DRN-3746106

Financial Ombudsman Service

The complaint

Mr R complained about delays caused by James Hay Administration Company Ltd trading as James Hay Partnership in switching his pension to a new provider (who I'll refer to as "A").

What happened

Mr R held a self-invested personal pension ("SIPP") with James Hay. In October 2021, he asked to transfer this to A). The SIPP held various investments. Two transfers were needed – an in-specie transfer of assets held within the SIPP and a cash transfer of the assets held as cash.

James Hay received the transfer request from A on 15 October and it responded to A on 20 October with the information they needed. James Hay asked A to confirm acceptance of the transfer, which it did on 4 November. James Hay then arranged the in-specie transfer of Mr R's assets and awaited confirmation from A that they'd all been transferred. A confirmed on 24 November that the final asset had been transferred.

On 25 November the cash balance of Mr R's SIPP was due to be transferred. The payment was raised but wasn't successful. Mr R and his advisor contacted James Hay on various occasions to chase the transfer of his cash balance. This transfer was eventually made on 22 December.

Mr R complained to James Hay about the delay that occurred. Although it felt the in-specie transfer completed as expected, James Hay agreed that there was a delay with the transfer of the cash. In summary, it felt the cash transfer should have been completed on 25 November. James Hay apologised and to resolve the complaint it offered Mr R £1,349.60 – this being the losses it thought he'd suffered because of the delay (which was calculated by comparing the cash amount transferred with what Mr R's funds would have been worth if they had been transferred on 25 November and invested in line with a benchmark).

Mr R rejected James Hay's offer. He didn't feel that all points of his complaint had been addressed or that the compensation offered was appropriate. His complaint was therefore referred to us.

Our investigator thought James Hay was responsible for four weeks of delays for the cash element of the transfer. She agreed with the date James Hay had used in its calculations and asked for the redress to be re-calculated to bring any losses up to date. She also recommended that James Hay pay Mr R £150 compensation for the stress and inconvenience caused.

Mr R didn't agree with our investigator. He didn't feel that the issue regarding adviser fees had been addressed. He also expected any calculation to be from 5 November as this is when A received the first part of his pension transfer.

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.

In cases like this – particularly when a business has already accepted that it acted unfairly – I don’t think it’s necessary to delve into what happened and why. For me, it’s simply enough here to conclude that James Hay did unnecessarily delay the transfer of the cash element of the pension as this should have been completed much earlier that it was. I therefore only need to decide what James Hay needs to do to put matters right.

The first issue I’ve considered is the date the cash should have been transferred. It appears from the documentation provided that assets were transferred to A on/around 5 November. This ties in with what I’ve said above about A confirming acceptance of the transfer on 4 November. It also appears that James Hay didn’t receive confirmation that all the assets had been transferred until 24 November.

In transfers of this nature, it's normal industry practice – and not unusual – for the cash element to be transferred at the end. Accordingly, I’m satisfied that James Hay acted reasonably by waiting until the final confirmation was received before transferring the cash element of the SIPP. I therefore conclude that the delay in transferring the cash in this case was from 25 November to 22 December ie roughly four weeks, as accepted by James Hay and agreed by our investigator. I’m therefore satisfied that 25 November is the appropriate date to use for the compensation calculations (see below).

Mr R also raised the issue about fees being charged. The first was in respect of the transfer fee of £150 – he felt this shouldn’t be charged given the delays that occurred. I don’t agree with this argument. When deciding what compensation is appropriate I look to put Mr R back into the position he would have been in had the delays not occurred. And if the cash transfer had been made on 25 November the transfer fee would have been charged. So there are no grounds in my view for this to be refunded.

The second was in respect of ongoing administration/management fees charged by James Hay and advisor fees. It’s not entirely clear to me that Mr R was charged any ongoing management fee by James Hay. But, as I’ve just said, the compensation I award is designed to put him back into the position he would have been in had the cash transfer been made on 25 November. So this will take account of any fees taken beyond this date.

James Hay referred to an advisor charge when it initially considered Mr R’s complaint – it said was part of the reason why the cash transfer was being delayed. This appears to have been a charge by Mr R’s financial advisor rather than James Hay. If this is the case Mr R will need to take that up with his financial advisor.

Finally, Mr R has said that both he and his financial advisor spent time chasing James Hay. I don’t award compensation for any distress and inconvenience caused to Mr R’s financial advisor. However, it’s clear the delay led to Mr R also spending time chasing the transfer. Our investigator suggested – and James Hay agreed to – £150 compensation and I think that’s fair in the circumstances. It’s in line with what I would have awarded had it not already been on the table.

Summary

For the reasons outlined above, I conclude that James Hay unreasonably delayed the transfer of the cash element of Mr R pension. It should have been transferred on 25 November 2021 rather than 22 December 2021.

Putting things right

Financial loss

The calculations outlined below will in my view put Mr R as close as possible into the position he would be in if the cash element of his pension had been transferred on 25 November 2021.

Mr R's loss should be calculated as follows:

- calculate what the current value of the 'cash transfer' element of Mr R's pension would be if it had been transferred on 25 November 2021 (this is "A")
- confirm the current value of the 'cash transfer' element of Mr R's pension is as it is invested now (this is "B")
- subtract "B" from "A" to get "C".

If "C" is a positive number, that is the loss Mr R has suffered. If "C" is a negative number, there's been no loss and James Hay don't have to pay any further compensation.

If there's a loss, James Hay should pay into Mr R's pension to increase its value by the total amount of compensation and any interest. The amount paid should allow for the effect of any charges and any available tax relief. Compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance.

If James Hay is unable to pay the total amount into Mr R's pension, it should pay the amount directly to him. But had it been possible to pay into the pension, 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.

The notional allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr R 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 Mr R would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

Interest

The above compensation must where possible be paid to Mr R or into his pension within 30 days of the date James Hay receives notification of his acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 30 days, that it takes James Hay to pay the compensation.

In order to do the calculations James Hay might need to get information from Mr R's new/current pension scheme, which in turn might require Mr R's authorisation. This might mean the actual time taken to settle goes beyond the 30 day period allowed for settlement above. So any period of time where the only outstanding information required to undertake the calculation is needed from Mr R's new/current pension scheme may be added to the 30 day period in which interest won't apply.

Income tax might be payable on any interest paid. If James Hay deducts income tax from the interest, it should tell Mr R how much it has taken off. James Hay should give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Distress and inconvenience

In addition to, and irrespective of, the above, James Hay should pay Mr R £150 compensation for the distress and inconvenience caused.

My final decision

I uphold this complaint. I require James Hay Administration Company Ltd trading as James Hay Partnership to pay Mr R compensation as outlined under the ‘Putting things right’ heading above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 7 April 2023.

Paul Daniel
Ombudsman