

## **The complaint**

Mr W complains James Hay Administration Company Limited (James Hay) have failed to provide the service he paid for on his pension. He wants them to refund his annual fee and make a payment for the trouble and upset they've caused him.

## **What happened**

Mr W holds a Self-Invested Personal Pension (SIPP) plan administered by James Hay. Mr W contacted them to highlight what he believed were shortcomings in the administration service he had received for the previous tax year.

James Hay reviewed his concerns and agreed there were gaps in the service they had provided. They decided to try and put things right with Mr W, so they offered to refund their annual fee for the year in question. This totalled £777. Mr W accepted their offer and that matter was considered closed.

Mr W subsequently recontacted James Hay to explain that a number of new concerns had arisen but covering the current tax year. He complained his messages were not being responded to or not done so in a timely manner. He was concerned about the roll-over of an existing term deposit within his pension and was seeking to understand why his online account with James Hay didn't correctly reflect his understanding of his balance.

James Hay again undertook an investigation of Mr W's concerns. They agreed the service he received had not been at the standard they would expect and as such, upheld his complaint. At that point, James Hay decided not to offer Mr W any further redress. They didn't believe he'd suffered any financial detriment and, because they'd refunded his previous years fee of £777, they considered he'd been adequately compensated already.

Dissatisfied, Mr W brought his complaint to this service.

The complaint was considered by one of our Investigators. He felt Mr W's complaint should be upheld. He concluded the payment of £777 offered by James Hay should relate to Mr W's concerns about the previous tax years' service and not the more recent issues relating to the new tax year as well. He didn't think James Hay were correct to conclude that as Mr W had already received a fee refund of £777, that it was reasonable to discount any further compensation.

Taking consideration of the trouble and upset caused to Mr W, our Investigator determined a payment of £250 was a fair and reasonable amount James Hay should pay to Mr W for the inconvenience they had caused him.

James Hay accepted that recommendation

Mr W however, disagreed with our Investigators findings. He told our Investigator, in summary, the following:

- Given the shortfalls in service, he did not believe James Hay deserved their full fee for

the new tax year.

- He didn't feel the decision our Investigator reached took account of the 'significant trouble, upset, distress and inconvenience which has been caused' to him by James Hay. He felt £500 would be a fairer amount.
- He believed that he has suffered a financial loss because James Hay has not delivered the service he has paid for. He feels James Hay has gained financially by not applying sufficient resources to his plan. He didn't feel this has been considered

Our investigator was not persuaded to change his view as he felt the amount Mr W was seeking was not proportionate to the inconvenience caused.

Mr W asked the Investigator to pass the case to an Ombudsman to review that outcome.

### **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 his correspondence with this service, Mr W has asked that I consider whether it is fair and reasonable for James Hay to receive a full annual fee for the new tax year given the level of service that has been provided to him.

What I don't believe is in any doubt here is, whether Mr W received the service he would have expected for the fee he was charged. James Hay have conceded he did not. The question at the heart of the complaint is whether it was reasonable for James Hay to conclude that as they had already paid Mr W £777 for an earlier complaint, they wouldn't have to pay compensation for his later concerns covering the new tax year. I don't believe it is, and I'll explain why below.

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.

It's important to understand what the annual fee Mr W pays to James Hay typically covers. As with all SIPP providers, they'll incur costs linked to staffing such as handling his queries, administration such as the issuing of statements and paperwork to him, IT costs, regulatory and insurance costs along with the expense of managing the relationship between third party providers such as banks and intermediaries. During the tax year, James Hay will have borne those costs in administering Mr W's SIPP.

Taking this account, I don't believe it's fair to expect James Hay to refund their annual fee on Mr W's SIPP every time mistakes occur, or the service levels are below what Mr W expects. Whilst there's no doubt there were gaps in the service they provided, his SIPP still benefited from the range of wider services from them and importantly, James Hay incurred the costs of providing them to him. I also don't believe that refunding the fees for the new tax year would place him back in the same position he would've been in had the mistake not occurred.

I am unable to agree with Mr W's assertion that James Hay has benefited financially from the shortfalls in the service he received as I have seen no evidence of this. I have also seen no evidence that Mr W has suffered a financial loss as a result of the actions of James Hay as he claims.

I would also note that James Hay did offer Mr W to transfer his SIPP elsewhere without a fee if he remained dissatisfied with their service. And they extended the deadline to do this until late September 2021. I appreciate Mr W didn't take James Hay up on this offer, however I do think it was fair in the circumstances to offer this to Mr W and would have allowed him to seek out a different provider if he generally remained dissatisfied with their service and what he was paying in fees.

Our Investigator noted he could well understand Mr W's thought process in believing that given James Hay had refunded the previous year's costs, they should do the same again in light of the new issues he presented. Whilst this service has not reviewed the issues Mr W raised with James Hay covering the previous tax year (as those concerns were resolved to Mr W's satisfaction by James Hay), I can conclude that it would be most unlikely we'd ask James Hay to rebate their fee in full. It is of course up to individual businesses to determine the level of compensation they wish to offer consumers when issues around inconvenience arise.

Therefore, I considered whether the recommendation of £250 for the trouble and upset Mr W suffered that was put forward by our Investigator for service shortfalls he received in the new tax year, is reasonable. I believe it is and I'll explain why below.

To help determine the level of payment businesses should make where consumers have suffered as a consequence of poor service, we look at each case on its own individual merits. It's important to remember in this instance, I am only looking at the new tax year as James Hay have already put things right for Mr W on the issues he encountered on the previous year.

In their resolution letter to Mr W, James Hay wrote:

*'I do accept that the level of service provided by James Hay has on several occasions fallen below that which I would expect you to receive. At James Hay, we aim to deliver a premium level of administration and I am deeply sorry that this was not evident in your dealings with the firm. Therefore, I have recorded your complaint as upheld for FCA reporting purposes, and I would like to offer my sincere apologies in this regard.'*

Mr W explained his concerns covering the new tax year related to James Hay failing to roll-over a fixed term deposit and not responding to multiple messages he'd sent to them in a timely manner. In addition, his concerns also appear to relate to incorrect balances being shown online. Whilst it appears James Hay did roll-over Mr W's deposit as he had initially wished, they failed to provide confirmation of that until they were prompted by him. There is evidence on the file of multiple messages going backwards and forwards between Mr W and James Hay; the file shows on a number of occasions his update requests going unanswered.

I do think it important though to acknowledge James Hay's role as an intermediary between Mr W and third-party banks with whom deposits were being placed with inside his SIPP. I could see evidence of a mistake occurring at third party bank that was subsequently rectified that led to some delays. I don't believe it's fair in those circumstances to penalise James Hay for someone else's mistake. I also think it's important to acknowledge there is considerable cross over of correspondence where discussions cover both tax years on the file presented to me and it's worth remembering I'm only focused on the latter tax year.

Whilst I do accept Mr W has exchanged significant volumes of correspondence with James Hay, and I would like to fully acknowledge the frustration this must have caused, I don't believe his latter experience covering the current tax year meets the threshold for what this

service would consider to be 'substantial'. Those instances are typically reserved for businesses that have caused serious detrimental effect to a consumer's lifestyle.

I do agree with the findings of our Investigator and conclude it would be unfair to make James Hay refund Mr W's fees for the current tax year. I do however believe given the service gaps which James Hay have already conceded too, an award of £250 for the trouble and upset he has experienced is fair and reasonable.

### **My final decision**

I uphold Mr W's complaint and direct James Hay Administration Company Limited to pay him £250 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 September 2022.

Simon Fox  
**Ombudsman**