DRN-4406645

The complaint

Mrs P complains about the delays to its payment – and additional errors - that James Hay Administration Company Ltd T/A James Hay partnership made during the course of switching her self-invested personal pension (SIPP) into flexi access drawdown and making the tax free cash (TFC) payment she had requested.

What happened

Mrs P was one of two members of a group SIPP held with James Hay. The SIPP, among other assets, held two commercial properties.

Mrs P wanted to draw her TFC, so on 1 March 2022 her adviser completed a benefits payment form which it sent to James Hay. This form was required where benefits were being taken from the SIPP through TFC and income drawdown – using an adviser.

Mrs P declared that she had previously drawn benefits to the value of 8.76% of the lifetime allowance (LTA). She requested maximum TFC – to be drawn across all the SIPP assets - and no income.

James Hay contacted Mrs P several days later and said it would need to obtain a current valuation of the commercial properties in order to comply with her request. This was provided to James Hay on 6 April 2022.

On 26 April 2022 James Hay wrote to Mrs P to confirm the maximum pension that was available from the SIPP in accordance with capped drawdown rules - following the 11 March valuation of the two properties, was £709,018.64.

James Hay then needed to establish the "split" of TFC between the two group members, but it failed to contact Mrs P or the other member for confirmation. So it waived that requirement (until after the payment) and, on 27 May 2022 paid the TFC of £51,268.87 into the bank account that was set out in the benefit payment form. However this wasn't the bank account that needed to be used in this case as the adviser had provided updated account details in a new form that was sent on 5 May 2022.

On 27 May 2022 Mrs P's adviser complained about the delays that James Hay had caused and also about the errors it had made during the process. It said it had spent numerous hours chasing up James Hay to get it to carry out the required actions for paying the TFC and to find out what its further requirements were.

On 24 June 2022 James Hay responded. It said that following receipt of the request for the maximum TFC it wrote to Mrs P two days later explaining that it couldn't pay the benefit until the properties held by the SIPP were valued. It said it received the valuations on 6 April but didn't send the necessary letter to Mrs P until 25 April 2022 – which it conceded should have been done sooner. It said it then failed to confirm the fund split with Mrs P and the other member of the group SIPP but was able to pause it's request until after it paid the TFC on 27 May 2022. It also accepted that it paid those funds into the wrong bank account. James Hay said that in recognition of its errors it was prepared to offer £300 as a gesture of goodwill.

Mrs P didn't accept the offer as her adviser said it wasn't adequate compensation for the numerous hours (it estimated over 15) for which it had to chase up James Hay. It said the whole process was *time consuming, costly, painful, frustrating, distressing for us and for Mrs P, who was – and still is - suffering from a severe illness.* So it brought the complaint to us where one of our investigators looked into the matter. He made the following points in upholding the complaint:

- Because of the need to obtain property valuations this transaction and process were more complex than a usual payment of TFC from a SIPP. He thought it was reasonable for James Hay to complete one requirement before considering its position and then requesting further information. He also it was reasonable to assume that an adviser would be aware of the requirements in this particular case.
- He thought the process should have begun in earnest on 6 April 2022 when James Hay received the property valuations. He thought there was delay of 10 working days from that point until James Hay passed the information about the maximum benefits available onto Mrs P.
- He thought there was another 10 working day delay from the time James Hay had concluded its investigation into the "asset split" until it paid the TFC to Mrs P.
- But as it was unreasonable to expect matters to be dealt with the same day, he allowed two working days for each requirement to be dealt with – which meant a total delay of 16 working days.
- He thought the matter of paying the TFC into the wrong bank account was a genuine error but also not entirely James Hay's responsibility – but he also noted James Hay hadn't been asked to recall the money or pay it in into a different account, so concluded no financial loss had been suffered as a result.
- He thought James Hay's offer of £300 compensation for the distress and inconvenience caused by its errors was fair and reasonable in the circumstances. But he thought Mrs P should be compensated for the overall 16 working day delay in receiving her TFC. So he thought James Hay should pay interest at the rate of 8% simple on the TFC for that number of days.
- He didn't think the time the adviser had spent chasing up the payment was particularly "*out of the ordinary*", but in any case, he wasn't able to consider a claim for costs made by Mrs P's adviser.

Mrs P's adviser didn't accept the assessment and said it didn't believe the compensation adequately covered the costs it had incurred. It said it could have billed Mrs P for those costs so that she incurred a financial loss – which could have allowed us to award further compensation. It further explained that its duties and obligations were to Mrs P in this case, and it wasn't responsible for correcting or pointing out James Hay's errors during the process. It said James Hay charged Mrs P for managing and administering her plan – which it had clearly failed to do here – so it thought James Hay should refund all the charges and fees it had collected from her.

James Hay accepted the investigator's assessment and said it would pay the additional interest required – as well as the compensation it had previously offered for the distress and inconvenience caused by its errors. But it noted that no complaint had previously been raised about the overall SIPP fees it charged, so it didn't think it should consider refunding them to Mrs P.

The adviser said Mrs P didn't agree with the outcome and wanted her complaint to be referred to an ombudsman, so it's been passed to me to review.

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.

And having done so I find I am in agreement with the investigator here. I think James Hay needs to compensate Mrs P for the loss of interest on her TFC caused by the delays in paying it to her and I think it should pay the compensation it previously offered for the impact the matter had on Mrs P during the process.

I'm sorry to learn of Mrs P's current medical condition and I know she and her adviser will be disappointed with this outcome not to award further costs for the time and effort her adviser put into chasing James Hay throughout the withdrawal request, and not to award a refund of her SIPP related fees as well. So I'll explain my reasons below.

The delays in paying the TFC

Although Mrs P's adviser has stated that it believed its request to draw Mrs P's TFC was relatively simply, I don't think it can be disputed that there were two additional requirements which I wouldn't have expected to see in the majority of TFC withdrawal requests. And these two requirements seem to have been the basis of a claim for the delays that James Hay caused to the payment. So I've looked at those two requirements to see if there were any avoidable delays caused.

I should also say that Mrs P complained that during the process James Hay didn't set out all its requirements at once but "drip fed" them one by one after previous requests were satisfied. I can only find one example of this which was the request to evaluate how the assets should be "spilt" in order to pay Mrs P's TFC, which was only highlighted after the valuation was returned. But it's not clear to me how James Hay could have asked about the split without having received the valuation figures first – so I don't think it caused any delays or acted unreasonably by not setting out those requests at the same time.

Looking at the sequence of events here James Hay says it asked Mrs P's adviser for a valuation of the two properties within the SIPP in January 2022 due to an impending pension review. So it said the adviser should have been aware of that request when it submitted a benefit request form – of which I've seen copy – on 1 March 2022. However, I've also seen that within that form, under the section headed "*if a property is held within the SIPP*", it said "*we require a red book valuation, produced in accordance with the relevant sections of the current Royal Institute of Chartered Surveyors professional standards, or a desktop valuation of the property produced between 12 months and 24 months after a red book valuation. A desktop valuation is valid for up to 12 months after the date of the last red book valuation."*

James Hay set out that a valuation would be required to pay Mrs P's TFC, so I don't think it was unreasonable for it not to be able to start the process until that was received on 6 April 2022 and I don't think it caused any delays up to that point.
But thereafter James Hay accepts that it didn't provide the letter which then set out the maximum amounts that could be released from the pension, until 26 April 2022 – which it agrees was too long. So I think it did cause a delay there which was avoidable.

And following that provision of information, James Hay - appropriately in my view, then had to ask the group members to confirm the spilt of the properties which each one held. But it didn't carry out that request and when it realised its error it decided to pay the TFC without further delay. That was another delay which James Hay caused which was avoidable, although I have considered whether it mitigated the delay by not requesting the details of the spilt until after payment. However it's difficult to work out how long that request would have taken to complete. But in any case, because of the relationship between the members James Hay was prepared to obtain that information after the event so it could be argued that it could have taken that path earlier anyway.

I've looked at the length of these delays and I agree with the investigator who decided that the total delay was 20 working days which he then reduced by a total of four working days to give James Hay a reasonable notional length of time to carry out the actions it should have undertaken. So I agree that James Hay needs to compensate Mrs P for any loss that she suffered as result of that delay. As this was a withdrawal and not a transfer there wouldn't have been any loss for being "out of the market", but Mrs P was deprived of the use of her TFC for 16 working days. So I think James Hay should pay interest – at the rate of 8% simple - for the time she was unable to access her funds.

Neither party has disputed the number of days involved in this calculation and, following the investigator's assessment, James Hay agreed to make this payment in addition to its offer of compensation.

The other errors

The other main error that was referenced here is that James Hay failed to pick up the different bank account details that were provided by the adviser within a revised benefit payment form – although James Hay said the adviser simply provided a new form without suggesting the only change was the bank account details. It said had this been highlighted as the only difference between the forms it would have picked up the change of details.

But that isn't to excuse that James Hay should have checked it more carefully as I would have expected it to do with any revised form that was provided before payment was made. We've asked for evidence to show the extent of the impact this had on Mrs P, but I haven't seen anything to support the idea that she suffered any financial loss as a result. And because James Hay has said that it wasn't asked to recall the funds and send them to the alternative account, I can only conclude that Mrs P was able to transfer them herself or accessed the money from the original account.

Either way I've assessed the impact of that error – which I consider to be a genuine mistake and not an attempt to delay payment - as part of the overall impact this had on Mrs P.

Mrs P's adviser said it spent a lot of time chasing James Hay regarding each step of the process, often not being responded to when it made contact. I've already dealt with the adviser's assertion that James Hay should have laid out all its outstanding requirements together at the beginning of the process, but the adviser has also provided a spreadsheet showing a number of its communications to James Hay – in various forms – during this time. It's difficult to conclude this was an excessive number of contacts or indeed the reason for each individual one, but I'm not persuaded that they alone indicate a lack of service from James Hay.
But in any case, James Hay has accepted that it could have done better here, particularly with its lack of communication around the two areas that I've said constituted avoidable delays. I don't take lightly the impact this would have had on Mrs P who has a serious medical condition, but I think an award of £300 is fair and reasonable when taken overall – including the error with the bank account – and it's within the range of what I would have recommended as appropriate in the circumstances.

Request for a refund of SIPP fees and compensation for the adviser's time and efforts

Mrs P's adviser has provided the spreadsheet I referred to above to support its claim for costs to be awarded for the "excessive" time it spent chasing up James Hay and bringing about the final TFC payment. It said the whole process was time consuming and costly. But as the investigator had previously explained this is Mrs P's complaint, which the adviser has simply brought on her behalf. The adviser isn't an eligible complainant here and so it wouldn't be fair to award it any costs on that basis as we wouldn't usually award third party costs.

The adviser also said that because James Hay hadn't provided appropriate levels of service, management, or administration of Mrs P's plan it should refund the total SIPP costs charged to the plan. But the SIPP fees are applied for a whole range of tasks and administration that James Hay has to carry out for Mrs P's SIPP, and I've seen no evidence to support the idea James hay hasn't managed the plan overall in accordance with its terms and conditions.

Indeed James Hay has accepted it could have acted quicker regarding aspects of this TFC payment – for which it has agreed to pay compensation, but ultimately it did still complete the request that was asked of it, and which would have been part of its duties with regards to the SIPP fees. I've seen nothing to support the claim that James Hay should refund all the relevant SIPP charges.

Our role is to consider an individual complaint and put right any financial loss that a consumer may have suffered as a result of a business's actions, or award appropriate compensation for any impact its errors may have had. In this case I'm satisfied that the determination set out below does that and isn't unduly punitive towards James Hay - which isn't something our role generally encompasses.

Putting things right

James Hay has made an offer to pay £300 for the impact its errors had on Mrs P which I believe is fair and reasonable in all the circumstances, so James Hay should pay £300.

In addition James Hay should pay interest on the TFC payment, at the rate of 8% simple, for the 16 working days that Mrs P was unnecessarily deprived of her TFC.

My final decision

For the reasons that I've given I uphold Mrs P's complaint against James Hay Administration Company Ltd T/A James Hay partnership. James Hay should pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 November 2023.

Keith Lawrence
Ombudsman