DRN-4272548

## The complaint

Mr K complains about the length of time James Hay Administration Company Limited took in transferring his Self-Invested Personal Pension (SIPP) to Prudential.

He'd like James Hay to recompense him for the losses he says he's incurred because of their delays.

## What happened

Mr K held a SIPP administrated by James Hay where the underlying monies were invested by Kleinwort Hambros under a discretionary fund manager (DFM) arrangement. In October 2020, James Hay received a request from Prudential to transfer his monies to them in cash. A week later, James Hay wrote to the investment manager asking them to sell Mr K's underlying holdings.

The investment manager never received that letter, so James Hay emailed them on 21 October 2020. The first tranche of cash was eventually received into the SIPP bank account seven days later and the second tranche two days after that. On 26 November 2020, James Hay transferred the cash to Prudential which they received on 2 December 2020.

Mr K decided to formally complain to James Hay on 4 December 2021. He said in summary, he was unhappy with the length of time it took James Hay to move his funds to Prudential – particularly the fact they'd only transferred his monies two days earlier. He said he'd lost out financially because of their delays.

Unbeknown to Mr K, when James Hay sent the monies to Prudential, they subsequently discovered they'd sent £2,000 too much so they asked Prudential to refund those funds. However, Prudential were unable to debit the £2,000 and needed James Hay to recall the funds and resend the correct amount, which they did, with Prudential receiving the correct amount on 5 January 2021. Prudential then invested Mr K's monies into their PruFund Growth Series E on 25 January 2021.

In February 2021, James Hay asked Mr K for evidence of any losses he'd suffered because of their delays and the following month they responded to his complaint. They concluded they'd not delivered the service they'd typically aim to provide. They also said in summary,

- had his pension not suffered the delays, they thought his transfer should've been completed by 13 November 2020. James Hay said that meant Mr K had suffered a loss of £6,845.

Unhappy with their response, Mr K asked James Hay to look at his complaint again. He said in summary, he thought James Hay could've transferred his pension sooner than the 13 November 2020. He also explained they'd not taken account of further changes in the PruFund's unit price. He was also concerned they'd not taken account of advice fees nor considered the inconvenience the delays had caused him. Finally, he wasn't happy that

James Hay said that any payment they made would be net of an adjustment for basic rate tax.

Having revisited his complaint, James Hay revised their redress offer to £43,205 and offered him £500 for the trouble and upset they'd caused. Mr K explained that he remained unhappy that James Hay hadn't calculated the redress from 26 October 2020, the point at which he felt the transfer should've occurred had it not been for their delays.

As Mr K was unhappy with James Hay's wider response, he referred his complaint to this service. In summary, he said James Hay's offer of £500 for the trouble and upset they'd caused him was too low. In addition, he also explained that he thought the transfer could've been done sooner and said that the point from which James Hay calculated their redress (April 2021), should be recalculated to the following month to take account of a further uplift in Prudential's unit prices.

The complaint was then considered by one of our Investigators. She concluded that James Hay had treated Mr K fairly. Having looked at the timeline and respective calculations that James Hay shared with her, she felt their redress placed Mr K back into the position he would've been in had it not been for the respective delays. She also felt the £500 James Hay offered for the inconvenience Mr K suffered looked fair. And in respect of the notional tax adjustment James Hay explained they'd need to deduct from the redress payment if it wasn't sent to Mr K's pension, our Investigator explained that was typical in such circumstances.

Mr K disagreed with our Investigator's findings and he repeated the same concerns. But our Investigator was not persuaded to change her view as she didn't believe Mr K had presented any new arguments she'd not already considered or responded to previously. So, Mr K then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering Mr K's concerns, I issued a provisional decision explaining that I was planning on upholding the complaint. As such, I wanted to give both parties the opportunity to respond. For completeness, I've set out the findings I made in full below.

<u>My provisional decision:</u>

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I have summarised this complaint in far less detail than Mr K has done and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this, our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the core issues here – and having done so, I'm upholding Mr K's complaint.*

*I can understand Mr K's frustration the transfer of his pension didn't proceed as quickly as he felt it should have. In complex transfers such as that of a SIPP, the sending scheme is reliant on several third parties to complete the switch. What's also important to note is this complaint is about the actions of James Hay rather than anyone else, so I'll only be focusing on any shortcomings from the service they've provided Mr K.*

*<u>Delays in transferring from James Hay to Prudential</u>*

*There's no doubt James Hay took longer than they typically would do when transferring Mr K's fund to Prudential. They've admitted as much. However, the important aspect of this complaint is how long should they have taken and what's considered reasonable. Mr K thinks the transfer should've been undertaken by 26 October 2020, so three weeks from when James Hay received the original transfer request. However, James Hay have explained they believe in normal circumstances they would've expected to have completed the transfer by 13 November 2020. In scenarios such as these, I can't say for certain what would've happened had the delays not occurred so I have to decide what's most likely to have happened on the balance of probability. And, having carefully considered the timeline, I'm minded to agree with James Hay. The prospective timeline that Mr K put forward gives 'best case scenario' assuming everything moved in tandem and every part of the chain responded immediately. Typically that rarely happens, particularly where monies are invested via third party DFM providers.*

*James Hay can't be held responsible for the delays of others, the time it took the DFM provider to respond to their original request or the fact that Prudential delayed sending back the transfer proceeds. However, had James Hay emailed the DFM originally rather than using the postal system on 12 October 2020 that delay could likely have been shortened by around 10 days. That's because as I've already explained above, James Hay received the cash from the DFM on 29 October after chasing them by email on 22 October. They then sent those monies to Prudential on 26 November. Therefore it follows that a reasonable transfer date would be 13 November. That would give James Hay an appropriate time to complete the necessary due diligence and respective controls it's expected to undertake before transferring a pension away.*

*I should note that had James Hay not miscalculated the switch amount, the funds wouldn't have needed to be recalled from Prudential. As Mr K's pension was being invested in the PruFund Growth Series E, initially the monies are placed into a holding fund prior to investment. Those monies are then invested into the PruFund Growth Series E at a single point each month. As Mr K's monies would've arrived with Prudential at or around 13 November 2020, the next available point for investment in that fund would've been 25 November.*

*James Hay provided an updated redress offer to Mr K on 11 May 2021 which took account of the movement from the holding fund to the main PruFund Growth Series E on 25 November 2020. In reaching the settlement figure, James Hay compared the number of units the consumer would have got had the funds been invested in November 2020 with the number of units that Mr K actually got when the money was sent in January 2021. They then worked out the cost of buying those "missing" units as at the date of calculation (which was 22 April 2021). I'm of the view that calculation approach seems fair and reasonable and is a method I would've asked them to adopt had they not already done so. In his email of 24 May 2021, Mr K explained that his IFA had sent James Hay's calculations to Prudential who had validated the £43,205 result James Hay had reached. Mr K explained that he was only happy to accept that figure assuming Prudential didn't undertake a unit price adjustment on 25 May 2021. However, they subsequently did and Mr K argued James Hay should revisit their loss calculation from 22 April to take account of May's uplift. James Hay didn't agree. That's because they said, had Prudential revised their unit prices downward, they would have stood by their redress offer and wouldn't have reduced it.*

*Whilst I can understand James Hay's position in wishing to 'lock down' their liability promptly, I don't think that latter approach was fair to the consumer. That's because Mr K only found himself in this position because of James Hay's mistake. So it seems to me, had they transferred his fund when they should've done (in November 2020), he would've benefited from May's unit price uplift. Also, in trying to rectify the consumer's complaint, James Hay made errors in its original calculations which delayed Mr K's pension being put right. It* *therefore seems only reasonable that Mr K didn't want to accept whatever offer James Hay subsequently put in front of him without first checking with his adviser and Prudential. Even putting that to one side, consumers are allowed to reject offers and bring their complaints to ourselves. The remit of this service is to place consumers back into the position they would've been in had it not been for the original mistakes of the business. Whilst I think the approach the business took in calculating Mr K's losses was reasonable, (and James Hay have limited their losses because the bulk of the transfer has been invested since early 2021) - I am upholding this aspect of his complaint. That's because there's no doubt Mr K found himself in this position because of James Hay's mistakes, they've admitted as much. So consequently, it's incumbent on them to put things right for him by correcting his losses up to date. As such, I require James Hay to run an updated loss calculation up to the date of my final decision.*

*Notional tax deduction on redress payment*

*Mr K is unhappy that if James Hay were to pay him the redress directly, they'd have to make a deduction for tax. It's important to explain here that at the time, James Hay were simply following standard industry practice. That is to say, by paying the redress into the plan, it would have eventually provided Mr K with a taxable income. But, by paying the money directly to Mr K and making the 20% deduction, James Hay were notionally allowing 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 wouldn't be able to reclaim any of the reduction after compensation is paid. However, it's likely that Mr K would have been able to take a tax-free lump sum from his pension so, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.*

*It's important that a notional adjustment for tax is made so the consumer isn't overcompensated. We're a quick and informal dispute resolution service and, in that light, paying cash with the tax adjustment where there are allowance issues is sometimes the best approach to drawing a line under the complaint.*

*Importantly, the purpose of the redress payment is to put Mr K back into the position he would've been in had the mistake not occurred. And therefore, it should normally be placed directly into the Prudential plan as it's to make good a known error. James Hay said they couldn't do so as Mr K is in receipt of Enhanced Protection, and that meant it would usually be treated as a contribution and invalidate that benefit. However, since James Hay's complaint resolution letter, the lifetime allowance has been abolished (as of 6 April 2023). That means monies can now be paid into Mr K's pension.*

*As this service isn't able to provide individual tax advice, Mr K should seek professional guidance before determining which option is best for him.*

*The rules around the lifetime allowance have obviously evolved since Mr K's complaint. So, whilst I appreciate Mr K's concerns about wishing to preserve the IHT beneficial nature of his funds, I don't think James Hay were being unreasonable in trying to avoid the potential for a greater tax charge on Mr K's remaining, larger fund.*

*Advice fees*

*I have not considered the complaint point Mr K made to James Hay about wishing to be recompensed for the time his IFA has spent supporting his complaint. That's because he conceded to James Hay on 11 June 2021 that his adviser will not be charging him for that support now and in any event, it's not the role of this service to consider the costs of other third parties.*

<u>*Distress and inconvenience*</u>

*I can well understand Mr K's frustration at having to complain a number of times to James Hay and I don't doubt he found the delays he experienced troublesome. However, in considering the impact such delays have had, our role is not to punish businesses for mistakes they make - that's the role of the regulator. Whilst each complaint is considered on its own individual merits, we aim to apply consistency when making awards for the distress and inconvenience firms have caused consumers. Having thought carefully about the chain of events Mr K encountered, I'm satisfied the £500 James Hay have already offered is in line with other similar complaints this service has seen. And, it is in line with what I would have recommended had James Hay not already offered that amount.*

*I consider the £500 fair and reasonable under the circumstances and as such, if they've not already done so, James Hay should pay Mr K £500.*

<u>Responses to my provisional decision</u>

After reviewing my provisional decision, James Hay stated that they weren't contesting the outcome and as such, wanted time to set about obtaining the necessary information to put things right for Mr K.

Mr K responded to the provisional decision seeking further clarification on a number of points around the redress. In addition, Mr K also wanted to put on record that the reason why Prudential had to send the transfer monies back to James Hay was because the funds were held in seven discrete pots. Mr K says that Prudential were never advised of this by James Hay.

**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.

Our Investigator addressed Mr K's queries about the redress. As neither party has disagreed with the outcome of the provisional decision, my final decision is that I uphold Mr K's complaint for the reasons I've set out above. As such, James Hay must put Mr K back into the position he would be in had it not been for their mistakes. I've explained how they should do that below.

**Putting things right**

**Fair compensation**

My aim is that Mr K should be put back as closely as possible into the position he would probably now be in if had not been for James Hay's error.

I'm satisfied that what I've set out below is fair and reasonable given Mr K's circumstances and objectives when he invested.

As I've already explained, in addition to the actions below, James Hay must also:

- Pay Mr K the £500 for the trouble and upset they've caused (if they've not already done so).

**What else must James Hay do?**

To compensate Mr K fairly James Hay should re-run their loss calculation from 22 April 2021. 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.

Mr K has confirmed that he is still invested with Prudential within the same fund as of May 2023.

James Hay can take account of the monies already transferred to Prudential. The balance should be paid to Mr K's pension.

James Hay should pay into Mr K's pension plan, to increase its value by the amount of the compensation. James Hay's 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.

If James Hay are unable to pay the compensation into Mr K's pension plan, they should pay that amount direct to Mr K. 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. 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%.

Provide the details of the calculation to Mr K in a clear, simple format.

Income tax may be payable on any interest paid. If James Hay considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr K how much they have taken off. James Hay should also 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 | Switched to Prudential | PruGrowth Fund Series E | November 2020* | date of my final decision | 8% simple per year if the redress due is not paid within 30 days of the consumer |

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| | | | | | accepting the final decision. |

**Actual value**

This means the actual amount of Mr K's Prudential pension at the end date.

**Fair value**

This is what Mr K's Prudential Plan would have been worth at the end date had it produced a return using the benchmark.

*James Hay should in their calculation use the value of what Mr K's fund would have been on 25 November 2020 had all units been switched to the PruGrowth Fund Series E fund.

Any withdrawal from the Prudential pension 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 you total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

**Why is this remedy suitable?**

I've chosen this method of compensation because:

Had it not been for the mistakes of James Hay, Mr K's pension would've been switched to Prudential in November 2020. By re-running the loss calculation and bringing his pension up to date will place Mr K back into the position he should now be in.

## My final decision

I uphold the complaint and I require James Hay Administration Company Limited to take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 August 2023.

Simon Fox
**Ombudsman**