

Ombudsman's Determination

Applicant	Mr S
Scheme	IPS Pension Builder SIPP (the SIPP)
Respondent	James Hay Partnership (James Hay)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by James Hay, other than those that it is already in the process of completing.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S complains about James Hay's administration of his SIPP, and the changes made to its terms and conditions, as well as the fees charged, of which he says he had no notification.

Background information, including submissions from the parties

4. In September 2014, James Hay wrote to all members of the SIPP to inform them of changes to the terms and conditions, as well as changes to fees. This included fees that would apply to members holding commercial property, such as Mr S. The letter stated that, if members were unhappy with the changes and chose to transfer, James Hay would waive its transfer out fee. Mr S says that he never received this letter.
5. In December 2015, James Hay wrote to all members of the SIPP to inform them of further changes to the terms and conditions.
6. In January 2016 and September 2016, Mr S raised a number of complaints with James Hay. They included:-
 - Changes to terms and conditions, including fees (**the changes**);
 - Incorrect reporting of the value of assets within the SIPP;
 - Re-valuation of the assets in the SIPP;
 - Incorrect conversion of the SIPP; and

- Difficulties encountered when attempting to take a further pension commencement lump sum (PCLS).
7. Mr S said that he was not notified of the changes as he did not receive the September 2014 letter. Nor had he been supplied with invoices for the property administration fees until six months after their creation, both of which would have alerted him to the changes earlier. Mr S requested a transfer, and that James Hay cover any associated costs.
 8. In response, James Hay said that following a review it had identified inconsistency in the approach and level of charges across its pension arrangements. It also identified an increase in property administration being undertaken by James Hay in connection with property held in pensions. It had found that some of this administration was not being charged to the pension funds. As a result, James Hay decided to make the change which clarified the charging structure for some of its arrangements, such as the SIPP. This was communicated in September 2014, and James Hay said it is satisfied that members received this letter. Mr S' copy was posted via Royal Mail and correctly addressed, so James Hay had expected it to be delivered. In addition, current literature is also available on its website. James Hay apologised for not issuing invoices for the property administration fees and provided copies, but also said that there was no obligation on it to provide these invoices to members.
 9. James Hay went on to say that it will waive its transfer fee and pay any reasonable associated costs in Mr S' case, if the costs are agreed prior to being incurred, and can be directly related to the change. However, it will not cover any costs associated with the sale of any properties held in the SIPP. James Hay said it is Mr S' decision whether to sell a property or not. Due to the nature of holding property in a pension it will be necessary to sell the properties at some point now, or in the future in order to access the funds. Following this, James Hay said that the sale of the properties cannot be directly linked to the change. In addition James Hay said it would not pay for Mr S' time, as a member of a SIPP as he would be expected to play an active role in the management of it.
 10. James Hay explained that re-valuation of the assets is necessary periodically under the SIPP due to the legislation governing drawdown pension arrangements, and in order to take further benefits. It also explained the process of re-valuation and referenced the legislation as well as the terms and conditions of the SIPP that the re-valuation must adhere to.
 11. With respect to the incorrect reporting value, Mr S had raised concerns that the value available online did not reflect the correct value. James Hay explained that it was reliant on information being supplied to it by other parties, which can include Mr S, in order to maintain accurate and up to date records. It could not identify any instances where there may have been a delay in updating its records. It requested that, if Mr S believes there to be an issue with the valuation displayed, Mr S inform James Hay and provide information to update the record.

12. James Hay said that, while it had received a series of emails regarding taking a further PCLS and it had supplied a benefit payment form, it had not received the completed form to action further payment. It also apologised for converting the SIPP from Capped Drawdown to Flexi-Access Drawdown and offered to reverse the conversion if Mr S was so inclined.
13. Mr S would like matters put right by:-
 - James Hay paying for the time he says he has spent correcting its continual errors.
 - James Hay covering the full cost of transfer to a new provider including loan surrender costs and the penalty of losing a 2.5% commercial loan.
 - A review of James Hay to be carried out looking at its competency to act as Trustees.

Adjudicator's Opinion

14. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by James Hay. The Adjudicator's findings are summarised briefly below:-
 - Regarding poor administration, the main instances raised are: the PCLS; re-valuation of the assets in the SIPP; conversion of Mr S' SIPP; not receiving invoices for property charges; and incorrect reporting of the value of assets within the SIPP.
 - There is no evidence that Mr S completed the paperwork for further benefits to be paid. Therefore no maladministration was found in relation to this.
 - Further, re-valuation of the assets in the SIPP was required because of the legislation governing Drawdown Schemes, and in order to enable further access to benefits. Following this it is not unreasonable for James Hay to have requested information in order for it to carry out re-valuation.
 - James Hay has acknowledged its error in converting Mr S' SIPP from Capped Drawdown to Flexi-Access Drawdown, which amounts to maladministration. However, it has offered to reverse this error by putting Mr S in the position he would have been in had this error not occurred. While this error is maladministration, the Adjudicator said that the offer to reverse it seems reasonable and in line with redress the Ombudsman would expect in such a situation.
 - James Hay has apologised for not providing Mr S with invoices for property charges at the point they were due, as it had intended. It did provide copies at a later date. The Adjudicator acknowledged that this may have alerted Mr S to the changes in fees in December 2015 when they were raised. Nevertheless, the

Adjudicator agreed that there is no obligation for James Hay to provide invoices and the charges remain payable regardless of whether invoices are provided to Mr S.

- Mr S said that the asset values shown online were always wrong. However, the Adjudicator saw no evidence to support this. James Hay has said that it could not find any instances where there was a delay in updating information. The value of investments involving property can only be updated where information has been provided to James Hay and it will act in good faith upon the information it is provided with. This is a reasonable approach and, as such, the Adjudicator did not find that James Hay had acted wrongly.
 - Regarding the change of terms and conditions and fees, which were notified in the letters of September 2014 and December 2015, James Hay is entitled to review and amend its terms and conditions and fees. Members should be notified of their options if changes are made. The Adjudicator said that the Ombudsman is likely to take the view that, on the balance of probabilities, the letters were issued to Mr S, as James Hay holds a file copy of the letter correctly addressed to Mr S. Yet, it is also acknowledged that Mr S says he never received the letters.
 - The Adjudicator said that James Hay has been reasonable in its offer to waive the transfer out fee in Mr S' case, as well as paying any reasonable associated costs if they are agreed with James Hay prior to being incurred. In doing so it has acknowledged that Mr S may not have received the September 2014 letter and that if he had, he may have opted to transfer out. However, the Adjudicator also agreed with James Hay's reasons for refusing to cover any costs, penalties or charges associated with the sale of any properties within the SIPP. Any costs met should be directly relatable to the changes. James Hay should not cover any costs arising from the sale of a property. Nor should James Hay pay for Mr S' time. James Hay does not appear to have made continual errors and, in any case it is the nature of a SIPP that the member is involved in its management.
 - It is not the role of the Ombudsman or his Office to determine if James Hay is competent to continue to operate as Trustees of the SIPP. The role of the Ombudsman and his Office is to determine if any maladministration has occurred, and if so, if any financial or non-financial loss has incurred as a result. Where appropriate, redress will be directed. While the Adjudicator found that James Hay had made errors in its administration when it converted Mr S' SIPP, it has offered appropriate redress for this, and no loss has been identified as a result of this error.
15. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which are summarised below:-
- Mr S has highlighted flaws in the current complaint handling structures of the pension industry, the industry more generally and questions whether James Hay should be allowed to continue operating. He says by not doing more, the

Ombudsman is perpetuating these flaws and there are a number of other dissatisfied customers. This situation should be broadcast to the wider public.

- There have been repeated instances of poor administration on the part of James Hay, including:-
 - Mr S argues that despite him providing James Hay with information in a timely manner, it has failed to act in good time to ensure asset values are up to date.
 - Delays by James Hay have incurred unnecessary fees and the transfer remains incomplete.
 - James Hay has repeatedly issued incorrect information regarding the investments tax position.
 - James Hay has lost documents within their own systems.
 - James Hay continue to report incorrect or out of date values.
 - James Hay failed to issue invoices and provided misleading information about whether they had been sent. If they had been sent and received, Mr S says he would not have ignored them. He says it is not his role to check details of administration, and the invoices which were issued failed to include relevant details as well as fees being double charged and attributed to the wrong properties.
 - Mr S says that when an error was identified James Hay was reluctant to act on it. Given the scale of the error, he questions how many small errors have passed unidentified. Mr S emphasises that the SIPP should be audited properly. He considers that the time spent correcting James Hay's mistakes go beyond the work expected of a lay trustee and he should receive payment for this.
 - It should not be necessary to undertake a further property valuation following the 2014 valuation. This will give rise to additional unnecessary costs.
 - Mr S argues that there should be no increase in the fee structure, other than inflationary, and he was informed at the outset that there would be no property fees in the future.
 - He says that James Hay have made it impossible to agree costs and that the solicitor costs have escalated due to the need to chase James Hay, its provision of incorrect information and not providing all available options.
16. Mr S' further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

17. While Mr S has provided copies of correspondence issued by James Hay which he believes evidences its poor administration and supports his complaint, I do not agree that this is the case. The correspondence does show that the invoices issued for the properties did not always indicate which property they were in relation to and that there were instances of double charging. However, James Hay has provided evidence to show that it corrected these issues once raised and made refunds where appropriate.
18. I have seen no evidence that James Hay has been reluctant to correct errors identified. While I do expect administrators to take care in providing correct information and not making errors in charging, I acknowledge that, unfortunately, errors do occur from time to time and it is important that these are corrected promptly with administrative changes made to prevent them reoccurring in the future. Similarly I expect members to carefully read all correspondence received and question any discrepancies or errors, as well as providing any information needed for corrections to be made. This becomes particularly important where there are properties involved which are not being fully managed by the administrator, as the administrator is reliant on information provided by the member or third parties, in order to keep records accurate and up to date. I would not direct that members or member trustees receive payment for the time spent dealing with the SIPP unless the rules or terms and conditions allowed for this, which is not the case in respect of this SIPP. In any event payment of this nature, where allowed under the rules, would usually be funded from the SIPP's assets and not by James Hay.
19. Mr S withdrew benefits in the form of a tax free cash lump sum in 2013, following a valuation of the properties within the SIPP in April 2013, but did not take any further income. This crystallisation event meant that Mr S' SIPP became subject to the rules of Capped Drawdown, for which HMRC set a maximum amount that can be withdrawn each year. Whether income is taken or not, HMRC require the maximum limit to be recalculated every three years and as such James Hay wrote to Mr S in February and April 2016 requesting a pro-forma be completed to allow re-valuation of the SIPP.
20. In August 2016, the SIPP was converted to Flexi-Access Drawdown. While James Hay accept it should not have processed this conversion, it negated the need to recalculate the maximum limit HMRC required under capped drawdown every three years.

21. Nevertheless, the conversion to Flexi-Access Drawdown does not remove the need to recalculate the assets held in the SIPP prior to further withdrawals. As a result Mr S could not take a further lump sum without a re-valuation of the assets in the SIPP. The values used in benefit calculations must reflect the “market value” of the SIPP’s investments under Section 272 of the Taxation of Chargeable Gains Act 1992. The SIPP’s terms and conditions documents sets out what James Hay require to satisfy the requirement of a property valuation. As such it is reasonable that James Hay requested up to date property valuations before paying a further lump sum.
22. Mr S maintains that he was informed, when he established the SIPP, that there would be no future property fees other than for purchase, leases or sale. However, James Hay is entitled to amend the terms and conditions of the SIPP including the fees it charges and what those fees relate to . When it did so it notified all affected members and offered to waive the transfer fees to enable SIPP holders to transfer elsewhere if they were not satisfied with the changes. James Hay has honoured this offer in the recognition that Mr S says he did not receive the letter informing him of the changes. This is more than reasonable in the circumstances, since on the balance of probabilities James Hay did send the letter regarding the changes.
23. James Hay has said that it will pay for all costs associated to the transfer. It has accepted that it is not unusual for costs to increase from an original estimate, especially where properties are involved and said it will be happy to pay these costs on production of an invoice from the solicitor.
24. I understand that James Hay has completed the transfer of the properties and that the SIPP closure process has begun. James Hay has informed this Office that there is an HSBC account to be closed, which requires Mr S’ signature, and that it has made contact with the receiving scheme regarding a Deed of Assignment for the investments held with St James’s Place which need to be reassigned before the SIPP can finally be closed.
25. I am not a Regulator so it is not my role to audit schemes or SIPP administrators, however where there is evidence to show that errors have occurred I will direct that these are put right. I have seen no evidence to support the claims of maladministration other than those already accepted and rectified by James Hay.
26. I do not uphold Mr S’ complaint as the actions that James Hay has taken, and is taking, to rectify the matters requiring remedy are reasonable and in line with what I would direct in these circumstances.

Anthony Arter

Pensions Ombudsman
17 January 2018