

Ombudsman's Determination

Applicant	Mr E
Scheme	James Hay Partnership SIPP (the SIPP)
Respondent	James Hay Partnership (James Hay)

Outcome

1. I do not uphold Mr E'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. Mr E says:-
 - James Hay has failed to properly administer the SIPP. It gave him no bank account details so rent from the SIPP's property could not be paid in. As a consequence, rent arrears have built up which he is unable to now pay.
 - He wants clarification that James Hay's fees are justified.

Background information, including submissions from the parties

4. Mr E is represented by his IFA (Financial Wealth Solutions Ltd) (**FWS**)
5. Mr E is a sign maker. He took out the James Hay Partnership SIPP (**the SIPP**) in June 2012.
6. The SIPP is administered by James Hay Administration Limited. James Hay Pension Trustees Limited is the Professional Trustee holding the assets of the SIPP. For ease, hereafter, James Hay Pension Trustees Limited and James Hay Administration Limited are collectively referred to as James Hay.
7. In July 2012, Mr E signed James Hay's Commercial Property Questionnaire in connection with the purchase of a ground floor 'shop outlet – workshop' (**the Property**). Under 'Checklist' he ticked the box 'I am intending to do a development/work on the property' and listed under 'Basic description of works/development:

“EXPAND ROOM – ELECTRICS – PLUMBING

DECORATE – NEW TOILET – WINDOWS & DOORS

NEW FLOORING + BLINDS”

He stated that the approximate cost was £10,000 to £12,000.

8. Emerson Survey and Valuation Limited (**Emerson**) was appointed to prepare a report and valuation. The report stated that the Property’s market rental value was in the region of £4,500 and its market value was in the region of £56,000.
9. On 8 August 2012, Mr E signed a ‘Property Management Resolution’, accepting responsibility for “Rent collection...ensuring such sums are collected expediently and in timely fashion”.
10. In October 2012, Mr E emailed James Hay. He said he totally understood the rules of the SIPP, but was having a real problem with the fact that it was not allowing for market movements. He said it seemed simple to him:

“1/ Buy the Property

2/ Improve if required within reason to benefit the Property

3/ Get a rental return for the SIPP (Acceptable amount in return, for the market)

4/ Access the returns on a yearly basis

5/ Invest and hopefully gain a good profit on the property” [Mr E’s emphasis].

11. Mr E said all he wanted to do was get in the Property, pay what he could afford, improve the Property and, if he wanted to, rent it to another potential tenant.
12. The Property was subsequently purchased in March 2013. Residential accommodation at first floor level is in separate ownership and is not held in the SIPP.
13. The 2013 Underlease (8 March 2013 to 7 March 2018) signed by Mr E states:-
 - James Hay and Mr E are the Landlord and Mr E is the Tenant.
 - The yearly rent (payable quarterly in advance) is:

£3,000 for the first year.

£3,750 for the second year.

£4,500 for the third year “or such higher rent as may from time to time be substituted therefor pursuant to the provisions of the Second Schedule.” The Second Schedule pertains to provisions as to rent review.
 - The rent is recoverable by the Landlord and the Tenant covenants with the Landlord to pay the rent.

14. On 5 December 2014, James Hay wrote to Mr E to inform him of upcoming changes to the bank account where his SIPP money was held. The letter advised the new bank account details, including the bank address, sort code, account number and the account name. It advised:

“If you make any electronic payments or pay any money into your SIPP by standing order, you will need to use these new bank details from 26 January 2015.”
15. On 1 June 2016, James Hay emailed Mr E that it could not locate where his rental payments were being made and asked him to advise.
16. The same day Mr E replied that when the Property was purchased it was in poor condition, requiring electrics, plumbing, decoration and general building work. He said he had consulted with James Hay and been told that if he used his own money to put the building in order he would be able to arrange a payment holiday. He said to date he had spent £5,900 on the Property, he was in the process of putting in a new bathroom and estimated that he would spend a further £2,300 by the time the work was finished. He said over the last two years his business had lost turnover and he had had to manage his money to keep the modernisation of the Property on track and increase its value. As a result, he had paid no rent. He asked James Hay for advice on “where to go from here”.
17. On 28 July 2016, James Hay emailed Mr E:-
 - The rent outstanding totalled £12,955.
 - While he had made reference to works during the Property’s acquisition he had been asked to provide estimates and notified that he should not undertake the work himself as it needed to be agreed on a commercial basis. It could not see that he had complied with its request.
 - The rent was due under the terms of the Lease which he had signed and failure to pay would necessitate the benefit being reported to HM Revenue and Customs (HMRC)
 - To consider whether the cost of works could be offset against the rental it required a copy of all invoices and full details of the work undertaken to ascertain whether the works were landlord or tenant works.
 - In the absence of full details of the works or payment of the outstanding rent, it would report the matter to HMRC as an unauthorised benefit.
18. James Hay asked Mr E to complete pages 7 to 9, sign and return its Commercial Property Works Guide.
19. The same day Mr E replied:-
 - James Hay’s records were not up to date. It had instructed Emerson to survey the Property for the works that required doing to make it a viable unit for trade. He

was informed that Emerson's bill had been paid out of the SIPP's fund. Therefore, he had complied with its instructions.

- He understood that James Hay was supposed to look after the SIPP. But he had had no contact for three years. He assumed it was still charging him. He would contact his IFA and seek legal advice on where he stood.
- He had never said that he would not pay any rent. He had been led to believe that he was carrying out the agreement James Hay had asked him to follow when the Property was purchased. The current situation was due to James Hay's negligence. He asked a representative from James Hay to visit the Property to sort the matter out.

20. On 3 August 2016, FWS submitted to James Hay an invoice for completed works of £13,289 (excluding labour costs). The amount with labour costs (Mr E being the labourer) was £14,889.

21. On 11 August 2016, James Hay emailed FWS:-

- A rent-free period for works had been discussed prior to the purchase of the Property. It and its Solicitors (**Parker Bullen**) had stated that this would have to be supported by a surveyor's report. Emerson recommended a staggered rent over years one to three would be more commercially acceptable and this was incorporated in the Lease.
- Mr E's comment about no contact was noted. But Mr E was responsible for self-managing the Property and this included the collection of rent.
- It did not make site visits. It suggested that a surveyor visit the Property and provide a report on the works carried out and whether they were payable by the Landlord or the Tenant.
- In principle it was happy to offset landlord costs against rent.

22. Emerson completed its report on 26 January 2017. The report detailed improvements that had been made and on-going improvements. It stated that the commercial market had performed badly and gave the Property's current sustainable rental to be between £3,300 and £3,500 and a market value of between £65,000 and £69,000.

23. On 18 April 2017, Mr E asked FWS to inform James Hay that he wished to commence payment of rent of £300 per month from 1 May 2017. He said he would like to know where the money should be paid as nothing had been mentioned by James Hay. He said communication with James Hay had basically ended with the purchase of the Property and for two years and three months there had been no contact at all.

24. He asked that James Hay acknowledge that it clearly knew that he required funds to modernise the Property, as it had refused any money from the SIPP for the necessary upgrades and had informed him that he would need to use his own money.

Knowing this he asked why James Hay had not informed him of the best way to go about funding these works in order to keep the SIPP within the law and HMRC rules. He said he was extremely upset with James Hay's handling of the situation. He had spent good money on increasing the value of his investment

25. FWS conveyed Mr E's concerns to James Hay who treated the matter as a formal complaint.

26. On 21 June 2017 James Hay wrote to Mr E:-

- Mr E's request for rent at £300 per month was not acceptable. The Lease he signed stipulated the rent he was liable to pay to March 2018, The Lease did not include a rent-free period, albeit the arrears could be offset against landlord works.
- A qualified surveyor needed to assess all of the works for which he had submitted invoices and confirm which were Landlord works and which were Tenant works.

27. On 28 June 2017, James Hay wrote to FWS in response to Mr E's concerns:-

- On 27 July 2012, James Hay had asked Mr E to provide specific details (drawings, specifications, estimates, costings and any other information) of the proposed works he intended to carry out. These were not provided.
- On 27 September 2012, Mr E had informed its Property Department that he was going to carry out the majority of the proposed works himself.
- A response was issued to Mr E on 19 October 2012. It stated it first required details of the works. Works classified as tenant works were payable by the tenant, did not impact on rent and the materials used could not be paid for by the SIPP. If the works fell within the definition of capital improvements the SIPP could pay for materials but it must also pay for the labour. It required two estimates from independent contractors to do the same works, so that it could show to HMRC that he had charged the SIPP a fair price. Additionally, it required a complete description of the works and invoices addressed to the SIPP trustees for both materials and labour. Once the works were completed the Property would be revisited to update the market rental valuation as this figure would be used for the new Lease. Mr E did not comply with its request.
- On 4 January 2013, it verbally informed Mr E that should a rent-free period be applicable it would need to be evidenced by a RICS qualified surveyor.
- On 14 February 2013, it requested Parker Bullen to ensure that the relevant parties were aware that works could not be carried out without reference to James Hay and obtaining the proper consent.

- Taking the above into account it was satisfied that it had sought to ensure Mr E's full understanding of the requirements surrounding the completion of works at the Property prior to its purchase.
- Following the purchase of the Property, Mr E entered into the Lease agreement. The Lease detailed the staggered rent payable and contained no provision for a rent-free period.
- It did not contact Mr E again until 1 June 2016. Its Property Department discovered that no rent had been paid to the SIPP Trust.
- Mr E said that it had previously confirmed to him verbally that if he pursued the work using his own funds then it would arrange a payment holiday. It was surprised that Mr E had not looked to document such a significant change in writing given that as the Tenant he was legally liable for the rental due to the Landlord and any changes for such an arrangement had to be formally documented. It had reviewed all correspondence on file and had found no evidence to suggest that it had proposed such a course of action to Mr E, which was contrary to the message it had previously relayed to him. It was plausible that during the conversation it had stated that a rent-free period was possible, as it had informed Mr E on 4 January 2013.
- Mr E's email of 1 June 2016, was reviewed by its legal and technical team. Its response was issued on 28 July 2016.
- At that time, it had received minimal details on the works that had been undertaken and what still remained to be completed. The only assistance it could provide was to review the invoices and endeavour to ascertain whether the works were legitimate Landlord costs.
- The same day as its July response, Mr E stated that he had been led to believe that he was in fact carrying out the agreement it had requested him to follow when the Property was purchased and he had submitted 'proof of work' when he first started the renovation. But James Hay had found no evidence to support that it had been provided with such documentation.
- On 3 August 2016, FWS emailed the requested invoices for consideration.
- Mr E said since the establishment of the Trust there had been economic factors affecting his pension, but it had not discussed the matter with him. As Co-Trustee Mr E was expected to play an active role in the management of the SIPP. It was not authorised or regulated to provide financial advice to Mr E. Whilst it was a corporate Trustee and joint legal owner (with Mr E) of the SIPP's investments, including the Property, this was for custodial reasons only. As a Bare Trustee it had no fiduciary duty with regard to Mr E's chosen investments. It was also the Landlord, but this was for letting purposes only.

- On 11 August 2016, its Property Department notified FWS that a surveyor's report was required to assess the works and advise whether these were Landlord costs.
- Mr E said he would arrange for Emerson to re-visit the Property. Hearing nothing further, in November 2016, it emailed FWS for an update.
- Emerson's valuation report was emailed to it on 2 February 2017. On 16 February FWS was notified that while the report was useful it still required clarification as to whether the works were the responsibility of the Landlord or the Tenant. As such it requested that a breakdown of the costs between the Landlord and the Tenant be provided. It chased the matter in April 2017.
- To re-affirm, it was happy in principle to offset the cost of Landlord works against rent arrears. However, before doing so, it needed to establish the legitimacy of classifying the works as Landlord costs and what the overall cost was.
- Its duty of care was to protect the tax-efficient integrity of the SIPP Trust and to ensure that it was administered in accordance with the governing rules and regulations. In the absence of evidence that the works were legitimate Landlord costs, the non-payment of rent due on the Property under the terms of the Lease was an unauthorised benefit and reportable to HMRC.
- It was satisfied that it had provided Mr E with explicit instructions concerning the completion of the works and the requirements to adhere to.

28. Emerson re-inspected the Property. Its report dated 18 July 2017 advised:-

- Improvements had cost, inclusive of labour costs, circa £14,900.
- On-going improvements:
 - Refurbishment of bathroom. The final cost would equate to £1,800 including labour.
 - The garage required boarding out, plastering and upgrading of electrics.
 - A three windowed bay required double glazing at an estimated cost of £1,480.
 - Partial rebuilding of brick boundary wall and concreting in front of garage door subsequent to removal of coal bunker at a cost of £450.
- It agreed that the works involved were the Landlords responsibility.

29. On 17 August 2017, James Hay wrote to Mr E:-

- Based on the report it would rely entirely on the surveyor's comments in treating the works as Landlord works and therefore would offset the sum of £13,289 (that is £14,900 less labour costs) against the rent arrears due.

- This left outstanding rent due to the SIPP of £3,961. It asked Mr E to pay the sum and going forward the monthly rent of £375 and provided the bank details to which the payments should be made.
 - It noted from the valuation report that a bath had been installed. It was not permitted that a SIPP hold residential property. Therefore, if it had been installed with the intention of anyone residing at the Property or the Property being capable of use as a dwelling this would trigger significant tax charges.
30. On 30 August 2017, Mr E emailed James Hay. Mr E queried the arrears sum. He said the delay in making any rental payment was down to James Hay. He said he was not able to pay the lump sum and would struggle to pay more than £375 per month. He said the true market rate for the area was £292 per month. He said he was hoping to start afresh by offsetting the arrears and beginning monthly payments as agreed. He said he had received estimates for work required to the Property's roof (which was leaking) and for a side dormer window amounting to £2,289 but had not yet committed to having the work done. He said he would set up a direct debit immediately.
31. On 28 September 2017 James Hay provided a breakdown of the arrears sum:

Year	Rent due
8/3/13 to 7/3/14	£ 3,000
8/3/14 to 7/3/15	£ 3,750
8/3/15 to 7/3/16	£ 4,500
8/3/16 to 7/3/17	£ 4,500
8/3/17 TO 7/9/17	£ 2,250
Total	<u>£18,000</u>
less	
Costs of works	(£13,289)
Total arrears	<u>£ 4,711</u>

32. James Hay said it was obliged by HMRC to collect the rent on an arm's length commercial basis. To this end it had to adhere to the terms of the Lease. However, it was prepared to consider a payment plan and asked Mr E to provide a satisfactory proposal for approval.
33. James Hay said the ongoing improvement works were noted in the Surveyor's report and confirmed as Landlord works. However, the report did not mention a dormer window or additional roof repairs and questioned why these costs would be payable

from the pension fund when only the ground floor premises were held within the SIPP. In addition, there was an active Lease that was granted on a fully repairing and insuring basis. Therefore, any costs relating to maintenance or repair were the responsibility of the Tenant. James Hay asked Mr E to provide further details regarding the works involved and estimates.

34. On 5 October 2017, Mr E said:-

- He understood the situation in full, but James Hay was entirely responsible for the arrears over the first 18 months to two years.
- Over this period James Hay had provided no indication where to pay the rent due to the pension fund.
- He was unable to pay the arrears sum but was prepared to make a one-off payment of £1,800 and restated that there was work to be carried out on the premises.

35. James Hay replied that it was happy to accept the £1,800, but the balance of £2,911 would remain due. It requested Mr E to submit a payment plan to clear the balance.

36. On 31 October 2017, Mr E said:-

- Currently he could only afford to repay the £4,711 at an extra £50 per month.
- He was not entirely happy with the way JH had preceded with the case and asked that it consider the matter through its internal dispute resolution (**IDR**) procedure.
- It had been a very stressful time. He had tried his best to sort the situation out. He had carried out the works at his own expense, added value to the Property and had always maintained that he wanted to pay rent. But not until 6 weeks ago had James Hay provided bank details to enable him to pay rent into the SIPP.

37. James Hay replied that the proposed repayment plan was unacceptable. It noted that Mr E had previously offered to pay £1,800. This would leave £2,911 outstanding. To repay this it suggested a monthly payment of £121.29 over two years in addition to the £375 monthly rent due.

Mr E's position as represented by FWS

38. FWS say:-

- Mr E understood the SIPP's main aims with regard to the Property and how it was supposed to work. But James Hay's communication after the purchase date had been poor. Mr E received no further communication from James Hay until he was asked about the rent on 1 June 2016.
- To Mr E's amazement he was asked to pay rental arrears with no reference to his prior discussions with James Hay about a rent-free period.

- Mr E informed James Hay in 2012 that the Property required modernising to get the business up and running. At James Hay's request he obtained a surveyor's report and costings. Around that time, he was informed of the rental amounts and that the bank account was with Santander, but he was not provided with the account number or sort code.
- Mr E was told by James Hay, during a phone call, that as Landlord and Tenant he could offset the costings against the rent payable.
- Mr E's outlay on the refurbishment had been around £14,780.
- It took James Hay eight months (from June 2016 to the end of January 2017) to accept the offset of Landlord costs against rent in principle. If it had acted promptly eight months' rent could have been paid and the matter moved on.
- Bank account details for the rent payments were not provided until September 2017.
- Mr E has never stated to James Hay that he did not want to pay rent.
- Mr E does not understand the back-rent calculation of £4,711 and he does not have the money to pay the sum.
- There is another spend of £4,400, as the Property's bay window roof is leaking and needs re-roofing and double glazing, the shop frontage roof is leaking and the garage requires boarding out and there are no electrics. Mr E has not informed James Hay about this as he considers it a waste of time.
- The Property has been valued at £71,500, an increase on the purchase price of £16,500. When the other works have been done he will have spent over £19,000.
- Mr E is of the opinion that if James Hay had 'got their act together' the rental issue could have been avoided.

39. In a personal statement Mr E says:-

- Around July 2012: "I was instructed the SIPP would not loan the money and would therefore have to fund the work myself, I was instructed to get estimates for the work (first Phase) which I did, and to appoint a Surveyor [Emerson] who I would have to pay for from my SIPP this I did, at this time I also said I would do some of the work myself, to get the project started. The problems initially started then as the communication was slow, and I did not have the time to waste, so I basically cracked on making the Shop Unit useable so to begin trading."
- He has only acted as instructed. If he had been told to pay the rental earlier and he had been given the account details he would have done so.
- If James Hay had provided bank account details in June 2016, some of the arrears would not have accrued.

- James Hay has charged his pension pot some £3,000 over 4 years. But what has it actually done for that money? He is the only person who has increased his pension. The valuation of the Property has gone up without any help from James Hay.
- He cannot repay the rental arrears in one go and unless his business improves he will not be able to afford the monthly rent.

James Hay's position

40. James Hay says:-

- Whilst it is the corporate Trustee and co-owner of Mr E's chosen investments in the SIPP, including the Property, it is for custodial reasons only. It has no fiduciary duty with regards the chosen SIPP investments.
- It does not provide advice.
- It does not manage or monitor the SIPP investments, including commercial property, on behalf of any SIPP Member. That responsibility rests with Mr E.
- It is not responsible for the condition or suitability of the Property or for the actions of the Tenant. This rests with Mr E.
- When Mr E opened the SIPP, he signed a declaration accepting the Terms and Conditions and the charges. Prior to the purchase of the Property Mr E signed a Property Questionnaire declaring that he undertook to accept and be bound by the provisions of its Commercial Property Purchase Guide.
- Rent is payable on commercial terms in accordance with the Lease. In signing the Lease Mr E, as the Tenant, agreed to pay the rent as set out in the Lease. As the SIPP Member, Mr E is responsible for managing the premises and making arrangements to collect the rent (from himself as Tenant) and to pay it to James Hay as an income for the benefit of the SIPP.
- Mr E was fully aware, or should have been full aware, of his contractual obligation to pay rent, and that prior to undertaking any works on the Property that he obtain its approval.
- It appears that Mr E simply set out to do what he wanted to do irrespective of the Lease and the communications it had with him prior to the purchase of the Property about rent and the proposed work.
- The position Mr E now finds himself in is not the result of maladministration on James Hay's part.

41. Since its formal response to Mr E's complaint, James Hay has informed the Adjudicator:-

- On reflection the labour costs identified in the Surveyor's report of 18 July 2017 (namely £1,600, that is £14,889 less £13,289) can be included and offset against the rental arrears. It apologises for the oversight of only offsetting the rental arrears by £13,289. The revised rental arrears are £3,100.
- It is prepared to consider the costs of other works that Mr E has undertaken on the Property if he clearly sets out what these are.
- It concedes that it could have done some things a little differently, but cannot see how this would materially have altered the situation.
- Notwithstanding all of this it is prepared to help and assist Mr E with regard to regularising the position.

Adjudicator's Opinion

42. Mr E'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 below:-

- James Hay is required by HMRC to ensure that all rent is collected and any covenants in the Lease are enforced. It is therefore required to refer the non-payment of rent to HMRC if Mr E cannot repay the outstanding sum, or is unable to show that the additional / ongoing works are classifiable as Landlord costs which can be offset against the outstanding sum.
- As things stand Mr E is liable to pay the rental arrears.
- Mr E self-managed the SIPP. Under James Hay's 'Commercial Property Purchase Guide' he is responsible for rent collection and payment to the SIPP. He is required to submit to James Hay an annual property return, which is to include information on the rent received.
- Prior to the purchase of the Property, Mr E signed a 'Property Management Resolution', accepting responsibility for "Rent collection...ensuring such sums are collected expediently and in timely fashion".
- Following the Property's purchase, Mr E signed the 2013 Underlease. As Tenant he agreed to pay the staggered rent as detailed in the Lease.
- As the Member Trustee and co-Landlord he is responsible for collecting the rent from the Tenant (himself) and paying it to the SIPP via James Hay.
- Mr E has had the benefit of not paying rent – allowing him to make improvements to the premises.
- Mr E says he did not receive any instruction as to where payment should be made for the rental. But he could and should have asked. While waiting he should have

set aside the monthly rent due, including over the period he was negotiating / awaiting James Hay's confirmation regarding the offset of rent against Landlord costs. However, it does appear that James Hay wrote to Mr E in December 2014, informing him of new bank details where his SIPP money was held.

- As the SIPP's Administrator, co-Trustee and co-Landlord, James Hay should have known earlier that no rent had been paid and queried the matter with Mr E. It would also have been sensible if a direct debit had been set up when the issue of non-payment of rent was first identified in June 2016, rather than belatedly in September 2017. But it is not clear to what extent (if any) this made a difference to the situation. Ultimately, it was and remains Mr E's responsibility to collect and pay the rent to the SIPP.
- Mr E says he received a verbal agreement from James Hay to a 'payment holiday'. James Hay says on 4 January 2013, it verbally informed Mr E that should a rent-free period be applicable it would need to be evidenced by a RICS qualified surveyor. Subsequent communications informed Mr E what James Hay required in order to consider the matter further, namely: a surveyor's report; estimates for the works; and invoices for the works completed. Mr E did not comply with this.
- In his personal statement Mr E says:-

"The problems initially started then [around July 2012] as the communication was slow, and I did not have the time to waste, so I basically cracked on making the Shop Unit useable so to begin trading."
- There is no rent-free period incorporated in the March 2013 Lease.
- It is apparent that Mr E jumped the gun.
- James Hay offset the costs for completed works against the rent arrears. But this did not include the labour costs, despite the Surveyor concurring that the costs (including labour) were Landlord costs and James Hay previously advising that if the works fell within the definition of capital improvements the SIPP could pay for materials but it must also pay for the labour.
- James Hay conceded that that was wrong and has agreed that the labour costs (£1,600) is deductible from the rental arrears. It has confirmed that the revised rental arrears total £3,100.
- James Hay is also prepared to consider the cost of other works Mr E has undertaken on the Property as Landlord costs, if he provides clear details of the works in writing.
- Turning now to James Hay's charges. Mr E agreed to pay these.
- Mr E says he is the only one that has added value to his pension by modernising the Property. But as its name indicates, a SIPP is a self-invested personal

pension, a pension plan that enables the holder to choose and manage the investments made.

43. Mr E said he agreed in principle with the Adjudicator's Opinion, and that he accepted he was not without blame for the situation. However, he had a slight problem with a few points made and the complaint was passed to me to consider. Mr E provided his 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 Mr E for completeness.

Ombudsman's decision

44. Mr E says:-

- In 2012, he spoke with James Hay about the substantial works that were required to be immediately undertaken to make the shop usable. He says he got a slow response from James Hay as to what had to be done, but there was no mention about rental or any offset.
- He received no correspondence from James Hay after the purchase of the Property until December 2014.
- It was not until 26 July 2016, that James Hay asked him about the payment of rent. James Hay should have noted earlier that no rent had been paid and called or emailed him to resolve the issue.
- He is now paying rental of £375 a month. He says if the bank details had been provided when James Hay first contacted him, rather than when it did, he would have paid off £3,000 of the revised arrears he now owes.
- He accepts that he agreed to pay James Hay's fees, but he has not had an efficient, professional and value for money service. He has had at least 8 people to deal with and each time he has had to go over the same points. Over this time money could have been paid as rental.

45. It is accepted that James Hay should have realised earlier that no rent had been paid into the SIPP. It first contacted Mr E about the matter on 1 June 2016.
46. Mr E says he received no bank account details from James Hay. But he should have asked James Hay for these. In December 2014, James Hay wrote to Mr E with new bank details. But Mr E took no action.
47. Mr E is responsible for the collection and payment of rent to the SIPP. He knew he had not paid any rent. In June 2016, he notified James Hay that he had paid no rent because he could not afford to both modernise the shop and pay rent.

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48. While James Hay should have provided Mr E with a direct debit when it contacted him about the payment of rent; equally, Mr E should have set aside the rental due while he was waiting for bank details.
49. James Hay is prepared to consider the cost of other works Mr E has undertaken on the Property as Landlord costs, if he provides clear details of the works to James Hay in writing. Therefore, Mr E has an opportunity to further reduce the rental arrears.
50. While James Hay are not blameless in this matter I do not find its actions (or inactivity) caused Mr E a financial loss or that its actions/inactions merit an award for significant distress and inconvenience as Mr E is complicit in the failure to properly administer his SIPP.
51. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
18 September 2018