

## **The complaint**

Mr S complains about delays caused to the transfer of his investments held within his Self Invested Personal Pension (SIPP) which he says IPS Partnership plc trading as James Hay Partnership (JH) is partly to blame for.

Mr S is being represented. All references to Mr S will include submissions by his representatives. It should also be noted that Mr S shared an investment account with his wife (Mrs S) linked to both their respective SIPPs. I'll refer to both Mr and Mrs S throughout this decision where relevant. But this decision concerns Mr S's complaint only.

## **What happened**

I issued a provisional decision on 7 September 2022. I set out the background to this complaint which I won't repeat again in full here but will instead focus on the reasons for my decision.

In summary, the following background is relevant to this decision:

- Mr S held a separate SIPP with JH which he wanted to transfer to a new provider. I'll refer to the new SIPP provider as 'T'. With Mrs S, Mr S held a joint investment account that was linked to both his and Mrs S's respective SIPPs. Both SIPPs were with JH. The investment account was with a business I'll refer to as 'B' and was called a Pension Trader Account (PTA).
- The way the PTA worked was that JH was the administrator and either Mr or Mrs S could communicate directly with B, including to arrange their own investments. However, any transfer instructions and any account change restrictions had to come directly from JH.
- In 2013, Mr S requested a transfer to T. However, after making a number of requests for information from T, and receiving no response, B cancelled the transfer.
- In 2015, B decided to discontinue PTA's. JH sent a letter from B to Mr and Mrs S's adviser on 25 July 2015 informing them of B's decision. B's letter said PTA clients should make new arrangements by 31 July 2015. However, in November 2016, Mrs S called B asking if their (Mr and Mrs S's) PTA could be reactivated. But, by this point, the account was being wound down, so no trading could be carried out.
- Mr S made a new transfer request in 2017. And in early 2021 he complained to JH about the delays it had caused to the transfer process.
- In my provisional decision, I said that I didn't think the 2013 transfer request had been made in time. However, I felt that in terms of the 2017 transfer, JH's customer service did cause some delays and overall, I felt it had fallen short of what Mr S could expect in terms of the customer service he received. I said I intended to award Mr S £100 for the distress and inconvenience caused by JH.

- JH disagreed with my intended outcome of paying Mr S £100 for its customer service failings. In particular, it said it had requested the ISIN codes (International Securities Identification Number) in August 2017 from B. Mr S didn't respond to my provisional decision.

The matter has now been passed back to me for a final decision.

### **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.

Whilst I've taken on board the further comments by JH my decision remains the same. I'll explain why after I deal with the 2013 request which I still consider has been brought too late by Mr S.

#### *2013 transfer request*

I have heard nothing from either party which has changed my mind about the 2013 request being out of time. So, as set out in my provisional decision, I think the 2013 transfer request is out of time for the following reasons:

*If a business doesn't consent (JH hasn't), I can't consider a complaint which isn't made within six years of the event complained of, or if later, within three years of when the complainant became aware, or ought reasonably to have become aware, of the cause for complaint. This is due to DISP Rule 2.8.2 of the Financial Conduct Authority Handbook.*

*The 'event' complained of is the delays to the transfer request made in 2013. Mr S says the 2013 request is a continuation of the later transfer request made in 2017. But in my view, these were two separate transfer requests. So, the six-year time limit started from 2013 for the transfer request made at that time. Therefore, Mr S had until 2019 to complain. As he only complained about this to JH in early 2021, I consider this matter is out of time under the six-year part of our time limit rules.*

*In terms of the three-year part of our rules, Mr S had three years from the date he knew, or ought reasonably to have become aware, of his cause to complain. B said the transfer was stopped in 2013 because T didn't respond to its requests. I'm not sure if this was communicated to Mr S by either B or JH.*

*However, in 2015 JH forwarded a letter to Mr S's adviser letting him (the adviser) know the PTA was still active. And that it needed to be transferred due to the PTA no longer continuing. So, given Mr S had already asked for a transfer two years previous to this, I consider the 2015 letter would have made him aware that something had gone wrong with the (2013) transfer request. As Mr S didn't complain until early 2021, I think the matter is also out of time under our three-year time limit rule.*

*I can look at a complaint even where it has been brought too late if exceptional circumstances apply. But given Mr S or his representatives were communicating with JH during different times up until he made his complaint I don't think this applies in this case.*

So, for all these reasons, I find the 2013 transfer isn't a complaint our service can consider as it has been brought too late.

#### *2017 transfer request*

In summary, my provisional decision, I gave the following reasons for upholding the complaint in part as follows:

*In terms of the 2017 transfer request made by Mr S on 1 August 2017, it's clear to me there were delays at the start of the process of around four weeks which I think were more likely than not, caused by JH. I say this because T's letter requesting valuations asked for ISIN codes. Whilst JH did ask B for valuations reasonably quickly, it didn't ask for the ISIN codes until 4 October.*

*As well as what I've set out in my timeline above this was confirmed in an email to Mr and Mrs S's adviser dated 25 October 2017. JH said: "This is concerning as I have myself spoken to [B] twice requesting a valuation including ISINS firstly on 04/10 and followed up on 12/10." Before 4 October, I can't see any documents or information where JH specifically asked for the ISIN codes. So, I do think this caused a delay at the start of the process. But from that point onwards, other than a few communication issues, I don't think JH has acted unreasonably or unfairly overall. I'll explain why.*

*By 26 October 2017 T had been sent the valuations along with the ISIN codes. But it took T three months until 20 January 2018, to confirm the re-registration details. Prior to this, in December 2017, T had said it could not accept one of Mr and Mrs S's shareholdings which they would need to sell. Mr and Mrs S provided instructions for this sale to JH in or around 20 January 2018. And sent B these instructions on the same day and the full transfer request on 31 January.*

*However, B needed to transfer Mr and Mrs S's joint former PTA to a new internal/ custody account before the transfer could be completed. This happened on 20 February 2018 and B confirmed this with JH. JH chased B twice in March about this but received no response.*

*It wasn't until early May 2018, that there seemed to be any further progress. Mr and Mrs S's adviser contacted JH for an update on 2 May and JH responded on 11 May to say that B couldn't do a partial in-specie transfer. On this date (11 May), B recorded on its system that the 'client' had called to say they'd changed their mind about transferring and were going to a new broker. I've asked all parties who the 'client' was in this context as B was unable to say whether it was JH or Mr and Mrs S. JH has told our service that it hadn't instructed B about this. Mr and Mrs S's adviser told our investigator that (bold the adviser's emphasis):*

*"It seems from going through correspondence that [Mr and Mrs S] initially wanted the transfers to be done in specie, but that [B] had a rule that either the entire holding must be transferred in specie or all must be transferred as cash. As [T] could not hold two of the funds on their platform (one was delisted and the other in administration), this meant [Mr and Mrs S] would be forced to cash in the entire holdings. [The adviser] did mention to James Hay that in the view of treating customers fairly and due to the severe delays that [B] should find an exception to their rule and transfer part in specie and part in cash. However this fell on deaf ears and eventually, with reluctance and to just get the matter resolved, your decision was to cash in the shares instructed on **28 June 2018**."*

*On balance, I think when Mr and Mrs S's adviser was told on 11 May by JH that B would not process a partial in-specie transfer, they spent some time either through their adviser or JH to try to see if B could be persuaded to change its stance on this. It's unclear whether B misunderstood this to mean they cancelled the transfer process. But in any event, until Mr and Mrs S (jointly) gave B new instructions, it could not progress with the transfer. It only received these new instructions on 11 July 2018 after JH received these from Mr and Mrs S on or around 2 July 2018.*

*I do, however, think JH could have chased B and communicated better with Mr and Mrs S and/ or their adviser between mid-March and early May 2018. But given it took Mr and Mrs S sometime to decide what to do once they were made aware they couldn't do a partial in-specie transfer, I don't think this caused a delay to the process overall. JH also had no control of B's processes so it can't be held responsible for Mr and Mrs S not being able to do an in-specie transfer as they'd originally requested.*

*B has admitted the new sale instructions arrived by 11 July but wasn't picked up until it was chased by JH on 15 August. JH chased this with B when it received no response after sending the instruction in July. This led to B finding the form and taking appropriate steps to sell the shares. There was then a two week delay in transferring the sale proceeds to JH once the shares were sold.*

*So, from what I can see, apart from failing to initially request the ISIN codes, up until the cash from the sale of the shares was received from B in early October 2018, JH didn't cause any unreasonable delays. I also don't think it caused any unreasonable delays after the cash was transferred to Mr S's (SIPP) account. This was because these delays were the result of the non-tradeable shares issue and/ or it (JH) was waiting for instructions from Mr S as to what to do with the cash balance held in his account.*

*Mr S's adviser was told no later than 2 November 2018 about the cash balance in his account and was given the option to transfer this to T. So, I can't fairly or reasonably hold JH responsible for Mr S holding cash in his SIPP for as long as he did. This was something he needed to instruct JH about given it was providing him with a non-advised service.*

*It's unclear exactly when the bulk of cash from Mr S's JH SIPP was transferred to his account with T, but this appears to have been done in October 2020. Regardless of this, there still remained the issue of the non-tradeable shares which meant the account with JH and B could not be closed. So, I don't think JH acted unfairly in continuing to charge Mr S fees for the service it was providing. And JH had no control over if or when T would accept the shares Mr S held in his joint account with B.*

*I can also see that JH informed Mr S and his adviser about the issues with the non-tradeable stock. These issues were beyond its control. It was only in January 2020, that T agreed to take two of the four remaining stocks. I can see it wasn't long after this that JH agreed to one of the remaining stocks being relinquished. But looking at the reasons for not relinquishing the last remaining stock, which was because it's accounts still showed the business had value, I don't think JH acted unreasonably here.*

*Further, when the matter came to our service, our investigator mediated with JH about the last remaining stock. JH agreed the last shareholding could be gifted. But from what I can see Mr S doesn't want this option as he thinks the shares may have some value. So, even if JH had offered this sooner, I don't think Mr S would have accepted its offer. Therefore, I can't hold JH responsible for any delays in closing the SIPP due to the stock still being held in Mr and Mrs S's joint account with B.*

*Mr S thinks JH should have told him the non-trading stocks weren't suitable investments for him. But as I've said, JH was providing a non-advised service to Mr S. So, it wouldn't be in a position to advise him about whether the stock was suitable.*

*I know Mr S thinks JH was disingenuous when it told B to communicate directly with T. Given the clear communication issues that were experienced during the transfer process, I think this was a reasonable approach for JH to take. From what I can see it actively stayed involved in the process but it just enabled better communication between T and B who needed to resolve the last remaining share issues.*

*Mr S says he has not received H Ltd shares into his SIPP with T. But from what I can see this transfer was completed in August 2018. And it's unclear to me whether these shares belong to Mr S or Mrs S. Nonetheless, I think JH has done enough to show it completed the transfer by providing the share certificate which clearly shows T as the owner of the shares. So, I don't think it has to do anything further in this regard.*

Following my provisional decision JH provided evidence that it did write to B asking for the ISIN codes on 8 August 2017. But on the same day it wrote to B again asking for valuations without asking for the ISIN codes. B then sent valuations, without the ISIN codes on 13 August. It took JH until October to ask for these again.

So, whilst I accept JH did initially ask for the ISIN codes, I consider there were various communication issues which caused Mr S unnecessary distress and inconvenience. For example, although JH did request the ISIN codes in August 2017, after receiving the statements from B, it didn't chase up the missing information until October 2017. And it only let Mr S know about the issues after being contacted for an update. Similarly, from mid-March 2018 to 11 May 2018, JH didn't take any action to chase matters until it was chased itself by Mr S's adviser for an update.

So for these customer service issues, overall, I think £100 is still a fair and reasonable reflection of the distress and inconvenience caused by JH.

### **My final decision**

I uphold the complaint in part in respect of the 2017 transfer request and order The IPS Partnership plc trading as James Hay Partnership to pay Mr S £100 for the distress and inconvenience caused. I think the matters relating to the transfer request made in 2013 are not within our jurisdiction as they have been brought too late

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 October 2022.

Yolande Mcleod  
**Ombudsman**