

The complaint

Mrs B's representative has complained, on her behalf, about a pension sum of £65,000 which was "lost" during the process of transferring it from her self invested personal pension (SIPP) plan with IPS Pension Limited, trading as James Hay Partnership, to Cofunds Limited, trading as Aegon.

The delays in locating her pension funds meant that a significant amount of her pension assets was left in cash until it was transferred to a new SIPP provider in May 2021.

What happened

James Hay received an instruction to transfer £65,000 from Mrs B's James Hay SIPP to her Aegon General Investment Account (GIA) on 10 December 2020. This was for a further contribution to an existing investment, for which required James Hay was required to countersign. James Hay then sent this payment to Aegon on 16 December 2020. However, Aegon said James Hay hadn't provided the correct forms, and so the payment would be returned on 31 December 2020.

Unfortunately, this didn't happen. Mrs B's representative contacted Aegon in January 2021 and was told the money had been returned to James Hay due to an incorrect reference number. The representative then raised a complaint with James Hay on 22 January 2021 about this missing money.

James Hay contacted Aegon on 26 January 2021 and was told the money had been returned as Aegon had been unable to match the reference number. James Hay then attempted to locate the money on its own systems, as it believed the money had been returned to it.

On 19 February 2021, James Hay received a transfer form, requesting that Mrs B's entire SIPP be transferred to Standard Life. James Hay emailed Mrs B's representative on 26 February 2021 requesting an "instruction to trade" form, in addition to any application forms Aegon may require. However, James Hay used an incorrect email address to contact Mrs B's representative. As a result, this request for information wasn't picked up.

Mrs B's representative then contacted James Hay on 8 March 2021 to enquire about the missing £65,000 and the status of the transfer. These issues were escalated, the correct email address was provided, and the request sent again on 9 March 2021. James Hay's banking team also confirmed that it had investigated and could find no evidence that the £65,000 had been returned to it by Aegon.

The necessary information to continue with the transfer was then sent to James Hay on 12 March 2021. This was then sent to Aegon to move all the funds into the SIPP bank account on 17 March 2021.

James Hay had also contacted Aegon on 16 March 2021 to request evidence that the £65,000 had been returned to it. Aegon said its system didn't show any record of the money being returned, but that it would investigate further. On 17 March 2021, it emailed saying the

money had been returned to James Hay on 31 December 2020.

On 26 March 2021, James Hay received £454,383 which was placed into the SIPP bank account. However, as it hadn't yet received the £65,000, it couldn't complete the requested full cash transfer. On 4 April 2021, Aegon then confirmed it had located the £65,000 which was still with it. It explained it had been placed under a different plan number. It confirmed on 12 April 2021 that the £65,000 had been placed into Mrs B's GIA.

Although James Hay had sent the full disinvestment instruction on 17 March 2021, Aegon said a new instruction would be required to disinvest the £65,000. James Hay questioned this and asked if the recent instruction could be used, but Aegon confirmed on 23 April 2021 that the new instruction would be required. However, James Hay didn't let Mrs B's representative know about this requirement until 12 May 2021, when James Hay sent it the application forms.

The completed forms were received on 14 May 2021 and were sent to Aegon on 24 May 2021.

On 25 May 2021, James Hay executed a partial transfer to Standard Life of the £545,089 which was already available. The disinvestment of the remaining amount was completed and £64,998 was received on 1 June 2021. The money was then transferred on 4 June 2021.

In its final responses of 27 May 2021 and 25 August 2022, James Hay said that it didn't believe it was responsible for the £65,000 going missing and that it also wasn't responsible for the delays caused when trying to locate it.

Mrs B wasn't satisfied with the responses to her complaint, so it was referred to our service for an independent review.

The first investigator to review the matter didn't think the complaint should be upheld, saying in summary that the confusion regarding the whereabouts of Mrs B's pension funds hadn't stemmed from James Hay, and as such he didn't think the complaint should be upheld.

Mrs B's representative rejected that assessment, saying that the investigator had only considered the "loss" of the £65,000, but the issues to consider were James Hay's failure to adhere to its own requirements, as set out in the plan's terms and conditions, namely to keep accurate records, process contributions and transfers and to carry out services it deemed necessary to effectively manage the SIPP. James Hay had failed on each count, the representative said. It had failed in losing control of the pension funds and then in its attempts to recover the situation, it added.

The further matters which therefore needed consideration were the service levels provided in recovering the situation, James Hay's promise to accept full responsibility for any financial loss, and why it had needed so many contacts and chasers to push for a successful conclusion.

The investigator wasn't persuaded to change his view, however, saying in summary that he had considered the level of service as a whole, which included the issues surrounding the "lost" £65,000, and whether James Hay could reasonably be found to be responsible for the delays in locating it – along with the amount of chasing which Mrs B's representative had said needed to happen before the matter was resolved. And although he noted that James Hay had said that it would compensate Mrs B for any investment losses incurred by delays it had caused, he reiterated his view that James Hay wasn't responsible for the delays.

Mrs B's representative reconfirmed Mrs B's dissatisfaction with the outcome, saying that

James Hay failed to complete the full transfer out (to Standard Life) in a timely manner due to the delays caused in tracing the lost £65,000. This had caused a financial loss, the responsibility for which didn't lie with Mrs B, it said. The whole transfer process should be considered, it said.

As the initial investigator had left the service, a new investigator said that, as agreement couldn't be reached on the matter, it would be referred to an ombudsman, but that the review would only cover the matter which had been assessed by the previous investigator.

The case was referred to me, but I agreed that the whole transfer should be considered within the existing complaint. And so the investigator asked both parties for any further comments before issuing his further assessment.

James Hay issued a new final response letter, in which it said that its view that the responsibility for the "lost" £65,000 lay with Aegon was unchanged. But it did concede that, once it had received confirmation that a new application form was required by Aegon, it should have conveyed this to Mrs B's representative sooner.

It therefore offered to calculate any financial loss assuming it hadn't caused delays and the transfer had been completed by the point it felt it would have been able to do so - on 20 May 2021. To do this, it asked for contract notes to be provided confirming the date, unit amounts and price when re-investment was made.

But Mrs B's representative has questioned the timings of the delays. It's queried as to why James Hay didn't use its secure messaging service to request the additional information on 26 February 2021. James Hay said that it was reliant on the client or representative to supply all necessary documentation before instructing a trade. So, although it did send the request to an incorrect email address, it said that if the information had been provided at the outset, it wouldn't have needed to request the additional information. It also apologised that it didn't use the secure messaging system but that it would use email where it was appropriate to do so.

The investigator then set out the most recent assessment of the matter, saying the following in summary:

- He agreed with the findings of the previous investigator on the matter of the "lost" £65,000, saying that James Hay wasn't responsible for the delays caused by the funds being untraceable. He noted that Aegon had informed James Hay that the funds had been returned, when they had not. It took reasonable steps to clarify the situation and the correct position was only confirmed by Aegon on 4 April 2021.
- Although James Hay could have completed its investigation into the whereabouts of the missing funds sooner than it did, it nevertheless did so within eight weeks of the complaint being raised – as was provided for within the dispute resolution (DISP) rules.
- James Hay sent the information request dated 26 February 2021 to the wrong email address, but the correct information should have been provided at the outset. In prior trade instructions, the correct application had been provided and so Mrs B's representative ought to have been aware of the requirement.
- It was reasonable for James Hay to expect clients and their representatives to provide the necessary information in line with the terms and conditions. The investigator also didn't think that James Hay had treated Mrs B unfairly in using

email, rather than the secure message service, in its communication.

- He noted the timeline provided by James Hay for calculating when the transfer could have been processed, had it confirmed the requirement for a new application form for Aegon sooner. He said that its conclusion that the full transfer could have occurred by 20 May 2021, and James Hay's offer to calculate any loss incurred as a result of it being processed later, was fair.
- Having assessed the likely overall impact on Mrs B, he also considered the further £150 offered by James Hay in respect of the inconvenience its mistakes had caused her to be fair.

Mr and Mrs B said, in response, that they remained dissatisfied with the outcome of the investigation. They made the following points in summary:

- Both James Hay and Aegon were at fault, but they were "passing the buck" to one another.
- There were three indisputable facts: James Hay didn't complete the transfer out from IPS to Elevate in a timely manner; Aegon lost control of £65,000 and its inaction and very poor communication created a huge delay.
- Mrs B had at all times acted in good faith and shouldn't be penalised for the incompetence of the two regulated businesses.
- James Hay's offer to back date the transfer timeline to 20 May 2021 made a difference of four working days, but this wasn't acceptable as: James Hay lost another eight working days by failing to supply paperwork to match the BACS credits, and so the reinvestment in fact occurred on 7 June 2021; and £454,383 was paid in cash by Aegon to James Hay on 26 March 2021, which was four weeks after the initial transfer request – this should have been enough time for James Hay to chase the missing funds and complete any outstanding paperwork – but it did nothing unless pushed by others.
- A total of £519,383, comprised of £454,383 and the "missing" £65,000 was sitting in cash from 26 March 2021 to 7 June 2021 – a total of 50 working days. This was an error caused by James Hay and Aegon, not Mrs B.

As agreement hasn't been reached on the matter, it was referred to me for review.

At my request, the investigator enquired further as to why James Hay was able to partially transfer the SIPP on 25 May 2021, with the £65,000 then being received a few days later, and therefore why it wouldn't have been able to do so earlier. In response, it's said that it's able to complete partial transfers providing certain requirements are met. And in this instance, as Mrs B's SIPP was "fully crystallised", with numerous tranches, it was able to complete a partial transfer for the full value of one of the tranches.

But it also said that it was unable to initiate a transfer to a new provider, and therefore it was incumbent upon the receiving scheme, customer or their appointed representative to initiate such a transfer – including a partial transfer – as set out in the plan's terms and conditions. The full transfer request which was submitted in February 2021 couldn't be completed as the £65,000 was "missing".

It further confirmed that there was a telephone conversation with Mrs B's representative on 7

May 2021 in which the possibility of a partial transfer was discussed, but James Hay couldn't act on the basis of a phone call. It did then agree to accept the partial transfer instruction via email, and this was received on 12 May 2021, but this wasn't actioned until 25 May 2021.

I issued a provisional decision on the matter on 15 March 2023, in which I set out my reasons for upholding the complaint. The below is an extract from that decision.

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

My current view is that there have clearly been errors and delays incurred both by James Hay and Aegon in this matter. And I agree with Mrs B's representative that she shouldn't bear the consequences of the combined effect of these.

I think the primary problem, and the issue from which other problems – albeit not all – stemmed, was the "loss" of the £65,000 by Aegon. Aegon has itself now confirmed that it didn't return these funds to James Hay on 31 December 2020, and that it didn't in fact locate and then invest the funds in the GIA until 12 April 2021.

But there were other delays for which I don't think Aegon was responsible, and I'm setting out my view on this below.

The "missing" £65,000 – from 18 December 2020 until reinvestment in the new SIPP

Before the £65,000 was "lost", James Hay initially provided the wrong forms, which led to Aegon trying to return the funds on 31 December 2020.

On the basis that the £65,000 was sent to Aegon on 16 December 2020, and it ought reasonably to have been able to invest this in the GIA, had the correct forms been provided, two working days later, there was a total delay in investing the £65,000 from 18 December 2020 up to 12 April 2021, the date that it was invested in the Aegon GIA

The £65,000 was then returned to James Hay as cash on 25 May 2021. But it should have been invested in the GIA from 18 December 2020 up to 12 April 2021, and been benefitting from whatever investment return was experienced during that time.

Therefore, my view is that, to compensate Mrs B fairly, James Hay should firstly seek from Aegon confirmation of whether, had the £65,000 been invested in the GIA from 18 December 2020 up to 12 April 2021, the notional value at that date would have been higher than £65,000.

If it wouldn't have been, there is no overall loss, and so neither James Hay nor Aegon would need to compensate Mrs B for the loss of investment of the £65,000 in the period from 18 December 2020 up to 12 April 2021.

But if the amount as at 12 April 2021 would have been higher, then there was a loss, which then needs to be apportioned between James Hay and Aegon.

James Hay should in that instance seek confirmation from Aegon as to whether there was an increase or decrease in the notional value of the GIA investment for its initial delay period from 18 December up to 31 December 2020. If there was a notional reduction in value, then James Hay doesn't need to pay Mrs B compensation in respect of the "lost" £65,000. The entirety of any loss to Mrs B up to 12 April 2021 should be borne by Aegon.

If there would have been an increase in value for that period, and then there would have been a further increase in the value of the £65,000 investment from 31 December 2020 to 12 April 2021, then James Hay will be responsible for whatever notional increase in value which would have been achieved within that initial delay period up to 31 December 2020.

And so it should seek confirmation from Aegon as to what proportion of the notional increase as at 12 April 2021 it would have been responsible for as a result of notional investment for the period from 18 December 2020 to 31 December 2021.

If there was a notional increase in the value of the £65,000 from 18 December 2020 to 31 December 2020, but a subsequent decline in the value from 31 December 2020 to 12 April 2021, then Aegon will bear no responsibility for any of the loss to Mrs B – the entirety of the loss would have been caused by the initial delay period.

Additionally, any such notional decline in value from 31 December 2020 to the date of disinvestment and return to James Hay may be offset by James Hay against a notional increase in value which would have been experienced between 18 December 2020 to 31 December 2021.

The amount of gain/loss to Mrs B on the £65,000, and if the latter, what percentage of loss would be attributable to each business, would then have been established as at 12 April 2021. If the amount resulting from notional investment on 18 December 2020 would have been higher, then I'll call this amount value (A).

From this point onwards, Aegon's liability for the delays relating to the "lost" £65,000 ceased, but the effect of its share of the loss on the current value of Mrs B's SIPP persisted (see below).

As set out above, Aegon confirmed on 23 April 2021 that a new instruction would be required to disinvest the £65,000. However, James Hay didn't let Mrs B's representative know about this requirement until 12 May 2021, when James Hay sent it the new application forms.

The completed forms were received on 14 May 2021 and were sent to Aegon on 24 May 2021. James Hay received the disinvested amount on 1 June 2021 and transferred it out to Mrs B's new SIPP on 4 June 2021.

Had James Hay conveyed the need for the new disinvestment instruction to Mrs B's representative on 23 April 2021, it would reasonably have taken, allowing for the intervening weekend, until 27 April 2021 for the forms to be received back by James Hay, and then sent to and received by Aegon the day after – 28 April 2021. Aegon then took six working days to disinvest and transfer the funds across to James Hay, and so James Hay would have received the funds on 6 May 2021. James Hay transferred the funds three working days after it received them, and so they would have been transferred to the new SIPP provider on 11 May 2021.

James Hay should therefore seek from Aegon the value of (A) as established above, with the addition of the actual investment returns it experienced within the GIA between 12 April 2021 and 6 May 2021.

The redress which would need to be paid by James Hay and Aegon is their respective share of the total loss to Mrs B as a percentage, which then needs to be applied to the current value of the amount represented by the transfer of the £65,000 into Mrs B's current SIPP.

So for example, if the £65,000 invested since 18 December 2020 would have been worth £68,000 at 12 April 2021, and either Aegon's or James Hay's share of that loss is 70%, and with actual investment returns applied up to when it should have been transferred out on 11 May 2021 (using the disinvestment date of 6 May 2021) taking that amount to £70,000, then it would need to uplift the amount represented by the £65,000 transfer within Mrs B's current SIPP by a factor of 1.054.

But Aegon wasn't responsible for the delay between 11 May 2021 and 4 June 2021, and so a separate calculation should be undertaken to determine the additional effect of the delay incurred solely by James Hay. This would be to compare the loss attributable to Aegon determined by a notional transfer on both 11 May 2021 and 4 June 2021. So in effect, a further calculation as above, but on the basis of the later transfer date of 4 June 2021. If the loss due to the notional earlier transfer on 11 May 2021 is higher, James Hay should pay as a monetary amount, instead of Aegon, whatever the difference is between those two calculations – with Aegon then paying the lower amount.

The effect on Mrs B's SIPP should be neutral, but this will reflect the impact of the loss caused by Aegon up to a notional transfer date of 11 May 2021, whilst not holding it responsible for additional delays incurred by James Hay.

The retention of £454,383 in cash from 26 March 2021 until reinvestment in the new SIPP

James Hay was unable to comply with the initial full disinvestment request as it didn't have the "lost" £65,000. As James Hay has confirmed, there was a telephone call on 7 May 2021 in which the possibility of the partial transfer was discussed, but James Hay couldn't act on the basis of a phone call. It did then agree to accept the instruction via email, and this was received on 12 May 2021, but this wasn't actioned until 25 May 2021.

But the full transfer was in any case impacted by the loss, investment, and subsequent disinvestment of the £65,000. As I've said above, Aegon had informed James Hay on 23 April 2021 that, following the relocation and investment of the £65,000, a new disinvestment instruction would be required, but James Hay didn't confirm this to Mrs B's representative until 12 May 2021. The forms were received back from Mrs B's representative two days later on 14 May 2021.

Had the £65,000 been received by James Hay sooner, the whole of the amount could have been transferred together at an earlier stage, with no need for a partial transfer. So for the period from 28 March 2021, which is two days after James Hay received the bulk of the amount to be held in cash, up to 11 May 2021, which is the soonest all of the funds could have been transferred together, I think the responsibility for any loss lies with Aegon. The funds couldn't have been transferred together before this point due to the "loss" of the £65,000.

But for the period between 11 May 2021 and the actual date of transfer and reinvestment, I think the responsibility for any loss lies with James Hay. If it hadn't caused delays in notifying Mrs B's representative of the need for a new transfer application form, and had actioned that request promptly, and the disinvestment of the £65,000 had also taken place earlier, a full transfer could have proceeded on 11 May 2021, with no need for the partial transfer.

As such, the same redress principle as that set out above should be applied to the amount which was held in cash from 26 March 2021 onwards, but with Aegon being responsible for the first delay period from 28 March 2021 to 11 May 2021 and then James Hay being responsible for the period from 11 May 2021 to the date of reinvestment in the new SIPP.

If there is a loss attributable to James Hay from either part of the redress calculation as set out above, James Hay should in the first instance pay into Mrs B's SIPP to increase its value by the total amount of the loss and any interest (as set out below). 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 Mrs B's pension plan, it should pay that amount direct to her. 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 Mrs B won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age. I assume this to be basic rate. And so, assuming that tax free cash would be taken, the reduction should be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

Additional interest at the rate of 8% simple per year should be added to any loss from the date of any final decision along these lines to settlement if the complaint isn't settled within 60 days of James Hay receiving notification of Mrs B's acceptance.

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

Mrs B has also unquestionably been significantly inconvenienced and distressed by this matter. And whilst I appreciate that James Hay isn't responsible for some of the delays or the "loss" of the £65,000, it's nevertheless made several errors which have contributed to Mrs B's predicament.

As such, my current view is that James Hay should pay to Mrs B a further £200 in recognition of this."

Mrs B's representative accepted my findings. James Hay broadly did too, but wished to amend an aspect of my proposed timeline, saying that, once it had received the documentation to send to Aegon on 27 April 2021, it would have taken four working days to do so, and given the bank holiday, this would have been on 4 May 2021. And so, according to the remainder of the proposed timeline, this would mean that the transfer would have occurred on 17 May 2021 rather than 11 May 2021.

Mrs B's representative has accepted that revised timeline.

Aegon also broadly accepted the proposed resolution, but pointed out that the instruction which accompanied the transfer of the £65,000 was to invest it in cash within the GIA, and so, it said, there would have been no loss for the time during which it had been "lost".

I therefore asked the investigator to enquire further as to Mrs B's understanding of what would happen with the £65,000 once it was invested in the GIA. Mrs B's representative has said that the money would have been invested in the same way as her existing funds in the GIA – and that there would clearly have been no point in adding further money just for it to sit in cash.

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.

My views on the matter remain broadly the same as those set out in the provisional decision, and for the same reasons. I've noted Aegon's point about the cash investment instruction, but I agree with Mrs B's representative. There clearly would have been no point in adding funds to the account unless Mrs B intended to invest them. And in the absence of any evidence to persuade me otherwise, it seems more likely than not that the £65,000 would have been invested in the same way as Mrs B's existing GIA funds.

I think it was the fact that James Hay firstly issued the wrong forms, and then the subsequent "loss" of the £65,000 by Aegon, which prevented the funds from being invested as intended. And so I don't think the proposed redress methodology needs to be changed, other than as set out below.

Putting things right

As with the provisional decision, my aim is to put Mrs B as closely as possible into the position she would have been, but for the mistakes made by both businesses.

This hasn't been straightforward, and I'm grateful to all parties for their swift communication on the amendments and outstanding issues which have needed to be addressed.

On the basis of the responses received, my view on the appropriate manner of putting things right remains as outlined in the provisional decision, but with an amended date of 17 May 2021 for the "soonest" date that all of the funds could have been transferred to the new provider. Further, the notional investment return on the £65,000 should be calculated on the assumption that Mrs B would have invested in the same funds, and proportions, as already existed within the GIA.

My final decision

My final decision is that I uphold the complaint and direct IPS Pensions Limited, trading as James Hay Partnership, to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 April 2023.

Philip Miller
Ombudsman