

## The complaint

Mrs P complains that The IPS Partnership Limited trading as James Hay Partnership (James Hay) is taking more than 50% of the interest earned on the portion of her self-invested personal pension (SIPP) held in cash.

## What happened

Mrs P has a SIPP with James Hay. On 23 May 2023 James Hay wrote to her saying it was making some changes to help her cash work harder for her. Under the heading, '*Sharing the benefit of active cash management*', the letter said, with reference to the facility in the SIPP to retain cash, that while interest rates were low, James Hay had retained any interest earned to keep charges as low as possible. But, with interest rates rising, James Hay had reviewed its position and Mrs P would start to earn interest on her cash balance from 1 July 2023. The interest rate would be variable and based on the amount of interest earned on cash balances. The first 1% of interest would be retained by James Hay and the remainder shared 50/50 with Mrs P.

Mrs P's IFA (independent financial adviser) contacted James Hay on 29 July 2024 saying the interest sharing arrangement between James Hay and its clients was unfair. For example, if the interest earned was 4.00%, the split would be 2.50% to James Hay and 1.50% to the client. What James Hay had said about it being justified by an attempt to keep costs and fees down wasn't accepted. James Hay's charges were a commercial decision for it to make. But clients shouldn't subsidise James Hay's commercial interests and businesses. The full interest should be credited to clients.

In response James Hay said it was unable to refund the interest to customers and the cash interest sharing policy had been communicated to both advisers and clients in July 2023. An explanation of the interest sharing policy and responses to further questions and answers was available on its website. As noted in the letter, other cash options were available.

Mrs P's adviser didn't accept James Hay's explanation and on 30 August 2024 made a formal complaint on behalf of Mrs P, saying it was interest earned on the client's money and James Hay had no legal right to take any of it.

James Hay issued its final response on 1 November 2024. James Hay said the regulator, the Financial Conduct Authority (FCA), allows product providers to retain interest paid on cash held in its pooled funds. The interest earned on the temporary balances had been used to keep James Hay's overall charges low, ensuring its pricing was beneficial to customers but competitive. James Hay also said the SIPP bank account wasn't designed to hold cash for long periods and that one of the permitted SIPP investments was a fixed term deposit. If Mrs P wanted to place cash in that type of account, she should locate an account eligible for holding in the SIPP and submit the necessary application forms.

The complaint was referred to this service. It was considered by one of our investigators, but he didn't uphold it. In summary he said:

- The Consumer Duty had been mentioned but it didn't apply as Mrs P's SIPP was a

closed product and the event occurred before 31 July 2024.

- The FCA hadn't said that businesses couldn't retain interest on cash balances. The 'Dear CEO' letter said the FCA had concerns about the practice and had asked businesses to demonstrate how it represented fair value to their customers. James Hay had done that in its letter dated 31 January 2024 to the FCA.
- Prior to the letter she'd received on 23 May 2023, Mrs P hadn't received any interest on cash balances held in her SIPP. So, going forwards, she'd been put in a better position as she'd be receiving a share of the interest earned.
- The charges didn't seem to include any additional excessive administrative charges in relation to the cash balance. The only apparent applicable charge was one of £63 pa plus VAT for '*External bank account annual administration charge (per account)*'. That was relatively modest compared to the core administration charge of £833 pa plus VAT for the SIPP. By retaining interest, James Hay had been able to reduce the overall charges on Mrs P's SIPP.
- James Hay operated the SIPP on an execution only basis and had given Mrs P reasonable notice before making the changes. She could've transferred her SIPP to a different provider if she'd wanted to.
- A SIPP isn't really designed to hold large cash balances as opposed to investing the pension fund. If Mrs P had wanted a conservative approach, there were other low risk products available. It wasn't reasonable to expect James Hay to encourage cash balances with favourable interest returns.
- James Hay was allowed to retain cash interest and this was widely practiced in the industry. On a sample size of 42 firms based on research conducted by the FCA, about 71% retain at least some of the interest of between 10% and 100% and on average they retain 50% of it. James Hay is therefore acting in line with standard industry practice. If the FCA wants to abolish this practice it will make it known. As things stood, James Hay hadn't done anything wrong so it wouldn't be fair to ask it to do anything more.

Mrs P's representative didn't accept what the investigator had said and made some further comments. The industry does share interest but the average was a 50% share. James Hay takes the first 1% and then shares the balance 50/50 which is way over the 50% average with no justification. That couldn't be fair simply because James Hay is taking more than the client gets. The interest taken by James Hay has no connection to its costs which hadn't been disclosed nor how they relate to Mrs P as per transparency and disclosure Consumer Duty obligations.

As agreement couldn't be reached the complaint was referred to me to decide.

### **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.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering that I need to take into account relevant law and regulations, regulator's rules, guidance and standards, codes of practice (including the Consumer Duty) and, where appropriate, what I consider to have been good industry practice at the relevant time. The regulator's rules include the Principles for Businesses (PRIN) which include, for example, PRIN 6 which requires a firm to pay due regard to the interests of its customers and treat them fairly. And the Conduct of Business

Sourcebook (COBS) which includes, for example, COBS 2.1.1R, the client's best interests rule.

In so far as the Consumer Duty is concerned, this came into force on 31 July 2023 and applied to 'open' products and services – those currently available to buy or renew. From 31 July 2024 it also applies to closed products. Mrs P's account is a closed product (that's one which is no longer sold but held by existing customers). The Consumer Duty doesn't apply retrospectively to complaints about events that happened before that date. Here Mrs P's complaint arose following changes that were introduced from 1 July 2023. Her complaint was made on 29 July 2024. The changes that were introduced had remained in place. I think the Consumer Duty is applicable and so I've taken it into account.

I'd point out that my role is different to the FCA's. The FCA is the industry regulator – meaning it regulates firms' conduct in general. Whereas my role is to decide individual disputes on a fair and reasonable basis. But, in doing so, as I've noted above, it's relevant to take into account the regulator's approach.

It's clear, from the FCA's 2023 Dear CEO letter, that the FCA has concerns about firms retaining some or all of any interest earned, particularly in a climate of rising interest rates, and especially if the customer is also charged a fee for the cash they hold. That practice may not provide fair value to customers and who may not understand what's happening. The FCA expects firms to be able to show fair value to customers and, if not, the FCA will intervene. I've considered James Hay's letter of 31 January 2024 to the FCA. It set out James Hay's position for its various propositions in detail. It appears that the FCA was happy with James Hay's approach, including the changes it was implementing.

Despite the FCA's concerns, it hasn't taken the step of imposing regulations relating to retaining interest. So what James Hay is doing isn't in breach of the FCA's rules. And it's in line with James Hay's SIPP terms and conditions – see condition 9.3 which provides for a proportion of the interest earned on a cash deposit to be allocated to the individual member's SIPP bank account in accordance with James Hay's Cash Interest Policy, available on its website.

That sets out James Hay's approach to cash interest. And that, in line with the SIPP terms and conditions, customers' cash is held in a pooled bank account, held in the name of the SIPP trustees. James Hay actively manages the cash balances held to help pay adviser service fees and charges and aims to credit customers with a competitive rate of interest held on cash held, while retaining some to keep charges low and for investing in technology and other areas. Looking at the extract from July 2025, the interest rates earned don't appear uncompetitive. And the information is there (including the percentage that will be paid to the customer) for customers (and their advisers) to see. If they're not happy with the interest earned and/or the interest paid to them, they can explore alternatives.

I don't agree that there's no connection to costs and savings in charges. I don't see any reason to doubt what James Hay has said about retaining interest having allowed it to keep its costs and charges down. I don't think it would be practicable to expect James Hay to produce a detailed breakdown as to precisely how that might've been achieved in Mrs P's case. James Hay has provided a charges schedule. There's an annual administrative charge of £833 plus VAT. There are charges for benefits (withdrawals) and investments but, as the investigator pointed out, the only other relevant charge is an administration charge of £63 pa plus VAT which I'd agree is modest.

As Mrs P's IFA accepts, what a business charges for a product or service is largely an operational and commercial decision for the business concerned – that is a legitimate exercise of the business's commercial judgment, which will take into account the costs of

providing the product or service and competition across the market. It's not something that this service would generally interfere in. However, we'd expect costs and charges to be clearly communicated to the customer. Here I don't think there's any suggestion that Mrs P wasn't made aware of what James Hay was charging her. And James Hay told Mrs P in July 2023 how retained interest would be shared and, if she was unhappy with that, it was open to her to try to find an alternative provider who was offering what she considered was a better deal.

I don't think, simply because the average in the industry (based on the FCA's sample) was 50% and James Hay retains more, that must mean James Hay is treating Mrs P unfairly. Or, by the same token, if James Hay retains more than Mrs P.

As I've said above, I've taken into account the Consumer Duty and if the outcomes have been met, in particular, as to price and value and consumer understanding. As far as the latter is concerned, I've already said that James Hay did explain to Mrs P about some interest being retained and what share she'd get. Mrs P may not think James Hay is providing fair value due to not paying her a high enough percentage of the interest earned on the pooled bank account. But I don't think that James Hay acted unfairly in relation to the Consumer Duty price and value outcome or that, overall, Mrs P was treated unfairly. James Hay also recognised that customers with large cash holdings could be disproportionately adversely affected and so drew attention to alternatives for customers who might prefer a cash type investment.

Mrs P's husband has made a similar complaint and my decisions are correspondingly similar.

### **My final decision**

I'm not upholding the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 12 January 2026.

Lesley Stead  
**Ombudsman**