

## The complaint

Mrs S had a self-invested personal pension (SIPP) with James Hay Administration Company Ltd (James Hay). Mrs S used funds in the SIPP to make two investments. Those investments caused Mrs S significant losses. Mrs S complains that James Hay should have kept her better updated about the investments and should have done more to recover the funds she invested.

## What happened

Mrs S opened the SIPP with James Hay in 2006 and made two investments: first, in the Si Hotels Trust fund and then secondly in a related investment called Si Glasgow Trust. Both investments were made prior to April 2007. I'll refer to these as together as the Si Trust investments.

Both investments suffered significant problems from around 2011 onwards. In short, there were problems with the tenants and lenders leading to the holding companies involved with the investments entering into administration. After suffering a total loss, Mrs S closed her SIPP in 2014.

Mrs S complained to James Hay in August 2019.

Mrs S' complaint initially encompassed detailed arguments about why she felt that James Hay had failed to carry out its regulatory obligations when facilitating the Si Trust investments.

However, our investigator pointed out that the investments were made *prior* to James Hay becoming an authorised firm with the Financial Conduct Authority (FCA) in April 2007. Firms that are authorised by the regulator to carry on regulated activities are subject to our compulsory jurisdiction, and our voluntary jurisdiction covers financial businesses that have voluntarily signed up to being within our jurisdiction. James Hay does not participate in our voluntary jurisdiction but has been covered by our compulsory jurisdiction since it became authorised by the regulator on 6 April 2007. As a result, the investigator concluded that we did not have jurisdiction to consider the complaint about whether James Hay acted fairly when facilitating the investments before April 2007.

I understand that this isn't being challenged by Mrs S and so I do not consider that matter further below.

Instead Mrs S asked us to continue to consider another aspect of her complaint that did take place after James Hay became an authorised firm and subject to our compulsory jurisdiction in April 2007. She said that James Hay should have kept her better updated about the Si Trust investments, that it should have sought valuations and should have done more to recover the funds she invested.

Our investigator said we did have jurisdiction to consider this issue but that he didn't think that James Hay had done anything wrong. He said that James Hay had regularly sent Mrs S statements, that it had acted reasonably when recording the investments at their purchase

value until it was clear that they had no value in 2011 and that it could not make investment decisions to recover money for and on behalf of Mrs S.

Mrs S didn't agree and asked me to make a decision. I issued a provisional decision on 28 February 2024. I've received no further submissions from the parties and therefore my provisional findings are unchanged below in this final decision.

### **My findings – jurisdiction**

There are other jurisdiction factors that I've considered that haven't been dealt with previously.

The rules about time limits and whether our Service can look into the merits of a complaint are set out in the DISP section of the FCA's Handbook. DISP 2.8.2R says:

*"The ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*...*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint*

*unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;"*

So we can't look at events more than six years before a complaint unless the three year limb of the rule applies and gives the complainant more time (DISP 2.8.2R (2(b))).

Mrs S complained to James Hay in August 2019. Mrs S had been aware of problems with her Si Trust investments from at least 2011 when they were valued at nil and, given the administrative nature of the *current* complaint against James Hay relating to those investments, I think she ought reasonably have attributed the issues she's complaining about now to James Hay at the same time. So the three year rule does not give Mrs S more time to look at events that occurred more than six years before her complaint.

DISP 2.8.2 does allow us to consider complaints made outside of time limits where there are exceptional circumstances. An example in the rules is where a consumer might have been incapacitated. No such circumstances have been brought to my attention. So I see no basis to make an exception to our time limits here.

So this all means that we only have jurisdiction to consider Mrs S' complaint about James Hay's acts from August 2013 onwards. This is what I do below.

### **What I've decided – and why**

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

James Hay supplied Mrs S with annual statements in 2013 and 2014 showing the status of her investments. The Si Trust investments were valued at nil which, given the problems associated with the investments, seems like the only valuation that could have been recorded. So, I've seen nothing to suggest that James Hay failed to keep Mrs S updated or acted unfairly when placing values on the Si Trust investments.

Mrs S has also complained that James Hay should have done more to recover funds from the investments. But, as our investigator has explained, James Hay was not Mrs S' adviser and could not give her advice about what to do. In the particular circumstances of this case, it was reasonable for James Hay to supply Mrs S with the information about the status of the investments and await her instructions. And of course Mrs S could have sought assistance from a professional adviser on her options – as it seems she'd done when she first made the investments.

The reality is that by 2013 (likely long before), the investments were illiquid and probably worthless. So no matter what Mrs S or James Hay did at this point, the outcome for Mrs S would not be different to when she closed her SIPP in 2014.

Overall, I see no basis to uphold the limited part of this complaint that we have jurisdiction to consider.

### **My final decision**

As set out above, I don't uphold Mrs S' complaint about James Hay Administration Company Limited's acts after August 2013.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 April 2024.

Abdul Hafez  
**Ombudsman**