

complaint

Mr W's complaint is about the time taken to transfer his self-invested personal (SIPP) from his existing provider to a new SIPP with James Hay Administration Company Limited and the delay in accessing his pension benefits, in particular his pension commencement lump sum (PCLS).

background

I issued a provisional decision on 21 April 2020. I didn't uphold the complaint. Essentially I said I didn't think there was any unreasonable or unnecessary delay on James Hay's part in dealing with the matter. Nor did I think James Hay was responsible for any financial loss that Mr W had suffered because the payment of his PCLS was delayed. And I didn't think James Hay was responsible for the distress and inconvenience Mr W has suffered.

James Hay accepted that and didn't have anything further to add. Mr W asked me to reconsider. He confirmed his property purchase was already underway by the time he needed to tell his existing SIPP provider if he didn't consent to the transfer. But the point wasn't that he had time to make other arrangements. There wouldn't have been a problem if the transfer had been completed within a reasonable time, even if there'd been some delay.

Mr W explained that he didn't know what the build costs for the new house he wanted to build would be. Various site tests were undertaken and a quantity surveyor had been appointed to cost the build options. Mr W requested the PCLS at the end of January 2016 as he wanted to submit a planning application, detailing the house size and construction. The amount of money available directly impacted on that and the timing of the planning application. Mr W needed the PCLS to help fund the project. He needed to know how much he had to spend so the planning application was delayed until June 2016. He'd been told then by all parties that he'd get the PCLS in September 2016.

Mr W noted what I'd said about it not being in dispute that the transfer had taken much longer than any of the parties involved anticipated. Just focusing on a claim for interest for late payment Mr W calculated he should have received a PCLS of £300,468.83 on 31 March 2016 (that's after making an allowance for the increase in value he gained because the fund stayed invested). Interest at 8% is £24,037.48 a year or £2,003.12 a month. Mr W calculated total interest of £22,725 as due. Taking into account the investment gain and if another party paid the compensation I'd suggested that left a shortfall of £13,997.83 plus distress and inconvenience. Mr W said it has been established there was a long delay. So responsibility should be met between the parties involved.

He added that the situation wasn't of his making – it was due to his existing provider withdrawing from the SIPP market. Being given the chance to opt out was only slightly better than given no choice at all. If he'd been asked to opt in then that would have given a clear message that he understood and accepted the implications. Opting out required a lot of knowledge about a specialist area.

I'd said that SIPP providers weren't expected to '*second guess*' a mortgagee's requirements. But it was entirely reasonable to expect them to have adequate knowledge of the processes involved and not assume that novation would be acceptable to a lender and that the lender would consent. That demonstrated inadequate knowledge of their specialist fields.

The information provided did say the transfer could take some time and that requesting a PCLS after the transfer process had started would delay the transfer. But that was vague. It

could be assumed the delay might be anything from a few days to a few weeks. He'd applied for the PCLS in January 2016 expecting to receive it by the end of March 2016. His existing SIPP provider usually quoted a timescale of between one and six months. Instead the transfer had taken about seventeen months.

my findings

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

I've considered elsewhere the impact of the delayed payment of the PCLS on Mr W's building project. Essentially I said planning permission had been applied for in June 2016 and granted in September 2016. But work hadn't commenced until late November 2017. So it seemed his building project hadn't been delayed by the fact that the PCLS (or the bulk of it at least) wasn't paid until January 2017.

It seems from what Mr W has more recently said that he wanted the certainty and security of the PCLS actually having been paid before deciding on the final design and build options and the costs before submitting a planning application. I can understand why Mr W may have perhaps felt more comfortable in waiting until the PCLS had been paid or was, so he was told, fairly imminent. But I think that was his decision. Building costs are generally only estimates. I think Mr W would have known, as far as possible, the expected cost of the various options. And he knew what his PCLS was likely to be, or he could have asked his adviser for an up to date estimate. I don't think it would be reasonable to say the fact that the PCLS hadn't actually been paid stopped him moving forward with his building project when he knew the amount of the PCLS that was available and which would be paid eventually.

I've also considered Mr W's interest calculations. But they are based on the assumption that he applied for his PCLS in January 2016 and it had been paid in March 2016. I don't think that sort of timescale, given the commercial property held in the SIPP, was realistic. And, as far as James Hay is concerned, it wasn't until March 2016 that accessing the PCLS was mentioned to James Hay who said the transfer needed to be completed first. So I can't agree with Mr W that he's entitled to interest for delayed payment from March 2016. When Mr W did need to access his PCLS, James Hay made special arrangement to facilitate the payment of the bulk of the PCLS. And it's possible, if Mr W had made it clear earlier that he needed the PCLS urgently, James Hay would have helped him then.

It was unfortunate that it wasn't possible to novate the loan as planned initially. But I don't think that points to a lack of expertise on James Hay's (or the existing SIPP provider's) part. They may have considerable experience of dealing with mortgaged commercial properties held in SIPPs. But different lenders' requirements will vary, depending on the particular property and other factors.

As I've acknowledged there was a considerable delay in completing the transfer. But sometimes a transaction will turn out to be particularly complex and take more time than could have been anticipated. But that won't always mean that one or more of the parties involved must have been at fault. Or that all the delays could have been avoided. From what I've seen James Hay was proactive, turned things round promptly and generally tried to move the transfer forward.

my final decision

I don't uphold Mr W's complaint against James Hay Administration Company Limited and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 July 2020.

Lesley Stead
ombudsman

PROVISIONAL DECISION dated 21 April 2020

complaint

Mr W's complaint is about the time taken to transfer his self-invested personal (SIPP) from his existing provider to a new SIPP with James Hay Administration Company Limited and the delay in accessing his pension benefits, in particular his pension commencement lump sum (PCLS).

background

Mr W's existing SIPP provider wrote to its SIPP customers in July 2015 to tell them its third party SIPP administrator had decided to withdraw from the market. Mr W's SIPP provider had decided not to find another third party administrator. If the value of the self invested assets held in the SIPP was over £1,000 they'd be transferred to a new SIPP with James Hay. The insured funds could stay with the existing provider (unless their value was less than £1,000).

Customers who agreed to the transfer didn't have to do anything. Those who wanted to opt out needed to tell the existing provider by 28 September 2015. If it didn't hear by then it would go ahead and begin the transfer of the self invested assets to James Hay in October 2015.

The information provided said the transfer could take some time. And, if a PCLS was requested, that might delay matters. A property transfer guide was supplied. Amongst other things, it explained the outgoing administrator and James Hay had 'agreed a streamlined process for property transfers'. Solicitors would be jointly instructed. If there was a mortgage in place, a novation agreement would be used, where possible, to transfer the existing mortgage to the new SIPP provider.

Mr W didn't opt out. His SIPP contained a commercial property so that had to be transferred to the new SIPP. The property was subject to a mortgage. In November 2015 the outgoing administrator asked the mortgagee to commence the novation process of the loan. Unfortunately the re-registration of the loan to James Hay was protracted and this delayed the transfer of the commercial property to James Hay.

Towards the end of January 2016 Mr W wanted his PCLS to be paid. On 18 March 2016 his independent financial adviser (IFA) had a conversation with James Hay about Mr W accessing his pension benefits. Following that James Hay emailed the IFA forms for completion and return. James Hay told Mr W's IFA that under James Hay's SIPP terms and conditions benefits could only be calculated and paid once the transfer had been fully completed.

Between August 2016 and January 2017 Mr W's IFA continued to query progress and highlighted Mr W's increasing frustration. On 5 January 2017 Mr W said he'd be taking legal proceedings and making the press aware if he didn't get paid by 26 January 2017 – he said that was a year after he'd first requested payment.

James Hay paid £249,081 in January 2017. The property transfer completed in March 2017. James Hay paid the balance of the PCLS - £54,200 - on 16 August 2017.

Mr W had by then complained to James Hay. It didn't uphold his complaint. It said there'd been a considerable amount of correspondence between the mortgagee and its solicitors. James Hay noted that Mr W had already complained to the mortgagee who'd accepted responsibility for the delay.

James Hay had agreed to pay Mr W as much of his PCLS as it could, whilst the final element of the transfer, the property, was still awaited. James Hay described that as a 'non standard' approach agreed internally as it was 'acutely aware' of the extended timescale taken so far for Mr W to access his pension fund and to mitigate the impact of waiting even longer. Once the property had been transferred the balance of the PCLS due to Mr W could be calculated.

James Hay was satisfied it hadn't caused any delays and had responded to every request from the mortgagee in a timely way.

One of adjudicators looked into what had happened. James Hay provided a very detailed response to the complaint (its letter dated 25 January 2018). Mr W has seen that letter. So I'm not going to set out here all James Hay said.

The adjudicator acknowledged that the transfer of the SIPP had taken a long time. But he didn't think James Hay had caused any unreasonable delays. He said the in specie property transfer – which involved re-registration of the mortgage to James Hay and when simply novating the loan hadn't proved possible – had taken several months. Mr W hadn't been able to access his PCLS in January 2016 but at that point James Hay was waiting for the funds to be transferred from Mr W's existing SIPP provider. And James Hay had made a payment to Mr W in January 2017 before the in specie transfer of the property had been completed and when James Hay could have insisted on that happening first.

We later asked James Hay for some further information about what had happened between March 2017 and August 2017, leading up to the payment of the balance of the PCLS. James Hay replied in detail and Mr W has seen that response. So again I'm not going to set out here all James Hay said. But, in summary, James Hay said there were complicating factors which meant the payment couldn't be made until August 2017.

Mr W didn't accept the adjudicator's view. He said the whole thing caused him and his wife considerable distress. In November 2015 they'd purchased an old bungalow, intending to demolish it and build a new house. The majority of the build cost was to be paid for by the PCLS which Mr W applied for in January 2016. He was unable to access the major part of it until late January 2017. He couldn't start the work until after then and so there was a delay in completing the build. Mr W said he could have received a monthly rental income of £4,000 for the new house and because of the delay he'd incurred a loss of £30,800. He later said the delay meant he couldn't move into the property as soon as he'd planned and so he and his wife had to stay in rental accommodation longer than they'd budgeted for at a total extra cost of £17,000.

Mr W said his understanding was that if someone was unable to access money that was his, he should get interest at 8% above Bank of England base rate. Mr W said he'd asked for his PCLS (about £305,000) on 26 January 2016. He'd been paid £249,081 on 12 January 2017, 352 days after he'd applied. And a further £54,000 on 16 August 2017, 568 days after applying. It shouldn't take more than 28 days to access his money. Allowing for that and applying interest at 8.5% was £18,793.67 on the first payment and £6,790.68 on the second, in total £25,584.35.

Even taking into account the increase in his fund value and what he'd been offered (by other parties) he'd still lost out. He also queried the increase in the value and whether some of it was income from the property or all a return on investments. And why if the transfer (of the insured funds) took place on 3 June 2016 it had then taken James Hay until January 2017 to make an interim payment. He said the only reason for the interim payment was that he was threatening legal action.

Mr W also said that James Hay should have realised that a novation agreement wouldn't suffice – James Hay has some 40 years' experience in managing pensions and so should have been aware of the legal position in transferring ownership of the property. Mr W didn't feel the solicitors instructed were the most efficient and the person dealing with the matter only worked part time. None of the parties involved cared how long the process took – there was no extra income for any of them in expediting the transfer.

Mr W has said he'd settle for £25,584.35 for not having access to his money and a further £17,000 for the extra rent he'd had to pay. He said he wasn't qualified on how that should be apportioned between the parties he'd complained about.

my provisional findings

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

I sympathise with Mr W that, following his existing provider's decision to withdraw from this sector of the market, Mr W had to transfer his SIPP to a new provider. Mr W didn't instigate the transfer and the timing was particularly inconvenient for him given his property purchase and his need to access his PCLS to fund his building project.

A further issue is that, although the whole process was instigated by Mr W's existing provider, a number of other parties were involved in the transfer. Mr W has complained not just about James Hay but about his existing SIPP provider and the mortgagee of the commercial property held in his SIPP. We've dealt with those complaints under separate references. But we've considered all three complaints together. Mr W is also critical of the solicitors acting for the mortgagee and Mr W's existing SIPP provider. The solicitors aren't strictly within our jurisdiction but I've treated them as agents for the parties they were acting for. I haven't looked separately at the solicitors' part in the matter.

I don't think there's any dispute that the transfer took much longer than Mr W or any of the other parties involved anticipated. I accept the transfer wasn't straightforward. The SIPP held a commercial property subject to a loan. I think it was always likely that would cause some issues. At the outset a relatively simple loan novation was anticipated. But it seems that wasn't possible and a new loan agreement had to be set up.

I don't see that James Hay is responsible for requirements imposed by the mortgagee. I don't agree with Mr W that James Hay should have known that a novation agreement wouldn't suffice. Despite James Hay's experience in this sector of the industry I maintain that it can't be expected to 'second guess' a particular mortgagee's requirements. Nor is James Hay responsible for delays on the mortgagee's part.

All I'm looking at here is what James Hay did (or didn't do). I've considered very carefully the information which James Hay has provided and which sets out its involvement in the matter in detail and, in particular, its dealings with the mortgagee of the commercial property. From what I've seen I don't think James Hay was responsible for any delays. It seems to have tried to move things forward quickly. For example, when revised loan documentation was set to James Hay on 15 June 2016 James Hay reviewed it and returned the slightly amended documentation to the mortgagee within an hour or so.

I can see that there were a number of instances where James Hay didn't hear back from the mortgagee or its solicitors as promised. James Hay seems to have chased up replies in an attempt to keep the matter moving. For example, James Hay, having been told by the mortgagee on 23 June 2016 that documents would be posted that day, chased the mortgagee up on 12 and 20 July 2016 and 2 August 2016.

Mr W may have thought James Hay's comments on the new loan agreement added to the time taken. But I think James Hay's approach was correct and aimed at protecting Mr W's position by ensuring that the terms of the new loan, as far as possible, mirrored the existing loan facility and weren't any less favourable to Mr W.

For example, I note the query around the end date for the loan: it seems that a fifteen year term was initially agreed in 2006 which would mean an end date of June 2021 whereas the mortgagee suggested the loan facility would end in 2017.

I think that and other queries were worthwhile and necessary. With hindsight James Hay suggests it could perhaps have referred matters to Mr W and his IFA but that could have resulted in further fees for Mr W. And there's no guarantee it would have resulted in less time being taken overall.

I note that the mortgagee did agree the later end date which protected Mr W's position and was to his advantage. And James Hay did explain that to Mr W in its email of 24 August 2016 and copied to Mr W's IFA. The email was also copied to the other parties – the existing SIPP provider, the mortgagee and the solicitors – in what was in my view a clear attempt to draw the issues about the loan together and to a close and to enable the transfer to proceed.

James Hay followed that up by emailing the mortgagee on 9 September 2016 for an update and referring to the 'need to keep the pressure on all concerned to get this through without further delay especially with such an unhappy client'. James Hay chased the mortgagee again on 15 September 2016. So I think there's clear evidence that James Hay was pushing to try to get the loan and the transfer completed.

That's also demonstrated by the fact that once it became clear that the mortgagee had further legal requirements, the cost of which the existing provider agreed to cover, James Hay asked that provider to expedite payment, in order that the property searches could be undertaken immediately.

I've seen that James Hay did at one stage misplace a document. But I don't see that added to the time taken. Although a replacement document had to be issued, agreement about the new loan and drawing down on it was still outstanding.

James Hay made two payments in respect of Mr W's PCLS – an interim payment of £249,081 on 12 January 2017 and a further payment of £54,200 on 16 August 2017. Mr W says he requested his PCLS on 26 January 2016. But whatever request may have been made to Mr W's existing SIPP provider no request was made to James Hay until September 2016.

Initially James Hay's position was that the PCLS was only payable once the transfer had been fully completed. I think at that stage James Hay was probably still hopeful that the transfer would complete soon. But by January 2017 that hadn't happened and so James Hay took the unusual step of paying an interim PCLS.

I think James Hay did what it could to mitigate the situation. Mr W says James Hay could have made that payment earlier. But James Hay wasn't obliged to do make any payment then. James Hay could have insisted on all aspects of the transfer having been completed – and the transfer of the property was still outstanding. But, in an effort to mitigate Mr W's position, James Hay made an interim payment.

James Hay's decision may well have been influenced to some extent by Mr W's increasing frustration and his indication that he was going to take the matter forward by legal proceedings or involving the press. I note here Mr W's email of 5 January 2017. But I don't think it would be right to say that James Hay should have made that payment sooner and when, as I've said, it could have insisted on waiting until the transfer had been fully completed.

James Hay initially approached Mr W's existing provider to see if it could make a payment of PCLS to Mr W. But by then the cash funds had already been sent, at Mr W's request, to James Hay – it held funds approaching £1 million. James Hay then agreed, as a concession, to make a PCLS payment based on the value of the cash and assets already transferred from the existing provider. James Hay received Mr W's new correctly completed benefits payment form on 13 January 2017. Payment was then promptly made on 18 January 2017.

There was some delay between the transfer of the property being completed in March 2017 and payment of the balance of the PCLS on 16 August 2017. But, and as James Hay has explained (in its letter of 13 March 2018), there were complications surrounding the calculation and payment of the second tranche of the PCLS.

These included an overpayment having been made by Mr W's existing SIPP provider; a new benefits claim form being required; the desktop valuation of the property not being completed until 22 June 2017; a reconciled unit transaction statement for one of Mr W's holdings being required; and a revised

Protected Lifetime Allowance Charge Certificate being issued on 13 July 2017 (which meant James Hay's initial calculations of Mr W's lifetime allowance done in January 2017 were incorrect). I don't see that James Hay was in a position to calculate and pay the balance of the PCLS until those issues, which weren't of James Hay's making, had been resolved.

Overall I don't think there was any unreasonable or unnecessary delay on James Hay's part in dealing with the matter. It follows that I don't think James Hay is responsible for any financial loss that Mr W says he's suffered because the payment of his PCLS was delayed. Nor do I think that James Hay is responsible for the distress and inconvenience Mr W has suffered.

my provisional decision

I don't uphold Mr W's complaint against James Hay and I don't make any award.

Lesley Stead
ombudsman