

## **complaint**

Mr E's complaint is about a delay in the reinvestment of his pension following its transfer from The Prudential Assurance Company Limited ("Prudential") to James Hay Administration Company Limited ("James Hay").

## **our initial conclusions**

The adjudicator wrote to Prudential and James Hay in November 2012 concluding that the complaint should be upheld. He concluded that James Hay's letters to Prudential in March 2009 and April 2009 set out that it could only accept transfers from a registered pension scheme. However, the adjudicator considered that James Hay had not explicitly asked Prudential to confirm that Mr E's pension was such a scheme, in accordance with the Association of British Insurer's (ABI) '*Statement of Good Practice: Pension Transfers*'. In addition, the adjudicator considered that, in light of the ABI's guidance, Prudential should have reasonably known that James Hay would require this explicit confirmation.

The adjudicator considered that Prudential should have provided the confirmation to James Hay in its letter on 27 April 2009, which enclosed the transfer value cheque. James Hay received this letter on 29 April 2009, the cheque cleared on 5 May 2009 and the investment instructions were received by James Hay on 6 May 2009.

The adjudicator therefore considered that Mr E's pension should reasonably have been reinvested on 7 May 2009 and that Mr E should be compensated for any loss between that date and when the money was actually reinvested on 3 June 2009. As the adjudicator found that both Prudential and James Hay had made errors, he considered each party should pay half of Mr E's loss, together with £150 each for the distress and inconvenience caused.

James Hay responded to the adjudicator's letter to highlight that its letters of 17 March 2009 and 7 April 2009 had in fact explicitly requested Prudential to confirm that the funds were from a registered pension scheme. In light of this, the adjudicator sent Prudential a letter on 27 November 2012 stating that he considered it should be liable for the whole loss. Prudential did not accept the adjudicator's findings in this letter and stated that James Hay was not legally required to have received confirmation that the funds were from a registered pension scheme before investing them. In addition, it said that it had sent James Hay a fax providing the confirmation on 20 May 2009. Prudential did however agree to pay half of the loss Mr E suffered.

Mr E was informed of Prudential's response and has made no further comments.

## **my findings**

The ABI's '*Statement of Good Practice: Pension Transfers*' sets out the '*minimum standards*' applicable for the transfer of pensions between providers. In respect of scheme documentation the guidance says the following:

*'Where the receiving scheme asks the transferring scheme to complete a form this should cover all the relevant data items shown in the lists in Appendix 1 or Appendix 2.'*

*'Where the transferring scheme is not content to complete a form or insists instead on providing the information in its own format (such as a letter), this should still cover all the relevant data items shown in the lists in Appendix 1 or Appendix 2.'*

Appendices 1 and 2 include a statement that the transferring scheme is a '*scheme registered with HMRC under Chapter 2, Part 4 of the Finance Act 2004*' i.e. that it is a registered pension scheme.

I consider that James Hay explicitly asked Prudential to confirm the funds were from a registered pension scheme, in accordance with the ABI's guidance. Whilst it may be correct that James Hay was not legally required to have received this confirmation before investing the funds, I consider that it was acting reasonably by requiring this confirmation in accordance with the guidance.

There has previously been some disagreement between Prudential and James Hay as to the date on which Prudential sent the confirmation. I note that Prudential responded to the adjudicator's letter to say that it sent the confirmation by a fax dated 20 May 2009. However, for the reasons set out below, I do not consider that the actual date that the confirmation was sent is relevant.

James Hay had previously requested the confirmation on 17 March and 7 April 2009. Prudential sent the transfer cheque on 27 April 2009, the cheque cleared on 5 May 2009 and James Hay received the instructions to invest on 6 May 2009. I therefore consider that the earliest reasonable date when the funds could have been reinvested was 7 May 2009, which was a reasonable time after James Hay had received the funds and the instructions. I consider that as Prudential had not sent the confirmation by this date, it is responsible for the loss suffered by Mr E.

### **my decision**

I uphold Mr E's complaint.

The Prudential Assurance Company Limited should liaise with James Hay to provide redress to Mr E and it should carry out the following steps:

1. Determine the current transfer value of Mr E's pension.
2. Determine the notional transfer value of Mr E's pension had it been invested on 7 May 2009.
3. Deduct the figure in (2) from the figure in (1). If the resulting figure is negative there has been a loss, and if it is positive there has been a gain.
4. If a loss is identified, Prudential should increase the value of Mr E's pension by this amount grossed up for any initial investment expenses. If no loss has occurred, Prudential need take no further action.

Prudential should also pay Mr E £300 in respect of the distress and inconvenience that this matter has caused him.

Adrian Hudson  
**ombudsman**