuity rate. It noted that for the SIPP without that property investment fund (policy ending 736) the forms were received on 24 July 2019 and there were no further delays and the payment was completed in a timely fashion but this took 5 weeks. So even if the open market form had been sent out earlier it would not have been possible to complete the transfer by 15 July 2019. It apologised but said it had not caused any loss.

JH also said the open market option form was available on their website and they expect members or their adviser to familiarise themselves with the documentation needed to withdraw funds. When it first sent the form on 18 July these were sent by post as it did not hold an email address at that time. It said it did not monitor fund suspensions and was not responsible for doing so. It did not have a service level agreement for a transfer such as this as it could not control the timescales taken by investment funds. It said that from 24 July when it received the correct application form it took 1 business day to issue risk warningsJH also said the open market option form was available on their website and they expect members or their adviser to familiarise themselves with the documentation needed to withdraw funds. When it first sent the form on 18 July these were sent by post as it did not hold an email address at that time. It said it did not monitor fund suspensions and was not responsible for doing so. It did not have a service level agreement for a transfer such as this as it could not control the timescales taken by investment funds. It said that from 24 July when it received the correct application form it took 1 business day to issue risk warnings which were then waived on 30 July 2019. It took 4 business days following the receipt to instruct the investment fund manager on 5 August 2019. The proceeds were then received on 21 August 2019 but a regular income payment was sent on 27 August and the transfer completed. If the same timeframe is applied to the second policy is clear it would not have been done in time for 15 July.

I issued a provisional decision and said the following, I first needed to decide if JH made a mistake. Having reviewed the papers I thought it caused a delay and didn't deal with Mr J's request as quickly as it could have. JH accepted this and said it should have sent out the open market request form at the start.

Where there had been a mistake, I could make an award for any financial loss and distress and inconvenience. I therefore considered this in further detail below.

Mr J had two SIPPs one policy ending 736 and one 249.

The policy ending 736 was wholly invested as to 98.77% in one insurance company international bond fund with the remainder in cash. As at 23 July 2019 it had a value of around £173,000.

The policy ending 249 (started in 2007) had a value of around £180,000 in June 2019 and was invested in 6 funds one of which was listed as Property fund which held about £65,000 (35%) of the overall investments in that policy, as at June 2019.

The JH file showed that it received various notifications about the property fund from the investment manager:-

- On 14/12/2012 to notify that the property fund manager was deferring any redemption requests and placing redemption requests in a queue that would be dealt with in date order,

- 02/08/2017 it was called to say that the fund had been suspended.

- 20 March 2020 it was notified the fund was still suspended but from 17 March redemption requests were no longer accepted.

- 19 April 2021, notified fund still suspended

- 26 January 22 redemption queue cleared and now making capital distributions settlements which were due on 26/1/22.

- 5 April 22 notification of payment of percentage of NAV to remaining investors and closure of fund from 14 July 2021.

From the above evidence it was clear to me that since 2012 the fund had been controlling redemptions. However it did seem that redemption requests were being accepted and dealt with in date order whether or not the actual fund was suspended. Based on this evidence it seemed reasonable to me to accept that as JH said an instruction to sell units in this funds would not proceed in the same timescales as other funds that were not subject to such controls.

I noted also that JH terms and conditions provided the following:-

12.9 Suspension of Funds
12.9.1 In the event that a fund manager suspends dealing in a Fund for whatever reason, we accept no responsibility for any inability to process instructions in respect of that fund.

So it seemed JH had expressly provided that it was not responsible for any delay caused by a suspension. This supported what JH has said about the sequence of events and reasons for the delay.

However this was only part of the reason for the delay which I considered further.

For ease of reference I set out a timeline of events below. This was based on the evidence provided to me.

Timeline of events in business days

6 June 2019 The annuity company sent applications forms and request for funds to JH

Day 1 -Monday 10 June JH (subsequently) confirmed it received the request from the annuity company. The letter from the annuity company said *'we believe that all the information you need to make the payment is above. If you have any questions or there is any reason why you are unable to make payment please call us on..'*

Day 21 -Tuesday 9 July the annuity company chased JH but were told they needed a form signed by Mr J which JH had not yet sent out but said they would do so urgently.

Day 25 – Monday 15 July time for acceptance of the annuity terms from the insurance company expired.

Day 28 Thursday 18 July The annuity company chased again and JH said the form had still not been sent out. JH sent the form to Mr J under cover of a letter dated 18 July listing both policy 249 and 736.

Day 30 Monday 22 July Mr J said he finally received a letter (dated 18 July) from JH with two transfer discharge forms.

Day 31 Tuesday 23 July Mr J called JH to ask for advice about how to complete the forms and was told he had been sent over the incorrect forms.

Day 31 Tuesday 23 July The correct forms were emailed for signature and returned the same day

Day 34 Friday 26 July JH wrote to Mr J asking him if he was sure he wished to proceed and he telephoned in reply on 30 July to confirm he did.

Day 35 Monday 29 July the annuity company received a discharge from which they completed and returned on the same day.

Day 37 Wednesday 31 July JH confirmed they received contact from the annuity company in June.

Day 40 Monday 5 August the annuity company phoned JH but did not manage to get through.

Day 40 Monday 5 August a letter is sent by JH to the investment manager asking for disinvestment of all units in all funds in the policy ending **736** and cash and income is not Reinvested

Day 40/41 Monday 5 and Tuesday 6 August - A transaction schedule shows that for the SIPP ending **249** units were sold on 5 and 6 August 2019 (yielding around £111,000) Funds).

Day 41 - 6 August JH called the annuity company back to say they were waiting for funds from the investment company.

Day 45 Monday12 August policy **249** the administrator writes to JH to confirm the sale of all funds (save the property fund) with proceeds of around £111,000. The letter makes no comment about the status of the sale of units in the property fund.

Day 47 Wednesday 14 August the annuity company chased again and were told the investment company property stock had been suspended from trading.

Day 52 Wednesday 21 August 2019 (The policy ending **736**) the insurance company confirmed it had been cashed in and £174,000 would be paid within 4 working days

Day 53 Thursday 22 August 2019 policy 249 letter from the administrator confirming of payment of £6.92 on one fund from sale.

Monday 26 August 2019 Bank Holiday

Day 57 Thursday 29 August 2019 Policy 736 confirmation of crystallisation date of 29/08/2019 and value of about £173,000

Day 58 Friday 30 August (policy **736)** the annuity company received the proceeds (around £173,000). JH wrote to Mr J to confirm the funds were sent by telegraphic transfer. JH file records shows around £173,000 transferred to the annuity company.

Day 68 Thursday 12 September (policy 249) sale proceeds received by JH from investment manager for the property fund the file record shows around £58,000 was transferred. It does not confirm how many units were sold.

Day 71 Tuesday 17 September the annuity company received the proceeds from the second SIPP (ending **249)** of around £180,000. JH writes to Mr J to send an annuity statement confirming the funds sent by telegraphic transfer. The file records for JH show around £180,000 was transferred.

Financial loss
Where there is a mistake the aim is to put Mr J back in the position, he would have been in but for that mistake. I needed to consider how long the delay was and what difference it would have made had there been no delay.

How long was the delay?

JH had accepted that it should have sent out the required forms which were not sent to Mr J until day 28 and received by him on day 30. I noted that JH said the open market option form was available on their website and they ed members or their adviser to familiarise themselves with the documentation needed to withdraw funds. But I didn't think this relieved JH of responsibility for sending out the form. The annuity company expressly said '

we believe that all the information you need to make the payment is above. If you have any questions or there is any reason why you are unable to make payment please call us on.'

But JH didn't answer to say what was needed. JH was also subject to the principles set out by the Financial Conduct Authority. These include

- principle 6 – *A firms must pay due regard to the interests of its customers and treat them fairly.*

- *Principle 7 - A firm must pay due regard to the information needs of its clients, and* *communicate information to them in a way that is clear, fair and not misleading.*

I thought these principles were clear that JH should do more than passively supply information. Even if it had simply reacted to the annuity company request it would have been clear what was needed much sooner. Had it proactively also written to Mr J that would have been supportive of '*his information needs'.* So I didn't think making the form available was a reasonable excuse for the delay in sending out the form in this case and should not excuse JH from responsibility for the delay.

However it also then sent the wrong forms and it then sent the new forms by email and they were signed and returned on the same day (day 31). While sending the wrong forms caused some delay, it seemed reasonable to assume it would always have taken at least one or two days for the forms to arrive by post. So in reality it didn't make any overall difference as the correct forms were then sent by email and returned the same day.

So I thought that JH caused 28 business days of delay before it took steps to start the process by sending the forms to Mr J on Thursday 18 July.

How long did it take to encash?

I have seen the disinvestment instruction for policy 736 that was sent on Day 40 - Monday 5 August to request full sale. The funds were confirmed as encashed on Day 52 (21 August) and the proceeds reached the annuity company by day 58 (30 August). So once all the papers were received it took from day 34 (when all forms required from Mr J were completed and confirmation he wished to proceed provided) until day 52 to complete the transfer of money.

A period of 18 business days.

I had not seen the disinvestment instruction for policy 249 but confirmations issued by the administrator show this was in hand by Day 40 - 5 August. However due to the payment of an income distribution and the delay with the property fund the transfer of money didn't take place until day 71.

A period of 37 business days (from day 34 to day 71).

What position would Mr J have been in but for the delay?

But for the 28 day delay it seemed reasonable to conclude that Mr J's transfer would have been completed 28 business days earlier which would mean it was completed on day 43 (Thursday 8 August 2019) rather than day 71.

So it was clear the transfer from both policies would not have been completed in time for the 15 July 2019 deadline for the annuity quote. I assumed that both transfers needed to be completed before the annuity contract could proceed.
However Mr J had said that the annuity company rates changed on 25 July, 8 August and 23 August. It therefore seemed likely that had there been no delay by JH, Mr J's money would have reached the annuity company in time for him to accept the rate change implemented on 8 August and before the rate change on 23 August.

My proposed redress
I did not know whether Mr J has suffered a financial loss as a result of the delay. I said that because while the annuity rate available on 8 August 2019 would, I understood have been better than the rate Mr J actually received, his funds would also have been encashed at earlier dates and might have realised more or less than they actually did.

My purpose in making an award for redress is to put Mr J back in as close to the position he would have been in but for the delay by JH.

It was therefore necessary for JH to complete calculations on the basis proposed below assuming each step took place 28 days earlier, so the encashment instructions would have been sent on day 12 (2 July 2019) rather than on day 40 (5 August 2019).

JH should:-

1. calculate the amount of money that Mr J would have received from each fund in policy ending 249 had the encashment instruction been issued on day 12 – 2 July 2019 and assuming that all funds (other than the property fund were sold on day 13- 3 July 2019). This reflects what happened when the instruction was issued on day 40 and encashment confirmed by the administrator on day 40 and 41

2. for the purposes of the money realised from the property fund assume that the fund would have been encashed 28 days earlier than it actually was. I did not have information to establish that date at preent but asked JH to confirm this before I issued my final decision.

3. calculate the total amount of money that Mr J would have received from the encashment of his SIPP policy ending 736 had the encashment instruction been issued on day 12 – 2 July 2019, and assuming encashment 28 days sooner than it actually was cashed in.

4. working with Mr J's annuity company ask it to confirm how much gross annuity income Mr J would be receiving if the total of the amounts received from 1,2 and 3 above were applied using the annuity rate on 8 August 2019 on the same terms and conditions (other than the annuity rate) as it was actually secured.

5. **Past Loss** JH should calculate:-

- **A) Total of all the notional payments** which Mr J should have received from this annuity pension, net of his marginal rate of tax, from the date of commencement of his current annuity up to the date of settlement under this direction based on the amounts advised by Mr J's annuity company under 4 above.

- **B) Total of all the actual payments** which Mr J has actually received from his annuity pension, net of his marginal rate of tax, from the date of commencement of his current annuity up to the date of settlement under this direction

- **C) Past Loss = A – B.** If the answer is negative, there's a past gain and no redress is payable if it is positive there is a loss which should be paid to Mr J.

6. In working out the net payments, **JH** should assume that **Mr J** was a nil/20%/40% rate taxpayer.

7. Such amount as is calculated as a loss under section 5 should be paid together with interest thereon at the rate of 8% per annum simple form the date each annuity pension payment should have been paid to the date of actual payment of the arrears calculated under 5 above, to Mr J under this direction.

8. ***Future Loss -*** *If there is a Past Loss under 5 above, JH should calculate and make*

arrangement to compensate for future loss as follows by calculating the following

D) The pension which Mr J would be receiving had he bought the higher rate of gross annuity income calculated under 4 and 5 above. (This is the gross annual amount from which the net instalments used to calculate the total under A) were used.)

E) The pension Mr J is currently receiving. (This is the gross annual amount of his current annuity, from which the net instalments used to calculate the total under B were used.)

F) Future Gross Loss per year = D – E.

G) JH should make arrangements with Mr J's annuity company or another annuity company to provide funds to it or another annuity company to increase Mr J's annuity to the gross pension amount to the level it would have been but for the delay.

If for any reason this is not possible **JH should refer to published annuity rate** tables to work out the gross purchase price of a comparable annuity paying the lost income in F).

H) The purchase price of the annuity found in G) is Mr J's gross future loss. If it is not possible to increase Mr J's existing annuity or secure another additional annuity to increase the amount of annual pension needed to compensate for future loss the amount required to purchase such an annuity should be paid directly to Mr J as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at his likely rate on the income in F – presumed to be Nil/20%/40%.

Mr J will need to supply JH with details of the basis of his annuity to enable JH to work with the annuity company to establish what annuity income would have been secured at 8 August 2019.

JH will need to supply Mr J with detailed workings including evidence to support unit prices on the dates of encashment assumed in 1 to 3 above and the annuity rate used in 4 above.

I have also considered an award for distress and inconvenience. Such an award is to reflect the impact on Mr J not to punish JH. It is clear that it has been frustrating for Mr J. Having considered this on balance I think an amount of £200 is fair and reasonable in the circumstances.

Before I issue my final decision

It would be helpful if before I issue my final decision:-

both parties could confirm:-

1. they are content with the detail in the timeline of events and if not explain why

2. they are content that the proposed redress is workable and whether they are any issues with increasing the current annuity or whether compensation should be paid in a lump sum.

If **Mr J** could confirm:-

1. his marginal rate of tax and provide details of his current annuity

2. his position in relation to the Lifetime Allowance (LTA) and any protection from the Lifetime Allowance and whether an increase in the annuity could create any potential issues if Mr J does not have LTA headroom to allow such payments or such payment could affect any LTA protection.

It would also help if **JH** can:-

1. Confirm on what date the property fund price was set for encashment.

2. Confirm whether all units in the property fund held in his SIPP policy ending 249, were encashed in 2019 and if so, why the fund managers continued to write with respect to Mr J's policy until 2022. If all units were not encashed in 2019, please explain how many remained and whether Mr J has now received credit following the final distributions from the fund.

I proposed to uphold this complaint.

I proposed to direct that JH should:-

1. Pay Mr J £200 for distress and inconvenience

2. within 30 days of this service notifying it that Mr J has accepted my final decision, it should calculate whether there has been any financial loss on the basis set out above and provide Mr J with details of those calculations.

3. If there is a financial loss it should make arrangement for:-

(a) To pay compensation for future loss to Mr J within 60 days of this service notifying it that Mr J has accepted my final decision and such payment to be either by way or increased annuity or lump sum payment as set out in my redress calculation.

(b) and pay any arrears of annuity income for past loss with interest at 8% per annum simple on the basis set out above within 60 days of this service notifying it that Mr J has accepted my final decision.

4. If payment of compensation set out above for future loss is not made within 60 days of JH receiving Mr J's acceptance of my final decision, interest must be added to the compensation for future loss, at the rate of 8% per year simple from the date of my final decision to the date of payment.

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

Mr J said he supported my provisional decision. He was content with the timeline of events and the proposed method of redress. He confirmed his tax code and that this was a basic rate taxpayer. He said he had a protected LTA of £1.4 million which had not been fully utilised. He also supplied details of his current annuity which have been sent on to JH.

JH said it accepted the timeline and findings in my provisional decision. It confirmed that all the units in the property fund were encashed on 6 September 2019 and the cash transferred to the annuity provider on 17 September 2019. After this it was notified of a bulk settlement rebate of 1.032 units on 20 September 2019 with a value of £18.75. As it charged a £50 fee to administer post closure payments this amount was below the threshold and no payment was sent to Mr J.

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.

As both parties have accepted my provisional decision, I have not changed my mind.

I note the comments from JH about the further receipt of funds from the property fund which seems reasonable to me.

Putting things right

JH should put things right on the basis below and on the basis that Mr J is a basic rate taxpayer and that there are Lifetime Allowance Protection issues that both parties will need to consider in deciding how to pay the redress without affecting that protection. My proposed redress makes provision for this and how the redress can be paid if this is an issue.

It is necessary for JH to complete calculations on the basis below assuming each step took place 28 days earlier, so the encashment instructions would have been sent on day 12 (2 July 2019) rather than on day 40 (5 August 2019).

JH should:-

1. calculate the amount of money that Mr J would have received from each fund in policy ending 249 had the encashment instruction been issued on day 12 – 2 July 2019 and assuming that all funds (other than the property fund were sold on day 13- 3 July 2019). This reflects what happened when the instruction was issued on day 40 and encashment confirmed by the administrator on day 40 and 41

2. for the purposes of the money realised from the property fund assume that the fund would have been encashed 28 days earlier than it actually was.

3. calculate the total amount of money that Mr J would have received from the encashment of his SIPP policy ending 736 had the encashment instruction been issued on day 12 – 2 July 2019, and assuming encashment 28 days sooner than it actually was cashed in.

4. working with Mr J's annuity company ask it to confirm how much gross annuity income Mr J would be receiving if the total of the amounts received from 1,2 and 3 above were applied using the annuity rate on 8 August 2019 on the same terms and conditions (other than the annuity rate) as it was actually secured.

5. **Past Loss** JH should calculate:-

A) Total of all the notional payments which Mr J should have received from this annuity pension, net of his marginal rate of tax, from the date of commencement of his current annuity up to the date of settlement under this direction based on the amounts advised by Mr J's annuity company under 4 above.

▯ **B) Total of all the actual payments** which Mr J has actually received from his annuity pension, net of his marginal rate of tax, from the date of commencement of his current annuity up to the date of settlement under this direction

▯ **C) Past Loss = A – B.** If the answer is negative, there's a past gain and no redress is payable if it is positive there is a loss which should be paid to Mr J.

6. In working out the net payments, **JH** should assume that **Mr J** was a 20% basic rate taxpayer.

7. Such amount as is calculated as a loss under section 5 should be paid together with interest thereon at the rate of 8% per annum simple form the date each annuity pension payment should have been paid to the date of actual payment of the arrears calculated under 5 above, to Mr J under this direction.

8. ***Future Loss -*** *If there is a Past Loss under 5 above, JH should calculate and make arrangement to* compensate for future loss as follows by calculating the following

D) The pension which Mr J would be receiving had he bought the higher rate of gross annuity income calculated under 4 and 5 above. (This is the gross annual amount from which the net instalments used to calculate the total under (A) were used.)

E) The pension Mr J is currently receiving. (This is the gross annual amount of his current annuity, from which the net instalments used to calculate the total under B were used.)

F) Future Gross Loss per year = D – E.

G) JH should make arrangements with Mr J's annuity company or another annuity company to provide funds to it or another annuity company to increase Mr J's annuity to the gross pension amount to the level it would have been but for the delay.

If for any reason this is not possible **JH should refer to published annuity rate** tables to work out the gross purchase price of a comparable annuity paying the lost income in F).

H) The purchase price of the annuity found in G) is Mr J's gross future loss. If it is not possible to increase Mr J's existing annuity or secure another additional annuity to increase the amount of annual pension needed to compensate for future loss the amount required to purchase such an annuity should be paid directly to Mr J as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at his likely rate on the income in F – presumed to be 20%.

JH should also pay Mr J £200 for distress and inconvenience.

My final decision

I uphold this complaint.

I direct that James Hay Administration Company Ltd should:-

1. within 30 days of this service notifying JH that Mr J has accepted my final decision pay Mr J £200 for distress and inconvenience.

2. within 30 days of this service notifying it that Mr J has accepts my final decision, it should calculate whether there has been any financial loss on the basis set out above and provide Mr J with details of those calculations.

3. If there is a financial loss it should make arrangement:-

   (a) To pay compensation for future loss to Mr J within 60 days of this service notifying it that Mr J has accepted my final decision and such payment to be either by way or increased annuity or lump sum payment as set out in my redress calculation.

   (b) to pay any arrears of annuity income for past loss with interest at 8% per annum simple on the basis set out above within 60 days of this service notifying it that Mr J has accepted my final decision.

4. If payment of compensation set out above for future loss is not made within 60 days of JH receiving Mr J's acceptance of my final decision, interest must be added to the compensation for future loss, at the rate of 8% per year simple from the date of my final decision to the date of payment.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 24 October 2022.

Colette Bewley
Ombudsman