

## Ombudsman's Determination

Applicant	Mr Y
Scheme	A C Independent SSAS ( <b>the SSAS</b> )
Respondents	James Hay Partnership ( <b>James Hay</b> )

## Outcome

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

## Complaint summary

3. Mr Y has complained that James Hay took too long to inform him that his proposed investment in Dolphin Capital GmbH (**Dolphin Capital**) was unacceptable. As a result he has lost out on potential investment returns and has had to pay administration charges. Mr Y wishes to be recompensed for the loss on investment returns; administration charges; and the distress and inconvenience he has suffered.

## Background information, including submissions from the parties

4. Mr Y established the SSAS in March 2014, and says his intention was to take more control of his pension and investment decisions. Mr Y instructed a representative of It's Your Money (**ITM**) to undertake the necessary documentation and make the investment. ITM was not an authorised financial adviser. The main events were:
  - a) 26 March 2014 – James Hay received Mr Y's application for the SSAS.
  - b) 6 June 2014 – James Hay received a letter from ITM enclosing signed opening documents and discharge forms for policies held with Aviva and Aegon.
  - c) 20 June 2014 – HMRC confirmed the SSAS had been registered.
  - d) 27 June 2014 - James Hay wrote to Aviva and Aegon to surrender the policies and transfer the funds to the SSAS.

- e) 3 July 2014 – ITM sent a further discharge form for another policy with Aviva, and an Expression of Interest form to invest £23,000 and £10,000 with Dolphin Capital.
  - f) 22 July 2014 - £30,808.69 received from Aegon and credited to the SSAS bank account.
  - g) 4 August 2014 – James Hay received a bundle of documents from Dolphin Capital regarding the loan note offer.
  - h) 7 August 2014 – the Dolphin Capital documents were forwarded to ITM with a request to clarify what investment was to be made, £23,000 or £10,000, as the balance in the bank account was only £30,809.
  - i) 14 August 2014 - £2,942.51 received from Aviva and credited to SSAS account.
  - j) 21 August 2014 – James Hay received a letter from ITM explaining that James Hay should sign the loan note offer and invest £33,000. The paperwork was submitted to James Hay's vetting department and Investment Committee for approval.
  - k) 12 September 2014 – James Hay wrote to ITM to say that the position on agreeing investments such as Dolphin Capital had changed, and these would not be accepted without a recommendation from a suitably regulated and authorised financial advisor.
5. James Hay says that the investment did not proceed to a conclusion as a further decision was made that no investments into Dolphin Capital would be processed.
6. Mr Y says that the loan note investment should have been made on 7 August 2014; the return of the loan note documentation was an error as he had signed the correct documentation. This was sufficient to execute the £23,000 investment but instead it was returned to ITM.
7. Mr Y has estimated that his loss includes the time he has spent researching the market and establishing the SSAS, as well as the establishment fee of £600, and the administration fee of £480. Mr Y also says he has lost out on the investment return which he cautiously estimates as £3,960 being 12% of £33,000, to make a total loss of £5,040, plus whatever recompense the Pension Ombudsman may decide for distress and lost hours.
8. James Hay dispute that the investment was delayed or that Mr Y has been financially disadvantaged. Any investment in Dolphin Capital was subject to the agreement of James Hay's Investment Committee as it was an unregulated investment. James Hay received the correct paperwork on 21 August 2014, and the application to invest in Dolphin Capital was passed to the Investment Committee for approval. The application was considered by the Investment Committee at its meeting of 26 August 2014, and the decision was taken that the application could not proceed without Mr Y

receiving advice from an authorised independent financial adviser. Even if Mr Y had been able to find a suitable independent financial adviser an investment in Dolphin Capital would not have been revisited until the next Investment Committee on 23 September 2014. It was at that meeting that the decision was taken not to accept the investment under any circumstances.

9. Mr Y was made aware of James Hay's position in October 2014. James Hay offered Mr Y £700 in respect of the fees deducted for transferring and winding up the SSAS. The offer was made in April 2015 after Mr Y had again contacted them, and the refund has been paid.

## **Adjudicator's Opinion**

10. MR Y'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:
  - Mr Y has complained that there were delays in processing his application to invest in Dolphin Capital and that he has suffered a financial loss as a result. The decision to invest in Dolphin Capital was taken in July 2014, and confirmed when James Hay received the bundle of documents on 4 August 2014. But these documents provided information on a total investment of £33,000 and at that time Mr Y's funds stood at just over £30,000. Therefore, it would have been impossible for James Hay to act on these instructions.
  - Mr Y says that at least £23,000 should have been invested on 7 August 2014, but it was not James Hay's role to make a decision such as this and it was not unreasonable to ask for clarification on what investments were required.
  - James Hay received confirmation of the investment proposal on 21 August 2014, and by that time there were sufficient funds in Mr Y's account to make an investment of £33,000. As the proposed investment was an unregulated one the matter was referred to the Investment Committee. There was not any undue delay in forwarding the matter to the Investment Committee and James Hay had made it clear in their documentation that they had the right to decline an investment.
  - Initially James Hay said that they would not accept the investment until Mr Y had received advice from an authorised independent financial adviser. The approach taken by James Hay was not unreasonable and presumably it was taken to protect their own commercial interests. Subsequently the Investment Committee revisited the decision and decided at the September 2014 meeting to not accept any investments in Dolphin Capital.
  - There were no unwarranted delays in processing the application to invest in Dolphin Capital. From the outset James Hay had the ability to either decline an investment or request that appropriate advice was taken. Therefore, although

Mr Y had expressed an interest in making an investment with Dolphin Capital he should have been aware that this was always subject to the approval of James Hay. Furthermore, Mr Y has not suffered a real financial loss but rather a loss of expectation if the investment in Dolphin Capital had been allowed to go ahead.

- Mr Y has asked to be compensated for the time he has spent researching the market and the cost of establishing the SSAS. It is not this service's practice to compensate individuals for time spent managing their own affairs. Mr Y decided after conducting his research to establish a SSAS with James Hay. The costs that James Hay incurred in establishing the SSAS were genuinely incurred and should not be refunded. James Hay has refunded the fees that were paid for transferring out the funds and winding up the SSAS following the decision not to allow an investment in Dolphin Capital; which is a reasonable compromise.

11. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and therefore, I will only respond to the key points made by Mr Y for completeness.

### **Ombudsman's decision**

12. Mr Y says that the documentation that James Hay received from Dolphin Capital was correct and that they should have proceeded to invest £23,000 on 7 August 2014. But the documentation received from Dolphin Capital was for two distinct investments, one for £23,000 and one for £10,000, making a total investment of £33,000, and there was only some £30,000 in Mr Y's account. It was not James Hay's role to make an investment decision as to whether to invest £10,000 or £23,000, and it was reasonable for them to seek clarification on this point.
13. Mr Y says James Hay should have requested clarification by phone or email and not have returned all of the documentation. James Hay says it was presented with a bundle of documents that appeared to be unsigned in several places, and without a covering letter. In these circumstances I do not find it unreasonable for James Hay to have returned all of the documents to Mr Y and ask for clarification.
14. Mr Y has also queried the date at which the Investment Committee took the decision to decline the investment and believes this was 19 August 2014 and not 26 August 2014. James Hay says that the Investment Committee meeting was held on 26 August 2014, and this was the first opportunity for the proposed investment in Dolphin Capital to be considered following receipt of the completed application on 21 August 2014. I have no reason to doubt James Hay's record of the Investment Committee meeting, and irrespective of the day it was held it was always for the Investment Committee to decide whether the investment should go ahead.

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15. Finally Mr Y's representative has queried the professionalism of our investigation and outcome of this complaint. He says that he finds the comment made by the Adjudicator, that he is not an IFA, as a derogatory and discriminatory remark. Firstly, I am content that the complaint has been thoroughly investigated and I do not find that it has been carried out in an unprofessional manner. Secondly, the comment that Mr Y's representative is not an IFA is not derogatory or discriminatory, it is simply a statement of fact and pertinent to the context in which it was made.
16. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 September 2016