

## The complaint

In 1999 Mr H and Mr M ('the complainants') purchased a commercial property investment into their jointly held Self-Invested Personal Pension ('SIPP'). The SIPP has been administered by James Hay Administration Company Ltd trading as James Hay Partnership ('JHP'). Its associated trustee entity was legal owner of the property, whilst the complainants were beneficial owners. A third party firm acted as the property agent.

The complainants' company was the tenant of the property, until it vacated the premises in November 2021. Thereafter, the property was vacant and placed on sale. In February 2023, the property (which remained vacant and unsold at the time) was discovered to have suffered a serious flooding incident. An insurance claim was made but was declined, because under the insurance policy coverage was restricted after 12 months of the property being unoccupied, and the restriction excluded the flooding incident.

The complainants mainly say JHP – failed to have a suitable/adequate insurance policy in place for the property; failed to communicate vital information to them (specifically about the insurance coverage restriction that applied after 12 months of the property being unoccupied) and to respond to their enquiries in a timely fashion; abandoned and sought to evade its responsibilities, as the SIPP's administrator, in the matter; and breached the regulatory Principles it was obliged to uphold.

JHP disputes the complaint.

Mr M has led representations on behalf of the complainants.

## What happened

The insurance claim form and the insurer's decision on the claim both confirm the date of the flooding incident as 7 February 2023.

The claim form stated the following cause – *"Damage occurred from top attic room where cold water tank held. Water coming down through floor to first floor room beneath and subsequently down to ground floor room beneath"*. The insurer's decision (dated 16 February 2023, and sent to JHP) includes confirmation that an official of the complainants' company (the previous tenant of the property) *"... advised that the unit had suffered an escape of water from the water tank in the attic ..."*.

Previously, in October 2021, the property agent had written to the complainants' company (including a request for the email to be passed to Mr M in his capacity as SIPP member) addressing the impending vacation of the property and termination of the lease. The agent forwarded a copy of JHP's Vacant Property Guide (the 'VPG') in order to help the complainants know the steps they should take once the property became vacant and the *"... ongoing requirements should the property remain vacant for a period of time"*.

The version of the VPG received by the complainants (that appears to have been published around 2018) and a 2023 version of the VPG have been shared with us. The former sets out a 'Void Insurance Requirements' section, which addressed what a SIPP member had to do

where a property continued to remain vacant after 30 days. It included – “Gas, water and electricity services and any fuel supplies being kept shut off at the switch or stopcock where they enter the Building”, “All water and heating systems being kept drained”, “The Building being kept secured ...”, and “The Building being inspected internally and externally by the Insured or their beneficiary at least weekly to check that any measures remain in place ...”.

The 2023 version of the VPG set out a ‘Vacant Insurance Requirements’ section with different contents, which the complainants say resulted from JHP reacting to their complaint and seeking, unjustly, to pass more responsibility to SIPP members than was previously the case. It included the following notice – “Where the property is unoccupied for more than 12 months, insurance cover is automatically restricted to Fire, Lightning, Explosion, Aircraft & Subsidence only and you must adhere to the unoccupied condition in the policy”. This notice did not exist in the version sent in 2021.

The complainants say careful consideration was given to the VPG and to the Void Insurance Requirements section, and that they ensured all the relevant requirements were met. They also note that their compliance with the requirements is evident from the urgent request they put to JHP in December 2022 to agree reopening of the heating due to cold and damp in the property. They say it is implicit in the request that the heating had previously been turned off. JHP acknowledged the request, but the complainants say its failure to provide a meaningful response to it falls under the service related part of their complaint.

They say the property’s neighbour alerted them, on 7 February 2023, to the sound of running water in the roof area of theirs, they attended the property and found the serious flood damage. They also say that, on closer inspection by the neighbour, he (the neighbour) believed the main pipe had been sawn through. For that reason, and because the water supply had somehow been switched back on (given that the system had previously been drained and the water supply switched off, in line with the VPG requirements) they reported the matter to the police. However, they say, due to the severe extent of water damage in the property the police investigation could not determine whether (or not) the property had been broken into.

The complainants highlight that JHP left them on their own to pursue the insurance claim and to mitigate the flood damage and secure the property in its aftermath. They regard this to be another failure of service. The same has been alleged about JHP’s complaint handling.

They also highlight that their allegation about JHP failing to have suitable/adequate insurance cover for the property extends to a separate matter of damage, probably caused by machinery in street digging works close to the property, to the property’s bay window. They refer to submitting an insurance claim in this respect, which was declined because such accidental damage was also excluded from cover after 12 months of the property being vacant.

One of our investigators looked into the case and concluded it should not be upheld. The complainants disagreed and commented on her findings.

Overall, her main findings included the following – the block insurance policy arranged by JHP was the only policy permitted for the property; the VPG made clear the responsibilities on the complainants (as SIPP members) during the property’s extended period (exceeding 30 days) of vacancy; the cause of the flood is not clear but, in any event, the water supply appears to have not been shut off where it entered the building; responsibility to shut it off belonged to the complainants; there was prior notice of the restricted cover (after 12 months of the property being vacant) in the insurance renewal document of May 2021 (even before the period of vacancy began); there is evidence from Mr M’s wife that she periodically inspected the property during the period of vacancy (as required by the VPG); and there is

no evidence that the responsibility to do so was ever passed to the property agent or JHP.

In response, the complainants mainly said – it may have been possible to put additional insurance in place to cater for the period of restricted cover, JHP should have arranged that; they (the complainants) were not in a position to do so because the provision for the restricted cover period was undisclosed to them at the time (and the 2023 VPG post-dates the events, so the disclosure in it is irrelevant); JHP was responsible for the periodical inspections of the property during the period of vacancy, and/or it was responsible for ensuring the inspections were being conducted; the investigator's understanding of the flooding incident is flawed, but the fact is that they completely followed the VPG requirements; nevertheless, the investigator has overlooked evidence confirming that JHP, as the insured party under the insurance policy, was solely responsible for meeting the vacant property requirements; she has also overlooked JHP's contractual obligations in the complaint; they did not receive the insurance renewal document or the insurance policy until after the event, and previously had no cause to ask for them; and the same applies to the SIPP's November 2022 Property Maintenance Guide.

The matter was referred to an Ombudsman.

### **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.

The regulator's Handbook includes Principles for Businesses that, as the complainants have said, JHP was obliged to uphold. They have referred to Principles 6, 7 and 10. In addition, I am also mindful of Principles 2 and 3.

Principle 7 requires firms to meet their clients' communication needs and to do so in a way that is fair, clear and not misleading. Principle 10 requires firms to arrange adequate protection for their clients' assets where they are responsible for those assets.

Principles 2, 3 and 6, in broad terms, require firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly.

Case law set by Ouseley J, in *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) confirms that The Principles are ever present requirements that firms must comply with.

Furthermore, and beyond the Principles, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the client's best interests rule which. This complements Principle 6 and, as the title suggests, it requires firms to uphold their clients' best interests.

The above broadly sums up key regulatory context, without being exhaustive, relevant to the present complaint. It is beyond my remit to, in isolation, repair or remedy a breach of the Principles. This service is not the industry regulator. However, the complainants are correct to cite the Principles as relevant overarching context, and I have applied them in this way.

### **The Insurance Policy/Protection of the Property**

The property was insured throughout the period relevant to the complaint. That insurance was put in place by JHP and there is evidence that it was renewed in 2021 before the period of vacancy. The policy was also active at the time of the flood damage, so there is no

dispute over the existence of insurance cover.

There is dispute over how adequate the cover was. The renewal document confirms coverage for fire, explosion, 'lightning & aircraft', subsidence and "*Any Other Accident*". I am satisfied that this coverage was adequate for the protection of the property. I do not find that the block policy used by JHP for the property was inadequate.

The real issue is therefore about the effect of the coverage restriction where the property was vacant and continued to be vacant after 12 months.

The terms applied to the SIPP property purchase, at the point of purchase, included notice about the block insurance policy that JHP would be using for the property and notice that the complainants were not permitted to arrange insurance for it. Therefore, any suggestion that they might have been able to arrange additional cover for the restricted coverage period falls away.

The remaining consideration is whether (or not) JHP was obliged to arrange additional cover. On balance, I am not persuaded that such an expectation would be reasonable in the circumstances of this case. Evidence shows that the plan was to market and sell the property upon it becoming vacant. Full and adequate insurance cover continued for the first 12 months of the property being vacant and, as I address below, both parties were aware of the reasonable steps required to ensure safety of the property during this period.

I have not seen evidence that JHP had a duty to put in place additional insurance to make up for coverage of *any other accident* being lost after the restricted coverage period began, so even if the argument is that it could have done so, there does not appear to be a basis to say it was obliged to do so. In terms of whether (or not), in the context of reasonableness, it *should* have done so, I am not persuaded that it should.

As the complainants have said, until notice of the flooding incident in February 2023, the period of vacancy had been broadly uneventful since it began in late 2021. They have repeatedly affirmed to us that they completely followed the VPG. I note their argument that Mr M's wife did not conduct periodical inspections of the property and that she only occasionally visited it to collect mail, but in her December 2022 enquiry (in which she asked about reopening the heating) she said "*I visit the property periodically to check all is ok ...*". This was in the 13<sup>th</sup> month of the property remaining vacant, so JHP was essentially being informed that the complainants' arrangement for periodical inspections had been, and continued to be, ongoing.

The enquiry also confirmed that the central heating system remained switched off. It did refer to a problem with the fire alarm system, and in this respect I agree with the complainants that JHP's failure to properly respond to the enquiry was a shortcoming. I imagine that a capable and working fire alarm system would have been a requirement for the fire related insurance cover, so JHP ought reasonably to have taken this seriously and addressed the notice about the faulty fire alarm. However, this is just an observation. The complaint is not about fire damage and the faulty fire alarm is irrelevant to the complaint issues. The faulty fire alarm would also not have been cause for JHP to consider additional insurance coverage – fire coverage already remained in the restricted cover, all it had to do was to address the notice about the faulty fire alarm system.

For the sake of completeness, I do not consider that JHP did anything wrong by not granting the request to reopen the central heating system. The VPG was clear on the requirement to drain and shut down that system during the period of vacancy, so it could not reasonably have been expected to permit its reopening when the period of vacancy continued.

Overall, on balance, and for the above reasons, I do not find that JHP ought to have had reason to consider and/or put in place additional insurance cover for the risk of *any other accident* after the 12<sup>th</sup> month of the property being vacant. This finding extends to all the claims made by the complainants about the consequences of the restricted cover after the 12<sup>th</sup> month of the property being vacant.

### The VPG Responsibilities

As I said above, the complainants have confirmed that they followed and applied the VPG completely.

I consider this to be important, because it makes the debate about who *should* have been responsible for discharging the VPG responsibilities arguably redundant.

The fact, as conceded by the complainants, is that they undertook those responsibilities and they affirm that they discharged them completely. This includes the periodical inspection I mentioned above. I am aware that Mr M's wife later, in her email of 16 February 2023, said something different about her property visits – she said her visits were only to collect mail. However, on balance and given the circumstances in which her December 2022 email was sent – whereby she was informing JHP about the heating reopening and fire alarm system issues, as part of her periodical inspections – I consider that weight should still be given to her previous confirmation that she routinely performed such inspections.

Beyond the above, the language of the VPG clearly gave notice that the responsibilities within its Void Insurance Requirements section belonged to the complainants. I acknowledge their point that the insurance documents placed essentially the same responsibilities with JHP's associated trustee entity, as 'the insured' party. However, as far as JHP (and its SIPP administering role) was concerned, those responsibilities fell upon the complainants (perhaps by delegation from the trustee entity – although, for the sake of clarity, I have not determined or found this), it notified the complainants and they were fully aware of this. So much so that, as stated above, they undertook the responsibilities and considered themselves to have fully discharged them.

### The Flood Incident

Mr M has explained a confusion that arose between what the insurance company recorded as cause of the flood and what they sought to convey (based on what they had learned and on what they believed at the time) as the cause of the flood. He has also explained the reasons why he considers the investigator's findings to have been misguided on the matter, especially with regards to some of the technical plumbing aspects of the water system feeding into and running within the property. I understand all his explanations.

However, the fact that the flooding occurred means there was water flowing into and within the property's plumbing/water system. This is an inescapable conclusion, in the absence of information or evidence about an external source of water flow, the flood could not have happened otherwise. Why and how there was water flow in the property, despite the complainants confirmation that it had been shut off as required by the VPG, is unclear, and why and how the flooding began is also unclear. What appears to be clear is that the flooding did not happen because of JHP's failure to discharge the requirements of the VPG. As I found above, responsibility for those requirements was with, and was accepted by, the complainants, and it is their evidence that they discharged that responsibility.

The conclusion that naturally follows is that whilst the flood incident, and its cause (what ever that was), was unfortunate, neither JHP nor the complainants appear to have been at fault in the matter. There was no failure, by either party, to discharge the VPG related requirements

because the complainants did that. Therefore, even if – as they have argued – JHP was responsible in that respect, it too would have applied the requirements like the complainants did, but that does not automatically mean the flood incident would have been prevented. It made no difference who applied the requirements, the fact is that the complainants did, but the flood incident still happened.

Overall, on balance and for the above reasons, I do not find that JHP holds any responsibility for the flood incident. This also means there is no basis for the compensation (for the consequences of the incident) that the complainants seek from JHP.

They say it did not assist them during the insurance claim and in addressing the severe aftermath of the flood damage (to the property), and they are unhappy about this.

I understand their strength of feeling in this respect. However, it seems inevitable that they would have had to take the lead in pursuing the insurance claim. They were closer to the facts of the event than JHP was. It is likely that the insurer would have required their direct input into the claim, as opposed to second hand input from JHP, which might explain why JHP took a step back during the process. With regards to responsibility for the aftermath, I have not seen terms for the SIPP which prescribed a role or responsibility for JHP in such circumstances. It is possible that it could have done more than it did, but I have not seen evidence that it was obliged to do that.

### Communications

I agree with the complainants' view that the 2023 version of the VPG is irrelevant. Unlike the version sent to them in October 2021, the 2023 version gave notice about application of restricted insurance cover after 12 months of the property remaining vacant. However, the updated 2023 version was issued in February 2023, the same month in which the flood event happened and the insurance claim was made, and around 15 months after the tenants had vacated the property. Therefore, it was issued after the relevant vacancy period and after the restricted cover was triggered.

The complainants say notice of the restricted cover provision was never communicated to them at the outset. They dispute the investigator's reference to the notice given in the May 2021 insurance renewal document. They say that document was also not sent to them at the outset in 2021, and that they did not see it until after the event.

They hold the same position with regards to the SIPP's 2022 'Commercial Property Purchase and Maintenance Guide', and they say they could not possibly have seen this in 2021 when it was published in November 2022. I agree. However, this document's relevance relates more to the responsibilities for the property during periods of vacancy, which I addressed above.

The other aspects of the communications related parts of the complaint are about JHP's role in the insurance claim and in the aftermath of the flood damage (which I have also addressed above) and about its handling of their complaint (which I will address separately below).

Returning to the matter of communication of the restricted cover provision, there is a lack of evidence to show that JHP clearly brought this to the complainants' attention in 2021.

In terms of the crux of the complaint – the flood damage and compensation for its consequences (including the trouble and distress caused to the complainants) – I do not consider this finding to be relevant. As I have established above, the VPG was completely applied by the complainants, it appears more likely (than not) that there were periodical

inspections of the property during its vacancy, the cause of the flood incident is unclear but neither party is responsible (by action or omission to act) for it, under the terms of the SIPP the complainants could not arrange insurance for the property, and I do not find grounds to say JHP should have put additional insurance cover in place for the restricted coverage period. Therefore, whilst notice of the restricted cover provision in 2021 would have informed the complainants, it is unlikely to have made a difference to the events that followed.

In terms of informing the complainants, I acknowledge that this can be a separate matter, of service, to address. However, I consider available evidence to be limited on this. It appears that the property, since acquisition, was not vacant until 2021, so I can anticipate and understand the argument that there was never previously cause to refer to the restricted cover provision in the insurance policy. However, this does not automatically mean that in the course of the policy being put in place at the outset general information about it was not shared with the complainants and/or that such information did not include reference to the provision. In other words, it is one thing to say notice of the provision was not given to the complainants in 2021, but I do not know (and have no basis to know) if any form of notice about the provision was or was not either previously given to them or accessible to them.

I am also concerned about straying outside the remit of the complaint. It is not a complaint about JHP's communications in isolation. It is a complaint seeking redress from JHP for the consequences of the flood incident and damage. As explained above, the lack of notice in 2021 about the restricted cover does not affect this crux of the complaint, so I do not find that it alters the outcome of the complaint.

### Complaint Handling

According to the rules for our jurisdiction, I can determine complaints about regulated activities, like the SIPP property safeguarding related issues in this case. Complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity.

Sometimes a complaint to a firm and its alleged mishandling of it might form a part of the substantive case. If so, addressing the firm's complaint handling might then be a necessary part of determining the overall complaint.

The present complaint is not that type of case. The complaint issues began in 2021 and were essentially crystallised by the time(s) of discovery of the flood incident in 2023 and the declined insurance claim that followed. Therefore, the subject(s) of the complaint had essentially concluded by the time the complaint was made, and before the complaint was handled by JHP, so JHP's complaint handling is an isolated matter that is outside my remit.

For the above reasons, I do not address the complaint handling related claims made by the complainants.

### Conclusion

Based on the analysis and findings above, I have reached the same conclusion expressed by the investigator for broadly similar reasons. I do not uphold the complaint. On balance and for the reasons given above, I also do not find grounds to say JHP failed to uphold the aforementioned Principles, in as far as they relate to the crux of the complaint, in its dealings with the complainants.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mr M to accept or reject my decision before 26 June 2024.

Roy Kuku  
**Ombudsman**