

complaint

Ms T complained that James Hay Administration Company Ltd (“James Hay”) made an error in transferring her pension fund, which caused her a financial loss.

background

In 2011, Ms T was looking to move her pension funds from one advisor (“advisor A”), to be managed by another (“advisor B”). The SIPP provider was to remain James Hay.

One of the funds Ms T wanted to transfer had to be sold first. So it was arranged that the transfer of this fund would happen separately to the rest. Once the fund was sold, the money, which was around £250,000, was transferred into the SIPP bank account in May 2012.

In 2015, and again in 2016, Ms T raised some questions about a large amount of cash sitting in the SIPP bank account which hadn’t been invested. After speaking to advisor B and James Hay, it came to light that after the money had been received in May 2012 into the bank account, it hadn’t been invested with Advisor B. The money was eventually transferred to Advisor B on 29 April 2016 and it was invested, some four years later than it should’ve been.

Ms T complained to both Advisor B and James Hay. She said she’d given both parties instructions as to what she wanted to do with the money and she couldn’t understand why the money hadn’t been invested. She said she’d received an email in May from James Hay to Advisor B which said the money had been received, and it would contact Advisor B for further instruction. She couldn’t understand why this hadn’t happened. Ms T complained that as a result of the actions of both parties, she’d lost out on a significant growth on her investment.

Advisor B said it couldn’t find any record on its systems that James Hay had got in contact, as it has said it would, further to the email of 2 May 2012. And it said that it was James Hay’s responsibility to transfer the funds to them, and because it hadn’t done this, Advisor B hadn’t been able to invest the funds. It also said that Ms T had been receiving statements since 2012, but she had never raised this as an issue.

Ms T brought the complaint to our service. Our investigator thought that Advisor B should’ve done more to chase where the funds were, and make sure they were invested as part of her plan. The investigator said that Advisor B, as her advisor, was aware that the money was coming and they’d been told on 2 May that the funds would be available. So when no further contact was made from James Hay, our investigator said it should’ve been chased up.

Our investigator initially thought James Hay should share responsibility with Advisor B, but then changed her view to say James Hay wasn’t at fault for what had gone wrong.

Advisor B asked for the matter to be considered by an ombudsman. To fairly consider this complaint, the case against James Hay has also been referred to me for a decision so that I can consider the conduct of all the parties involved in the transfer of Ms T’s money.

I've already outlined my thoughts to both Advisor B and James Hay, as the outcome I intended to reach was different to that of the investigator. I said both should share responsibility for what went wrong and compensate Ms T 50% equally. I've summarised what I said below.

Advisor B accepts it is unfortunate that they didn't chase the matter with James Hay, but has said it had no visibility on the cash bank account, and couldn't make a request for that money. The transfer into the SIPP needed to be made by James Hay or Ms T.

I said that having looked at Ms T's emails, I thought she made clear what her intentions and instructions were to both James Hay and Advisor B. She also said no one told her that she needed to take any further action and was given the impression by both parties that the transfer was being made. So she had no reason to make a request to transfer the money as she'd been told that this would be done.

Ms T was provided with an annual statement in 2012 which showed the money as cash. She says she assumed this was there in the interim whilst the transfer was being made, and after 2012, she wasn't sent a copy of the statements. These went from James Hay directly to Advisor B, as her advisor. So she couldn't have known the transfer hadn't been made.

Based on this I said I didn't think there was anything more I'd have expected Ms T to do. I accepted this was a self-invested pension; however Advisor B as her advisor and James Hay had everything they needed from her for the transfer to be made. And it seems that a breakdown in communication between James Hay and Advisor B has resulted in this quite simple movement of funds being missed.

Both Advisor B and James Hay have said they weren't responsible for moving the money – but I found this difficult to accept. James Hay failed to communicate with Advisor B as they'd promised. And I noted that in 2016, when Ms T had realised what had happened, it was James Hay who then moved the funds over to Advisor B to be managed.

However Advisor B, despite being Ms T's fund manager, didn't chase up any funds in 2012. I hadn't seen Advisor B's investment plan for Ms T, but I assumed there was a plan for where the cash from this fund was due to be invested and an expectation that the funds would become available. It's unfortunate that this wasn't picked up at any point, or chased, by Advisor B, despite being on notice that the funds of around £250,000 were due.

James Hay said its letter to Advisor B dated 28 May 2012 discharged its liability in relation to moving the funds. This letter confirmed that a CHAPS payment had been made for over £250,000, but it didn't say into which account this has been paid. And there weren't any instructions on this letter. However Advisor B's defence has been to say that this letter and annual statements weren't received by the fund manager, so they were unaware of what had happened. Looking at the letter and the annual statements, I was satisfied they were sent by James Hay, and if the fund manager hadn't received them then I'd have expected this to be chased up by Advisor B.

James Hay responded to my provisional findings. It said it didn't think it was responsible for the money not being transferred. It said that whilst a follow up email hadn't been sent, the

letter sent to Advisor B at the end of May was enough for it to be on notice that the funds were available.

It also said that Advisor B could've seen the funds and could've made the request for the money to be transferred; it didn't need to wait for a further email from James Hay.

James Hay also said that whilst it may have been aware of Ms T's intentions, it hadn't received a valid instruction to move the funds. It was aware of what Ms T wanted to do in February, but by the time the money came into the account in May, they wouldn't assume that the money would still be going to the same place.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

James Hay's response to my provisional findings largely repeated points it had already made. I've looked again at the letter that James Hay refers to. I've noted that Advisor B said it hadn't received it, but I'm satisfied on balance that it was sent. I don't think this letter tallies with the email that James Hay sent on 2 May. That email, sent to Advisor B and Ms T says:

"I have confirmed with Advisor A today that they have received the monies for the [fund]"

My colleagues in Contact Team 2 will now be requesting the monies and the closure of Advisor B's account.

I will contact you for further instruction when the monies have been transferred to the Partnership SIPP."

The letter that was sent confirmed that Advisor A's account has been closed. The letter doesn't explain where the money is sitting, and it doesn't ask for any instructions on what to do with the money. So whilst I accept Advisor B didn't chase this, it seems that based on the previous email chains, James Hay should've contacted Advisor B once the monies were in the partnership SIPP. This didn't happen and I think this has equally contributed to Ms T's money not being invested for a number of years as much as Advisor B's failure to chase up the missing funds.

I've noted James Hay's comments that it couldn't act based on what it thought Ms T wanted to do in February 2012. But if this was the case, James Hay didn't explain this to Ms T. She was under the impression she'd given very clear instructions as to where she wanted to money to go. And in February 2012, James Hay told Ms T:

"Once the fund has been sold the monies will have to come into the [named] account initially and sent to the bank account on your James Hay SIPP. We will then transfer the monies internally to the Partnership SIPP."

But it doesn't say this meant the fund wouldn't be invested or that further information would be needed at this stage.

So for the reasons outlined in my provisional findings and above I still uphold this complaint and hold James Hay responsible for 50% of any losses.

what should James Hay do?

The purpose of the redress set out below is to put Ms T back in the position she'd most likely be in had the transfer been made in 2012. So to compensate Ms T fairly, James Hay must:

1. Compare the performance of the fund at the date of settlement (amount A) with the value it would've been had the money been invested in the relevant fund since 16 May 2012 (amount B).

I've used the date of 16 May 2012 as it seems the date the money became available was 2 May 2012, so assuming it took no longer than two weeks for the transfer to take place (which would be a reasonable period to achieve this), this would be 16 May 2012 when Ms T's money should've been invested by.

2. If amount B is greater than amount A, James Hay should pay into Ms T's pension plan 50% of the difference in the amounts.

Importantly, compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance held by Ms T. If James Hay is unable to pay the total amount into Ms T's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Ms T's actual or expected marginal rate of tax at her selected retirement age.

For example, if Ms T is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Ms T would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

3. Pay Ms T £150 for the distress and inconvenience this has caused her. Ms T has been understandably distressed that a large amount of money hadn't been invested for a number of years. She has also had to spend a lot of time ensuring her accounts are now up to date and there are no further communication errors, this has caused her inconvenience.
4. Add and pay 8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance).

Income tax may be payable on any interest paid. If James Hay deducts income tax from the interest it should tell Ms T how much has been taken off. James Hay should give Ms T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

my final decision

For the reasons outlined above, I uphold Ms T's complaint against James Hay Administration Company Ltd.

I direct James Hay Administration Company Ltd to pay Ms T compensation calculated as set out above.

James Hay Administration Company Ltd should provide details of its calculation to Ms T in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms T either to accept or reject my decision before 11 October 2017.

Michelle Henderson
ombudsman