

The complaint

Mr F complains that James Hay Administration Company Ltd (James Hay) failed to confirm that it had opened a Selftrade account for him. As a result of the delay in confirming that the account had been opened, Mr F says he suffered a financial loss as he was unable to trade promptly.

What happened

Mr F holds a SIPP with James Hay. In spring 2020, when the financial markets were falling rapidly, Mr F wanted to invest in the oil sector. He says the range of funds available in his Investment Centre account was too limited, so he opened a Selftrade account in order to access a wider range of funds and shares.

From the information that has been provided to this service, I understand that Mr F applied for a Selftrade account in early May 2020. The account was opened for Mr F on 6 May 2020. James Hay accepts that it failed to send a letter that day to confirm that the Selftrade account was active. It has apologised for this oversight on its part.

Mr F and his adviser only became aware that the account had been opened on 13 May 2020, when Mr F's adviser chased up the matter.

As a result of James Hay's failure to notify him that the Selftrade account had been opened, Mr F says he had to delay selling holdings in his Investment Centre account and transferring these funds to the Selftrade account. Mr F complained to James Hay and his adviser also sent a detailed timeline and set out how it felt the redress should be calculated.

James Hay upheld Mr F's complaint. But it said it did not accept the redress calculation Mr F's adviser had carried out. It provided a timeline setting out when it thought events would have happened if it hadn't caused Mr F to delay selling holdings in his Investment Centre account and transferring the funds to his Selftrade account.

It then used this timeline as the basis for calculating its redress offer.

Mr F was not satisfied with the offer James Hay made and referred his complaint to this service.

Having considered Mr F's complaint our investigator said she felt the offer James Hay had made was fair and reasonable and she didn't think it needed to offer any more to resolve the complaint.

Mr F remained unhappy with James Hay's offer. He said he didn't think it was fair for James Hay to have assumed that money in his Selftrade account '*... would have been retained in cash from May 2020 until present*'.

He explained that he felt the offer was unfair as it was '*...based upon the assumption that I intended to purchase a specific number of shares irrespective of the sum raised from the prior sale of funds and have offered their compensation based upon the difference in share*

price between the actual transaction date (what happened) and what should have happened. The methodology adopted compensates me for the movement in share price over a 9 day period (18th May 2020 – 26th May 2020) but fails to reflect the loss of utility of this money (£10,013) over the intervening period.'

I issued my provisional decision on Mr F's complaint on 16 December 2022. In it I explained that I had reached a different view to that of our investigator. I explained my provisional decision as follows:

I said I had carefully considered the timeline James Hay had used to calculate the redress it offered to pay Mr F. The timeline (below) set out when it thought each step would have happened if it had notified Mr F promptly that his Selftrade account had been opened.

- 01/05/2020 - James Hay receive the completed Selftrade application form for Mr F.
- 06/05/2020 - James Hay set up the Selftrade account with Selftrade and provide confirmation of this to [Mr F's adviser] via post (2nd class).
- 07/05/2020 - James Hay set up the Selftrade account on their systems, so it is now viewable online.
- 11/05/2020 - Letter received by IFA/member. I have made allowance for 4 days, based on the standard 2nd class post taking 3 days and an extra day due to the delays with the royal mail due to the Covid-19 pandemic.
- 12/05/2020 - First Investment Centre sales placed. I have used this date to mirror the actual date used for the sales, which was the day after confirmation was received,
- 14/05/2020 - Second Investment Centre disinvestments placed. Please note I have used this date to mirror the original instruction, which was received two days after confirmation was received. It was submitted online at the end of day so had to be rolled over to the next working day.
- 15/05/2020 - Proceeds from [name of fund] received. This date mirrors the turnaround time of the original sale instruction.
- 18/05/2020 - £77K sent to Selftrade as per Mr F's instruction. Please note I acknowledge that Mr F requested to send two amounts of £77K to Selftrade. However, if I mirror receipt of Mr F's instruction and receipt of the sale proceeds, it would not have been possible to send both on this date. I also note that when the £77K was sent across to Selftrade, only an amount of £74,353.50 was invested.
- 19/05/2020 - Proceeds received from [name of second fund] received. As well as several funds received from the second set of disinvestments placed. This date mirrors the turnaround time of the original sale instructions.
- 20/05/2020 - Proceeds received from various Investment Centre holdings sold on 14/05/2020. This date mirrors the turnaround time of the original sale instructions.
- 21/05/2020 - Final sale proceeds received from the various Investment Centre holdings sold on 14/05/2020. This date mirrors the turnaround time of the original sale instructions.
- 22/05/2020 - Following receipt of the final Investment Centre funds, second investments are placed with Selftrade.

I carefully considered whether this timeline was reasonable. Having done so, I said I thought that the timeline James Hay had used was a fair and reasonable reflection of what would most likely have happened, if it had issued confirmation by post when the Selftrade account was opened.

I noted that Mr F and his IFA said that if he had been notified by email on 6 May 2020, that the Selftrade account had been opened, Mr F would have 'immediately' started selling holdings in his Investment Centre account. Based on the evidence I had seen, I said I couldn't safely agree with this claim.

In particular I said I must take into account that Mr F did not start selling his holdings until the day **after** James Hay had confirmed that the Selftrade account had been opened.

Likewise, I said I appreciated that it would have been helpful if James Hay had emailed either Mr F, or his adviser to notify them that the Selftrade account was open, but James Hay had confirmed that its normal procedure was to send confirmation by post. In view of this I said I couldn't reasonably say that the redress calculation should be based on the assumption that Mr F would have been in a position to start selling holdings in his Investment Centre account on 6 May 2020.

I explained that I couldn't say with certainty that the timeline James Hay had used as the basis for its redress calculation was what would have happened, if it had promptly confirmed that the Selftrade account had been opened. But I said I thought it did reflect what would most likely have happened, but for the failure to notify Mr F or his adviser that the account had been opened.

However, I said I didn't think the assumption James Hay had made - that if Mr F had been able to sell his holdings sooner, and therefore had transferred a larger cash amount to his Selftrade account, he would have left this amount in cash - was fair or reasonable.

I noted Mr F had commented:

I most strongly challenge the suggestion that the funds would have been retained in cash from May 2020 until present. As I noted in my email response to your enquiry about the nature of my claim, the whole purpose of the exercise of transferring funds into the new James Hay module was then to immediately invest them in the target oil & gas funds as the oil price was rising strongly at the time. James Hay can vouch for the fact that all the other funds transferred into the new module were immediately used to purchase the new funds. So, the funds would most definitely not have been held as cash from May 2020 until present.

Having reviewed the information that had been provided to this service, I said I thought the assumption in the redress calculation James Hay carried out, that Mr F would have left this additional money uninvested, after it was transferred to his Selftrade account, was not fair or reasonable.

I noted that James Hay had subsequently offered to pay 8% simple interest on this money, but I said I didn't think this adequately reflected the loss Mr F had suffered.

James Hay said it disputed that Mr F intended '*... to invest the funds with Selftrade in a*

particular way and in specific percentages.' It said it had been '*...unable to match these percentages/figures to the amounts actually invested and in the absence of a signed agreement from Mr F to evidence this intention, I have produced my calculations based on the actual units purchased*'

I said I didn't think this was a fair or reasonable assumption. I said that, as I understood it, Mr F had fully invested the money he transferred to his Selftrade account by the end of May 2020. In view of this, I said it seemed more likely than not that Mr F would have invested all the money available, rather than buying a specific number of units and shares and leaving cash uninvested in his Selftrade account.

In order to put matters right, I said I thought James Hay should re-work the redress calculation it had carried out, using the same dates it set out in its final response letter, dated January 2021, but assuming that all the money Mr F would have transferred to this account (if he had sold the holdings in his Investment Centre account as per the timeline) had been invested.

James Hay responded to say it did not accept my provisional decision.

It said it did not think it was fair or reasonable for me to have said Mr F had 'fully invested' the money he transferred to his Selftrade account by the end of May 2020. It said Mr F had left around £550 of the funds he had transferred to his Selftrade account in cash. It reiterated that this was why it had carried out a price comparison based on the units purchased in the redress it had offered. And it asked this service to '*provide the evidence that 100% of the funds sent across were invested within the Selftrade holdings by the end of May 2020*'.

Mr F also responded to my provisional decision. He said he appreciated the provisional decision, but wanted to clarify that he had not sold holdings in his Investment Centre account before he received confirmation that his Selftrade account had been opened as he '*... didn't know when the new module would be open: until it was open, I didn't know where to move the funds to; there was no point in taking funds out of a potentially earning situation to await an opportunity to re-deploy them to a time when the new module was opened; and perhaps, most significantly, that I was not aware that it would take a week for JH to sell the units in their original funds and to transfer the funds into the new module, so that I could invest them there. The latter point was a significant surprise*'.

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.

Having done so I do not intend to depart from my provisional decision. I'll explain why.

Mr F says that as he didn't know when his Selftrade account would be opened he didn't want to sell holdings in his Investment Centre account as '*...there was no point in taking funds out of a potentially earning situation to await an opportunity to re-deploy them to a time when the new module was opened...*' It was, of course, Mr F's prerogative when he chose to sell holdings in his Investment Centre account.

I note Mr F also says that he '*...was not aware that it would take a week for JH to sell the units in their original funds and to transfer the funds into the new module, so that I could invest them there. The latter point was a significant surprise*'. I appreciate that this may have come as a surprise to Mr F, but as Mr F's IFA was assisting him in moving funds from his Investment Centre account to a Selftrade account I would have expected Mr F's IFA to make him aware that there would be a settlement period, and he would not be able to transfer the proceeds until the trades had settled.

I appreciate that Mr F would have found it frustrating if he had expected to be able to immediately transfer the proceeds from holdings he had sold in his Investment Centre account. But I can't reasonably find that James Hay acted incorrectly by not permitting the

proceeds to be transferred until the transactions had settled.

Was Mr F 'fully invested'?

I asked Mr F to confirm whether James Hay's claim, that he had left around 0.2% of the money he had transferred to his Selftrade account in May 2020, in cash was correct.

Mr F kindly re-checked his records and confirmed that only £1.25 had been left in cash in his Selftrade account by 27 May 2020. In light of this I asked James Hay to provide evidence to support its claim that Mr F left around £550 uninvested. On re-checking its records James Hay accepted that there was only £1.25 left in cash in Mr F's Selftrade account by late May 2020.

As both parties now accept that Mr F was fully invested by the end of May 2020, I see no reason to depart from my provisional decision that Mr F would have invested all the money available, rather than buying a specific number of units and shares and leaving cash uninvested in his Selftrade account.

I therefore remain of the view that James Hay should re-work the redress calculation it has carried out, using the same dates it set out in its final response letter, dated January 2021, but assuming that all the money Mr F would have transferred to this account (if he had sold the holdings in his Investment Centre account as per the timeline) had been invested.

Putting things right

Fair compensation

My aim is that Mr F should be put as closely as possible into the position he would probably now be in if James Hay had promptly notified him that his Selftrade account had been opened.

I think Mr F would have invested in the same way, and would have fully invested all the money transferred to his Selftrade account. I'm satisfied that what I've set out below is fair and reasonable in the circumstances of this complaint.

What must James Hay do?

To compensate Mr F fairly, James Hay must:

- Compare the performance of Mr F's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.
- James Hay should also add any interest set out below to the compensation payable.
- James Hay should pay into Mr F's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If James Hay is unable to pay the total amount into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would

have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If James Hay deducts income tax from the interest it should tell Mr F how much has been taken off. James Hay should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Selftrade SIPP	Still exists and liquid	Actual investments bought, but assuming Mr F fully invested all the money he transferred, in the same proportions but buying the maximum number of shares or units possible with the funds available	The dates set out in James Hay's January 2021 timeline	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

(I am mindful that there appears to have been a rights issue for one of Mr F's holdings and that Mr F would have received dividend income for at least some of his holdings. James Hay should take this into account in its calculations.)

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point

on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if James Hay totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- I think Mr F would have fully invested all the money he transferred into his Selftrade account.

My final decision

My decision is that, for the reasons I have set out above, I uphold this complaint. In order to resolve matters, James Hay Administration Company Ltd should calculate and pay the redress due, as set out above.

It should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 April 2023.

Suzannah Stuart
Ombudsman