

Complaint

Mr L complains that IPS Pensions Limited (“IPS”), trading as James Hay Partnership (“James Hay”) should not have allowed him to invest in two unregulated investments within his Self Invested Personal Pension (“SIPP”). He says James Hay didn’t carry out sufficient due diligence checks before accepting the investments and, had it done so, it would not have accepted them.

Background

Mr L’s IPS SIPP was established in 2010, and a UK based authorised Independent Financial Advisor (IFA) was recorded as Mr L’s advisor. Two investments in unregulated investments were subsequently made. Both have failed, and Mr L has lost the money he invested.

In response to Mr L’s complaint, James Hay said:

- It doesn’t accept responsibility for the failure of the investments.
- It doesn’t undertake any investment fund research by way of a suitability study on behalf of any of its SIPP members.
- It is not regulated or authorised to provide advice and could not assess the suitability of the investments Mr L chose.
- Whilst James Hay is not required to ensure an investment is suitable, it did have a responsibility to run some checks at the time, effectively undertaking its own ‘due diligence’.
- It’s reasonable to presume that Mr L would have fully understood the self-invested nature of the SIPP and nature of the investments he chose as at the time he was involved in the sale and distribution of SIPPs and investments of the type he made.

Mr L was unhappy with James Hay’s response and referred his complaint to our service.

The investigator’s view

Our investigator concluded Mr L’s complaint should not be upheld. She said she did not think it would be fair and reasonable to uphold the complaint, given Mr L’s involvement with the sale and promotion of investments of this type. She felt he would have fully understood the risks involved.

A representative responded on Mr L’s behalf. It said, in summary:

- The businesses Mr L was associated with were not FCA authorised, and were only involved in introductions to authorised businesses.
- Mr L did not appreciate the risks involved with the investments he made – he wholly relied on regulated professionals to carry out due diligence.

- We should find that James Hay did not carry out sufficient due diligence checks when accepting the investments into the SIPP
- It is not reasonable to presume Mr L would have fully understood the risks. He did not have a sufficient knowledge of what he was doing when transferring his pension into the SIPP and subsequently investing into the unregulated investments.
- Even if he did understand the risk (which he did not), he relied on James Hay, the FCA regulated professional.
- There is no evidence that, if Mr L was advised by IPS not to invest in the investments, he would have gone ahead – it would have been foolish to do so. James Hay should be held responsible for its failure to carry out an ample due diligence before accepting any consumer into an investment which is doomed to fail.

As an agreement could not be reached, the complaint was passed for an ombudsman's decision.

My findings

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

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When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. This goes wider than the rules and guidance that come under the remit of the FCA. Ultimately, I'm required to make a decision that I consider to be fair and reasonable in all the circumstances of the case. I also need to have my statutory duty to resolve complaints with the minimum of formality in mind.

There are various relevant considerations to complaints about the acceptance of business by a SIPP operator. They include a number of regulatory publications, such as the 2009 and 2012 thematic review reports, the Principles for Businesses, COBS and some recent case law. These establish the regulatory obligations of SIPP operators, give examples of how those might be met in practice, and offer insight into how the courts might deal with similar issues.

Essentially these mean that I would generally look to consider the due diligence carried out by James Hay, whether that was sufficient and, if it was not, whether it is fair and reasonable to uphold the complaint and award compensation. However, in the particular circumstances of this complaint, it is in my view sufficient to go straight to that last point. I say this because no matter what view I take on whether James Hay should or should not have allowed Mr L to make the investments in question, in my view it simply would not be fair to ask James Hay to compensate Mr L for the losses he has suffered, in the circumstances.

Even if Mr L did not understand the risks associated with the SIPP and investments (and I am not persuaded that is the case), he was heavily involved with the promotion and distribution of these investments. It has been widely reported that his businesses earned very large sums of commission from these activities, and Mr L and his businesses have been ordered by the courts to pay significant sums in compensation to retail investors who have lost out as a result of their activities.

In these circumstances I think it would not be fair to ask James Hay to pay compensation to Mr L for any investment losses he has suffered personally. I should stress that I take this approach in this case because of the particular, unusual, circumstances.

My final decision

For the reasons given, I do not uphold the complaint.

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

John Pattinson
Ombudsman