

The complaint

Mr B complains that James Hay Administration Company Limited trading as James Hay Partnership (JHAC) delayed the transfer of his pension to another provider and he suffered financial loss as a result. He also complains about administration delays and errors.

What happened

Mr B was a member of a Group Self-invested Pension Scheme (Group SIPP) which was administered by JHAC. It was invested in a product known as the IPS Pension Builder SIPP.

Mr B is represented by Mr H and he acted on his behalf throughout the process. So, I will refer to Mr H in this decision.

Mr H informed JHAC in or about August 2020 that Mr B (and other members of the Group SIPP) wanted to transfer their pensions to another provider. The Group SIPP was invested in a commercial property and arrangements were made to sell the property. The property sale completed on 23 February 2021 and the sale proceeds were transferred to JHAC's bank account that day.

Mr H says that an application was made to transfer the pension using the ORIGO Options Pension Transfer Service (ORIGO). However, despite having previously been told that JHAC would accept an application to transfer using ORIGO, the application was denied and paper forms had to be submitted. He says that the paper forms were received by JHAC on 12 March 2021 but JHAC delayed the transfer. It wasn't completed until 18 June 2021 with the monies being reinvested by the receiving scheme on 22 June 2021.

Mr H complained to JHAC about what had happened. He said that throughout the period since August 2020 there had been a series of administrative errors and delays. By way of summary, he referred to problems he'd experienced when he asked JHAC to provide copies of bank statements to enable him to reconcile rental payments; problems with the rent reconciliation itself caused by JHAC errors and incorrect information; issues around communication and significant delays in effecting the transfer.

JHAC investigated the complaint. It said it had received the transfer application on 12 March 2021. It did not accept that any maladministration which may have occurred prior to that date had led to any delays in the transfer. But it accepted that the transfer application had taken much longer than it should reasonably have taken. It said it was prepared to consider financial loss calculations based on the following assumptions:

- The instructions were received on 12 March 2021;
- The transfer was completed within 10 working days – 26 March 2021; and
- The funds were reinvested by the new provider within 2 working days - 30 March 2021.

JHAC asked Mr B to provide evidence of the investments the new provider had made so that it could complete the calculations. In addition JHAC said it would refund Mr B's share of the administration fee raised on 15 March 2021. That fee related to administration charges for

the period from March 2021 to February 2022. It would also refund his share of the fee for the property sale.

JHAC apologised that the transfer had taken longer than anticipated and for any inconvenience or concern that had been caused. In recognition of this it offered to pay him £250 by way of compensation.

Mr H did not agree. He referred the complaint to our service.

Our investigator looked into the complaint. She thought that JHAC had not made it clear to Mr B's advisers that ORIGO was not available for this particular SIPP. If it had done that she thought the paper application forms would have been received by 1 March 2021, which was the date that she said the sale proceeds could reasonably have been allocated to the SIPP. She said it was reasonable to say that the transfer process could take ten working days and allowing for a further two days to reinvest the funds, she thought the process could have concluded by 17 March 2021. She thought JHAC should rework its calculations using these dates.

Our investigator also considered the offer to pay Mr B £250 compensation. She thought this was fair and in line with our approach.

JHAC accepted what our investigator said and agreed to settle the complaint in the way that she'd set out. It said it didn't have anything further to add.

Mr H also responded to what our investigator said. He reiterated his view that the transfer should have commenced on the date that JHAC had been sent the property sale completion monies – 23 February 2021. He said the transfer should've been straightforward. The fund was all held in cash. He thought the transfer could reasonably have concluded within a few days and the funds could have been reinvested no later than 3 March 2021.

Mr H also thought that £250 was not enough compensation for what happened. He said Mr B was aware of and affected by the ongoing failures during the entire period and not just in connection with the final transfer delays. He said the distress and inconvenience had been prolonged and extraordinary, over an 18 month period. Hours and days were spent trying to get JHAC "to do their job".

Because Mr B didn't agree, the complaint has been passed to me to decide.

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.

Having done so, I've reached the same outcome as our investigator for mainly the same reasons. I'll explain why:

In its final response letter JHAC accepted that the transfer took much longer than it would consider to be reasonable and identified two primary reasons for the delay:

- It took longer than it should reasonably have taken to complete the fund split; and
- It misunderstood that a deed of removal was required – in fact it was not required.

There is no dispute that the transfer took longer than was reasonable. The issue that I have to decide is whether the compensation which JHAC has offered to Mr B to resolve his

complaint is fair and reasonable. So, I've looked at what happened and when I think the transfer should reasonably have concluded.

When considering whether a business has acted fairly and reasonably we take into account the law, codes and good practice. The Association of British Insurers (ABI) published a statement of good practice relating to pension transfers in 2006. It said that requests relating to transfers of pensions should be completed within ten working days. Since that date there have been further developments in the industry guidance (which I'll comment further on below) but the industry standard for the end-to-end process for automated pension cash transfers is still ten business days. That is regarded as a good practice timescale.

When should the transfer request be treated as having been received?

Mr H says he first informed JHAC in August 2020 that Mr B intended to transfer his pension to a new provider. He thinks that in light of this stated intention, JHAC should have been ready to make the transfer as soon as the property sale was completed.

However, even though there was a stated intention to make the transfer, I don't think that precluded the requirement for Mr B to make his intention clear by completing a transfer application. The application would have included details such as the name of the scheme he was transferring to and his authority confirming that he wanted the transfer to proceed. So, I don't think it's fair or reasonable to say that the application can be treated as having started prior to the date when JHAC received the formal application.

Mr H says JHAC told Mr B's advisers that ORIGO could be used to make the application and a transfer out application was submitted through ORIGO. ORIGO is described as "an electronic pipework that lets connected businesses swiftly and easily transfer customer funds from one platform to another." The application was denied however because the IPS Pension Builder product required a paper application.

Having looked at the exchange of correspondence, I'm satisfied, on balance, JHAC did not do enough to inform Mr B's advisers that a paper application would be required. When reaching that view, I've taken into account a response which JHAC provided to a request for information it received from a firm which was acting on behalf of Mr B and another member of the Group SIPP. That response was dated December 2020. It stated:

"Is the plan supported under ORIGO Options Pension Transfer Service – if not please provide Warranty/Discharge forms?"

Yes we use ORIGO, paper forms are on the Literature page of our website."

I think it's fair and reasonable to say that the recipients of this information reasonably believed they could rely on what they were told. When reaching that view, I've taken into account what JHAC says about its response to the information request. It says that the Literature page on its website made clear that paper forms were required for the IPS Builder product. However, having looked at the response to the request for information, I don't see any reference to the product name on that document. So, I'm persuaded on balance that Mr B's advisers reasonably believed the transfer request application could be submitted using ORIGO.

Mr B's advisers say the ORIGO application was submitted on 26 February 2021. JHAC has now confirmed that an application was submitted through ORIGO on 26 February 2021 and received by it on 1 March 2021.

The application was denied on 2 March 2021 with the response “*ceding product not supported.*” The records indicate that a further attempt was made to submit the application via ORIGO and that attempt was also denied with the same response.

Mr B’s advisers asked him to complete a paper application which JHAC acknowledges it received on 12 March 2021. I’m persuaded, on balance, that had JHAC made it clear to Mr B’s advisers it wouldn’t accept a transfer application via ORIGO, the paper application would’ve been submitted instead. Although Mr H says that a paper application would’ve been submitted no later than 23 February 2021 (the date that the sale proceeds were received) I’ve not been provided with evidence which persuades me that would’ve been the case. The first ORIGO application wasn’t received until after that date.

Having considered everything here, I’ve decided it’s fair and reasonable to conclude that the date when the application should be treated as having been received is the date when the first ORIGO application was received by JHAC – which is 1 March 2021. So, that’s the date I think the transfer out process should reasonably be treated as having commenced.

How long should it have taken to complete the transfer?

JHAC says its normal timescales and processes in respect of a group pension scheme cash transfer are that it takes ten working days to carry out the necessary reconciliations and final checks before sending the cash. Mr H disagrees. He says that once the sale proceeds were received into the bank account (which would have been the same day as the sale completed) all JHAC had to do was deduct its fees, divide the balance by the number of members of the scheme and transfer that amount to the new provider for each member.

I’ve thought about what both parties have said here. Having done so, I’ve decided that ten working days to complete the transfer is a fair and reasonable timescale in this case. When reaching that view, I’ve taken into account the information that JHAC sent Mr H at the start of the process (in August 2020). In its Property Disposal Guide (referred to in that email) it said:

*“[after outlining the various accounting entries that would be required ...]
Once all these aspects have been resolved, we will check that the property account has been fully reconciled and once confirmed we will proceed to close the property account and transfer the balance to your trustee cash account. If applicable, funds will then be transferred to your new pension provider.”*

So, even though the completion monies had been received on 23 February 2021, JHAC had made Mr H aware, from the outset, there was a requirement for post-sale reconciliations to be completed, the property account to be closed and the balance transferred to the trustee cash account before the transfer out could take place.

It is the case that JHAC made a number of errors when carrying out the post-sale reconciliations – which caused further delays. JHAC has accepted that these further delays were “wholly avoidable.” It has also accepted that it shouldn’t have asked for a “deed of removal” to be signed before it completed the transfer.

However, even though there were avoidable delays, that doesn’t mean post-sale reconciliations, associated processes and the subsequent checks we would expect JHAC to carry out before transferring a member’s pension to another provider didn’t need to be carried out.

I’ve also thought about developments in industry guidance, since 2006, concerning what is considered to be a reasonable timescale to complete the end-to-end process for a pension transfer of cash assets. In June 2018, TRIG (Transfer and Re-registration Industry Group)

published an industry wide framework for improving transfers and re-registrations. The framework set out TRIG's agreed position on what providers were expected to deliver to customers in relation to the timeliness of transfers and re-registrations and communications during the process.

For automated pension cash transfers the framework stated that a good practice timescale for the end to end process should be ten business days from when the acquiring provider received the completed instruction from the client up to the receipt of the transferred funds. For manual transfers the timescale could be longer.

In this case Mr B's pension was invested in the IPS Builder product. JHAC has explained that although it does use the ORIGO system for pension transfers generally, that option was not available for the IPS Builder SIPP. So, a manual process applied. That meant Mr B's pension transfer involved a transfer of cash assets using a manual process.

Taking all the circumstances that applied here into account, including industry guidance, I've decided that ten working days to complete the transfer process (from the date when JHAC received the ORIGO application) is fair and reasonable. So, I think it's fair and reasonable to say that the transfer should have been concluded by 15 March 2021 and the new provider could then have reinvested the funds two working days later (17 March 2021). I'll comment further below about what I think JHAC needs to do to put things right.

Administration Fees

JHAC agreed to refund Mr B's share of the property sale fee and his share of the administration fees it charged for the period March 2021 to February 2022. In total the refund of fees offered to Mr B was £966.

Mr H thinks JHAC should refund all the administration fees for the period since August 2020. But I'm not persuaded, on balance, that it's fair or reasonable to require JHAC to do that.

I've looked at what the SIPP's terms and conditions state regarding the payment of administration fees. These provide that administration fees are payable in advance. The terms further state that where there is a transfer out there is no entitlement to any pro rata refund of fees.

So, even if the transfer out had progressed much earlier than it did, no part of the administration fees chargeable for the period up to the end of February 2021 would have been refunded under the terms and conditions. And despite the issues that arose with administration here, I don't think it's fair and reasonable to require JHAC to refund the administration fees for the period prior to the end of February 2021.

I do think it's fair and reasonable for Mr B's share of the property sale fee to be refunded and also his share of the administration fees charged for the period after March 2021 – since those administration fees could have been avoided had the transfer out completed in a timelier way.

Complaint Handling

When he complained to our service, Mr H said that second only to the issue of delays the way that JHAC handled the complaint was the most serious point to be addressed.

Under the Rules which apply to our service, we cannot look into a complaint (or any part of a complaint) which is solely about how a business handled a complaint. That's because complaint handling is not itself a regulated activity. It means I can't comment further on this aspect of Mr B's complaint.

Distress and Inconvenience

JHAC has accepted it caused distress and inconvenience to Mr B.

Mr H has referred to the delays and administrative errors that took place prior to the sale of the property completing. He says Mr B was aware of and affected by these issues. He's also referred to the distress and inconvenience Mr B experienced because of the unnecessary delays completing his transfer out.

When thinking about the distress and inconvenience Mr B experienced, I've noted he relied on Mr H to liaise with JHAC throughout the period from August 2020 to try to get matters resolved.

Under our Rules, I can award redress for distress and inconvenience experienced by the eligible complainant. The eligible complainant here is Mr B. So, I've taken into account the distress and inconvenience Mr B experienced because he was aware of and affected by the administration errors and delays both before and after the completion of the property sale.

As mentioned above, Mr B relied on Mr H to deal with JHAC throughout the process. But Mr H is not the eligible complainant here – so I can't take the distress and inconvenience Mr H experienced into account when deciding what is fair and reasonable redress for Mr B.

JHAC has offered to pay Mr B £250 by way of compensation for the distress and inconvenience he experienced.

Having considered everything, including our general guidelines about compensation for distress and inconvenience, I think the offer made by JHAC for distress and inconvenience is fair and reasonable in all the circumstances.

Putting things right

I've decided that the transfer out should've been completed by 15 March 2021 and the fund reinvested two working days later (17 March 2021). In order to put things right JHAC should:

- re-work its calculation to assess whether Mr B has suffered any financial loss as a result of the delay that occurred. It should compare the number of units in each of the funds Mr B purchased with the new provider on 22 June 2021 against the number of units in each of those funds he could have purchased on 17 March 2021 had the transfer monies been reinvested on that date. If the number of units he could have purchased on 17 March 2021 was greater, JHAC should arrange to purchase those additional units and add them to his pension with the new provider. If the number of units he could have purchased on 17 March 2021 was lesser, he will not have suffered a financial loss as a result of the delay and no compensation for financial loss would be payable;
- if it has not done so already, refund Mr B's share of the property sale fee (being £108) together with 8% simple interest* on this amount from 26 February 2021 until the date of settlement;
- if it has not done so already, refund Mr B's share of the administration fees (being £858) which were applied to the Group SIPP account for the period after 1 March

2021 and his share of the annual drawdown charge which was applied for the period after 1 March 2021 (being £38.88) together with 8% simple interest* on both of these amounts from 15 March 2021 to the date of settlement; and

- if it has not done so already, pay Mr B £250 for distress and inconvenience he experienced as a result of what happened here.

My final decision

For the reasons given above, I uphold this complaint about James Hay Administration Company Limited trading as James Hay Partnership.

I now require it to take the following actions:

- re-work its calculation to assess whether Mr B has suffered any financial loss as a result of the delay that occurred. It should compare the number of units in each of the funds Mr B purchased with the new provider on 22 June 2021 against the number of units in each of those funds he could have purchased on 17 March 2021 had the transfer monies been reinvested on that date. If the number of units he could have purchased on 17 March 2021 was greater, JHAC should arrange to purchase those additional units and add them to his pension with the new provider. If the number of units he could have purchased on 17 March 2021 was lesser, he will not have suffered a financial loss as a result of the delay and no compensation for financial loss would be payable;
- if it has not done so already, refund Mr B's share of the property sale fee (being £108) together with 8% simple interest* on this amount from 26 February 2021 until the date of settlement.
- if it has not done so already, refund Mr B's share of the administration fees (being £858) which were applied to the Group SIPP account for the period after 1 March 2021 and his share of the annual drawdown charge which was applied for the period after 1 March 2021 (being £38.88) together with 8% simple interest* on both of these amounts from 15 March 2021 to the date of settlement; and
- if it has not done so already, pay Mr B £250 for distress and inconvenience he experienced as a result of what happened here.

** If HM Revenue & Customs requires James Hay Administration Company Limited trading as James Hay Partnership to take off tax from this interest, James Hay Administration Company Limited trading as James Hay Partnership must give Mr B a certificate showing how much tax it's taken off if he asks for one.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 October 2023.

Irene Martin
Ombudsman