

Ombudsman's Determination

Applicant	Miss O
Scheme	SSD Pension 04563 (SSAS) (the Scheme)
Respondent	James Hay Partnership (James Hay)

Outcome

1. I do not uphold Miss O's complaint and no further action is required by James Hay.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss O has complained about a number of administrative errors on the part of James Hay, and the delays in completing a transfer-out of the Scheme which she says has caused a financial loss.
4. Miss O says she has been served with duplicate invoices, and funds have been inappropriately withdrawn from the Scheme. Further, she says that James Hay failed to provide information in a timely manner, and deliberately attempted to mislead her.

Background information, including submissions from the parties

5. Miss O was one of two members of the Scheme, set up in 2011 and linked to her company, Safety Services Direct (**SSD**). The other member was her colleague, and they both acted as Trustees, appointing Union Pension Trustees Limited (**UPT**) as the professional Trustee. The majority of the funds within the Scheme were invested with 7IM, and a small portion of funds comprised of shares in Rolls Royce. The Scheme had assets in the form of a property and land.
6. In May 2016, SSD was sold, and it was concluded that as the Scheme has been associated with the company, it was no longer viable. SSD began the process of selling the Scheme assets, to enable Miss O and her colleague to divide the profits of the pension funds, for investment in individual Self-Invested Personal Pensions (**SIPPs**).
7. On 13 January 2017, the property and land attached to SSD was sold, with the £363,990 in proceeds being transferred to James Hay shortly thereafter.

8. In February 2017, James Hay received Miss O and her colleague's requests to wind-up the Scheme and be transferred-out. On 23 February 2017, Miss O contacted James Hay requesting clarification on what the hold-up was regarding her transfer. As the pension was in cash, she said the delay was 'unacceptable' and was causing a daily financial loss.
9. On 28 February 2017, James Hay wrote to Miss O and said that in order to proceed with the transfer, it required new valuations of the Scheme's assets to enable it to calculate the shares to be paid to Miss O and her colleague. It outlined in detail what other actions would need to take place. James Hay had received an up to date valuation of the 7IM funds so the relevant paperwork in relation to this part of the pension was being prepared. On the same day, Miss O's IFA informed James Hay that the Rolls Royce shares would need to be transferred in-specie, with the remaining value being transferred in cash. James Hay advised Miss O that AJ Bell would need to liaise directly with 7IM regarding the in-specie part of the transfer.
10. On 1 March 2017, the new SIPP provider for Miss O, AJ Bell, emailed the IFA to obtain clarification as to whether the transfers would be entirely in cash, as advised by Miss O and her colleague. AJ Bell said that it had received different instructions from James Hay, stating that part of the funds was to be transferred in-specie, and it needed confirmation of whether this was correct. If so, the IFA should notify AJ Bell of any additional paperwork required.
11. On 8 March 2017, Miss O emailed James Hay, as she was unhappy that, despite the Scheme funds being almost entirely held in cash, the transfer was still ongoing. Miss O informed James Hay that this email constituted a formal complaint, and stated that it was her expectation that the transfer be completed by no later than 31 March 2017.
12. On 13 March 2017, James Hay emailed the IFA, regarding a payment into the Scheme on 3 October 2016 of around £5,415, under the name of 'Landsbanki'. James Hay had confirmed at the time that the Scheme appeared to be the correct recipient of the funds, however, it now transpired these monies should have been credited to another scheme with a similar name. James Hay withdrew these funds from the Scheme, as a result.
13. On 28 March 2017, James Hay emailed Miss O regarding a payment deducted from the Scheme in January 2016 for IFA fees of £800. James Hay was performing a review of its records for the Scheme, and said it could not locate the written authorisation for this payment, so requested retrospective authorisation. Miss O's IFA replied the same day, stating that the fees had already been agreed and the bill was settled at the time. The IFA considered it incompetent that James Hay used the Scheme's funds to pay the invoice if it did not have authorisation to do so.
14. On 7 April 2017, James Hay requested that 7IM transfer cash to the Scheme.

15. On 10 April 2017, Miss O emailed James Hay, stating that after months of trying to transfer-out of the Scheme, she had now been told that the 2014 annual fees of £614+VAT had not been paid. Miss O argued that this invoice should have been settled in late 2014 or early 2015, and asked that its accounts be checked to confirm. James Hay responded shortly after, stating that, on review of its archives, the 2014 annual fees had been paid on 21 November 2014.
16. On 11 April 2017, Miss O wrote to James Hay to make additional submissions to her prior complaint. Miss O said that the transfer requested, as a 'simple cash fund' with only two members, should not have exceeded 4 weeks. Further, she listed a number of errors on the part of James Hay including the Landsbanki funds matter, the duplicate invoice of 2014 fees, and the retrospective payment authorisation request. Miss O considered the 'catalogue of errors' to be unacceptable, stating that this raised concerns over how James Hay is regulated, and said that she was having to micro-manage the transfer through the IFA, as her correspondence was never responded to. Miss O requested compensation for investment losses as a result of the transfer delays, reimbursement of 'her portion' of the Landsbanki funds, and an additional sum of around £5,000 for James Hay's maladministration.
17. On 18 April 2017, James Hay contacted 7IM again to obtain an update, and, on 25 April 2017, 7IM transferred £740,134.64 in funds into the Scheme.
18. On 26 April 2017, James Hay provided its final complaint response to Miss O. It stated that the process of transferring the Scheme was a complex one and various checks were required to avoid sanctions and charges, therefore it could not commit to a specific timescale for completion. It did not agree that Miss O had suffered an investment loss, as the majority of the funds had remained invested until April 2017, and transferred within three weeks. It did not consider it had delayed the transfer, as such action could not be executed until the property and land sales completed.
19. On 2 May 2017, 7IM contacted James Hay to request the receiving scheme details, which were subsequently provided on 4 May 2017.
20. On 12 May 2017, AJ Bell informed James Hay that the IFA was to confirm if a partial transfer of the 7IM funds was initially to take place, with the in-specie transfer being actioned later. AJ Bell said this confirmation was needed before it could accept the cash transfer from James Hay.
21. On 15 May 2017, James Hay transferred the 7IM funds, and the profits from the sale of the property, into Miss O's SIPP with AJ Bell, and another SIPP which had been set up by her colleague. The SIPP's received £556,412.41 and £537,810.63 respectively, with Miss O receiving the higher amount. AJ Bell informed James Hay that it was awaiting the IFA's instructions regarding the transfer of the Rolls Royce shares, and would forward these instructions to 7IM directly.

22. On 19 May 2017, Miss O complained to this Office, arguing that the time taken to complete the transfer of her funds was unacceptable. Further, she stated that James Hay had made deliberate attempts to deceive or mislead her throughout the process, citing the duplicate invoices, withdrawal of the Landsbanki funds, and the request for authorisation on a payment already taken. Miss O said she had suffered a loss of investment, and required around £36,000 in compensation for this, the mistake regarding the Landsbanki funds, and the administrative errors which had been made.
23. On 9 June 2017, James Hay was advised, via AJ Bell, that a corporate action had been instigated, involving the Rolls Royce shares, which was expected to be ongoing until July. The transfer of these shares therefore needed to be put on hold, until confirmation that the corporate action had been concluded.
24. On 14 July 2017, James Hay received confirmation from the IFA that the corporate action relating to the Rolls Royce shares had concluded, and these monies, as well as any residual 7IM funds were subsequently received by James Hay on 1 August 2017. On 8 August 2017, James Hay transferred the remaining funds from 7IM and the Rolls Royce shares to AJ Bell, completing the transfer.

Adjudicator's Opinion

25. Miss O'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.
 - The monies received from the sale of the property were disinvested a month before the transfer was requested, and, once requested, the transfer was completed within three months. The Adjudicator thought that the timeframe was reasonable, and James Hay cannot be responsible for any loss due to the monies being disinvested before the transfer was initiated. The 7IM portion of the funds remained invested until 25 April 2017 and were disinvested for only three weeks while the transfer was processed.
 - The Rolls Royce assets remained invested until the transfer-in to AJ Bell. A corporate action had been instigated involving these shares, preventing the in-specie transfer from progressing. The corporate action concluded in mid-July 2017, and the transfer was then completed within a week of James Hay receiving the monies and residual funds on 1 August 2017.
 - Regulations allow up to six months to complete a transfer. Whilst it is expected that most transfers should take much less than this, it is not necessarily maladministration where a transfer does take this long. James Hay did not delay any part of the transfer, and the 7IM funds and profits from the property sale, were transferred within three months. The Rolls Royce shares were transferred within

the maximum time of six months, which was reasonable given that circumstances beyond its control prevented an earlier transfer.

- James Hay has confirmed that the Landsbanki funds should not have been credited to the Scheme in the first place, and that this was an error due to the almost identical name of the actual receiving scheme. This error should have been recognised much earlier, however, Miss O was never the correct recipient and is not entitled to any share of those funds.
- It was most unprofessional for James Hay to request retrospective authorisation for a payment already made, however, there is no indication that authorisation was not obtained at the time, only that James Hay cannot locate it. This does suggest poor record keeping, but is not evidence of an attempt to mislead Miss O. The duplicate charge identified by Miss O, again, indicates that James Hay has failed to properly maintain its files, however, it has rectified any invoicing errors upon notification.

26. Miss O did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss O provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss O, in her email of 29 November 2017, for completeness.

Ombudsman's decision

27. Miss O has, in my view, provided no new evidence to support her complaint. Reference has been made to existing points, and these are listed below.

- Miss O has stated that James Hay failed to be open and honest in its dealings with her, and alleged that the Adjudicator has '... colluded with James Hay's unprofessional and deceptive behaviour...' citing its response to her complaint which mentions the need for the sale of the property and land to be complete before the transfer could proceed.
- Miss O does not consider it appropriate that the issue regarding the Landsbanki funds appears to be viewed as an 'acceptable administrative error'. She has argued that this action has resulted in another pension fund missing out on around two years of investment growth.
- Miss O does not agree with the complaint summary in the Adjudicator's Opinion, stating that the complaint is not only about the delays in transferring her benefits, but also about the '... administrative malpractice and intentional means to mislead'. It is her view that the Adjudicator has 'endorsed the conduct of James Hay as acceptable'.

- Miss O believes the 'tolerance of James Hay's unprofessionalism to be of great concern, and has referred to a lack of confidence in '... the regulating body that is supposed to protect the interests of us all...' in reference to this Office.
28. Miss O has argued that James Hay has directly misled her, as it stated in its complaint response letter that the reason for the delay in completing the transfer was due to awaiting funds from the property and land sold in January 2017. However, James Hay has simply stated that the 'execution of the transfer request was dependent on the property sales...' meaning that a valid request could not be made until the sale of the property was complete. Once the sale was finalised in January 2017, Miss O was free to make a transfer request. The fact that she made no such request until 15 February 2017 and the monies had therefore been disinvested for a month at this point, is not the responsibility of James Hay. I do not agree that there is any evidence of deception on the part of James Hay, or collusion by the Adjudicator.
29. Miss O is unhappy that the incorrect crediting of the Landsbanki monies into the Scheme appears in her view to have been judged an 'acceptable administrative error', despite the fact that another pension scheme has lost out on investment growth. The incorrect payment of the Landsbanki funds into the Scheme is not considered 'acceptable' and I do not condone such errors. However, I am not reviewing a complaint made by the scheme which should have received those funds, but one made by Miss O, who is requesting that James Hay be directed to pay 'her a portion' of the funds (50%). I do not agree with her request, as Miss O was never entitled to any portion of this money. Further, I do not consider that this error will have caused Miss O significant distress, so I do not find that it warrants an award.
30. It is entirely possible that the members of the scheme to which the Landsbanki payment should have been made, have experienced a financial loss. However, it is for those members to seek redress if this is the case, and the matter is entirely irrelevant to Miss O's complaint, so I will not be commenting further on the matter.
31. It is clear that there are a number of strands to Miss O's complaint, however, her application does appear to indicate that the alleged delays in James Hay completing the transfer-out is the main issue which has caused her concern. I have reviewed Miss O's letter of complaint to James Hay, dated 11 April 2017, and her letter to this Office, dated 5 May 2017. It is evident that the Adjudicator's Opinion addressed all of the specific points raised in each of these letters, and each strand of the complaint has been investigated. Whilst I agree that there is evidence of maladministration on the part of James Hay due to its errors, and James Hay needs to improve its administration process, I cannot see that there has been any attempt to deceive or mislead Miss O.
32. Miss O has said that the 'tolerance' of James Hay's unprofessionalism is concerning, citing a lack of confidence in this Office, which she refers to as '... the regulating body that is supposed to protect the interests of us all.' The Adjudicator has already explained to Miss O that The Pensions Ombudsman is not a regulatory body, and it is

not the role of this Office to audit James Hay, or any other pension provider. If Miss O has concerns about the general practices of James Hay, she should contact the Financial Conduct Authority,

33. My role in examining Miss O's complaint is to decide whether she has suffered financial loss, or non-financial loss as a result of significant distress and inconvenience, through an act or acts of maladministration on the part of James Hay. I do not find this to be the case as I have explained.
34. Therefore, I do not uphold Miss O's complaint.

Anthony Arter

Pensions Ombudsman
20 December 2017