

## **The complaint**

Mr S complains that James Hay Administration Company Ltd (“JHAC”) failed to complete the transfer of his pension savings to another provider in a timely manner.

## **What happened**

Mr S held pension savings that were administered by JHAC. His pension savings were invested through another regulated firm that also acted as Mr S’ financial advisor. Following a change in the individual that acted as Mr S’ financial advisor, he decided to appoint an alternative firm as his financial advisor. So, in October 2023, the new financial advisor requested JHAC to arrange the transfer of Mr S’ pension savings to a new pension provider.

The transfer of Mr S’ pension savings took longer than might have been expected. At first the information supplied when requesting the transfer quoted an incorrect account reference. Later there were delays in the disinvestment of the pension monies, and in making the new financial advisor aware that some of the pension monies were available for transfer. And further delays were caused by the payment of some backdated advice fees to Mr S’ original financial advisor and making the new advisor aware when those fees had been refunded to the pension plan.

Mr S complained to JHAC about the delays. JHAC didn’t agree with the complaint saying that any delays had been caused by factors outside its control, although it accepted the transfer had taken longer than might be expected. Unhappy with that response Mr S asked us to look into the complaint.

Mr S’ complaint has been assessed by one of our investigators. She agreed that most of the delays Mr S had experienced were not due to something that JHAC had done wrong. But she thought there were two delays that could reasonably be considered to be the responsibility of JHAC. There was a delay in making Mr S’ new financial advisor aware that the cash proceeds from the disinvestment of the majority of his pension investments had been received and could be paid as a partial transfer. And she thought that JHAC had not acted quickly enough when the former advisor returned the fees. In total she thought two delays amounting to four and six working days respectively had occurred for which JHAC should calculate some compensation. And the investigator thought that JHAC should pay Mr S £250 for the inconvenience he’d been caused.

Neither Mr S nor JHAC agreed with that assessment. JHAC thought that it was only reasonably responsible for the delay relating to the returned fees – it thought it was for Mr S’ financial advisor to monitor the disinvestment and request a partial transfer. Mr S thought that the delay JHAC had caused was far longer. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr S accepts my decision it is legally binding on both parties.

## **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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr S and by JHAC. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

There are a number of different regulated firms involved in the matters that form this complaint. JHAC administered Mr S' pension plan and was responsible for transferring its value to the new provider. But in line with normal industry practice, the request for the transfer was made by the new provider. And before the transfer could proceed JHAC would need to request Mr S' former advisor and investment manager to disinvest his pension savings.

But this complaint only relates to the actions of JHAC. So in this decision I will only be dealing with the actions of that firm when considering if any avoidable delays were caused to the transfer of Mr S' pension savings. Although naturally I will need to reference the actions of other firms I do so without any implication of fault or otherwise. It would be for Mr S to decide, after considering this decision, whether he thinks it appropriate to complain to the other parties involved in the transfer, for any delays their actions caused.

Our investigator has set out in some detail for both parties the timeline of when the key events happened. It doesn't seem there is much dispute about when those activities took place – the disagreement appears to be around the importance of, and responsibility for, those events. So in this decision I will not provide a blow-by-blow commentary about what happened. Instead I will focus on what I consider to be the most important events in the transfer process.

In order for the transfer process to commence JHAC needed to receive an instruction from the new pension scheme that Mr S had chosen. But the original instruction that was sent included an incorrect account reference. I have seen that Mr S says it would have been possible for JHAC to interpret the information it had been sent in order to identify the correct reference rather than rejecting the instruction. But I don't agree that would have been appropriate. Generally the transfer of pension savings is irrevocable and, particularly in this case, might mean a consumer is out of the market for a period of time whilst the funds are being transferred. I don't think it unreasonable for JHAC to ensure that it held a correct and valid instruction before proceeding with the request.

So I am satisfied that JHAC didn't receive a valid instruction to proceed with the transfer until 31 October 2023. And it is reasonable that a period of time be allowed for a firm to undertake its processing activities. I wouldn't expect those activities to take place on the same day. Instead I would generally think a period of around five working days would be reasonable in normal circumstances for each stage of the process to complete.

JHAC requested the disinvestment of Mr S' pension investments four working days after it received the corrected transfer instruction. I think that was entirely reasonable. And JHAC cannot be held responsible for any delays that occurred during that disinvestment process. I have seen that JHAC accepts it didn't chase any progress with the investment manager during the following weeks. But I haven't seen anything to persuade me that any chasing activity would have resulted in quicker progress.

The majority of the proceeds from the disinvestment were received by JHAC on 28 November. The new advisor contacted JHAC for a progress update the following day. It appears that by then JHAC's reconciliation activities had not been completed so it failed to confirm that the funds had been received. It wasn't until 8 December (eight working days after receipt) that JHAC notified the new financial advisor that some funds were available for transfer.

I don't think that JHAC acted quickly enough at this stage. Mr S' new financial advisor wouldn't be aware that some funds had been received until JHAC gave its confirmation. And I think the contact the new financial advisor made on 29 November might have put JHAC on notice that confirmation was required. So I think if JHAC had advised the new financial advisor of the receipt of the funds the transfer might have concluded earlier. I think the delay JHAC caused here was three working days.

JHAC explained that not all the funds had been successfully disinvested so it wouldn't be able to process the full transfer instruction it had previously received. It suggested that a new partial transfer instruction could be submitted. It appears that when that partial transfer instruction was submitted the new financial advisor repeated the previous error relating to the account reference. But when that was corrected JHAC incorrectly rejected the instruction as a duplicate. The problem was resolved by a new instruction being submitted the following day. JHAC paid the funds to the new pension provider on 29 December. So I think an additional day's delay was caused by the second instruction being incorrectly noted as a duplicate.

So overall I think the transfer of the majority part of Mr S' pension savings was delayed by four working days. As I said above that transfer was completed on 29 December. So if JHAC hadn't caused the four working days delay I think the transfer should have been concluded on 21 December 2023. So JHAC will need to assess whether that delay has caused Mr S to lose out by applying the methodology I set out later in this decision.

For clarity here I will note that I have agreed with the date proposed by the investigator for when the transfer should have taken place (21 December). But the investigator's assessment described that delay as being six working days. It appears the investigator had failed to take account of the Christmas bank holidays within that time.

As part of the transfer activity JHAC noticed that Mr S hadn't paid some fees that had apparently been due to his financial advisor over the past three years. So once sufficient cash became available as a result of the transfer it paid around £24,000 to the advisor. I don't make any finding of fault in JHAC making that payment. It held a valid instruction from the financial advisor for the payment of its fees from Mr S' pension savings. It correctly complied with that instruction once sufficient cash was available to make the payment.

But it appears an error had been made by the financial advisor and the fee instruction had been set up incorrectly. That was the responsibility of the advisor, not JHAC. So when the error was identified the advisor returned the incorrectly deducted charges to JHAC on 22 January 2024. But JHAC failed to make Mr S' new advisor aware it held those returned monies until after it had received the remainder of the pension disinvestment proceeds on 5 February. Allowing for the normal processing periods that I've explained earlier in this decision I think that amounts to a further delay of six working days in Mr S receiving the refunded fees. They should have been transferred to him by 19 February, rather than in the payment he received on 27 February.

There seems little doubt that the protracted nature of this transfer, although much of the delay was not due to something that JHAC did wrong, will have caused distress and inconvenience to Mr S. I agree with our investigator that a payment recognising that inconvenience would be appropriate here. And I agree with her assessment that a payment of £250 would be appropriate.

I appreciate that this decision will not provide as much redress to Mr S as he thinks would be fair. But I am satisfied that my findings reasonably set out which parts of the transfer delay have been caused by errors made by JHAC.

### **Putting things right**

As I have explained above I am satisfied that errors by JHAC unreasonably delayed two parts of the transfer that Mr S instructed. I think the first part of the transfer, for the amount of £749,877.45, should have been paid on 21 December 2023. And I think the refund of the advisor fees, amounting to £24,101.85, should have been paid on 19 February 2024.

For each transfer JHAC should liaise with Mr S' new pension provider to determine whether the investments Mr S made with the transferred monies would have been differently valued had they been made earlier, in line with the delays set out above. If that shows Mr S has lost out, JHAC should pay him compensation, equal to the current market value of the additional investments Mr S could have purchased at the time.

Any compensation should be paid into Mr S' new pension plan to increase its value by the total amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If JHAC is unable to pay the total amount into Mr S' new pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, 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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr S won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age. I think it reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, as Mr S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation. So making a notional reduction of 15% overall from the compensation adequately reflects this.

JHAC should additionally pay Mr S £250 for the inconvenience he has been caused.

**My final decision**

My final decision is that I uphold a part of Mr S' complaint and direct James Hay Administration Company Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 February 2025.

Paul Reilly  
**Ombudsman**