

The complaint

Mr C says James Hay Administration Company Limited (James Hay) unilaterally cancelled a standing order arrangement linked to his Self-invested Personal Pension (SIPP) which resulted in no income being paid into his pension for 18 Months. He wants all fees during this period to be refunded.

What happened

Mr C was a part of a syndicate whose members held an interest in a commercial property in their individual SIPPs. Rent from the tenant was paid into a pooled bank account with Bank A. Standing orders were established to transfer each member's share of the rent into their own SIPP accounts. The arrangement appears to have been established in 2005.

In July 2019 Mr C wrote to James Hay confirming lead responsibility for administration matters in respect of the commercial property had passed to another member of the syndicate (Mr Z).

In July 2020 James Hay notified customers and counterparties of changes it was making to its banking arrangements. It set out the new details to be used from September 2020. Reminder communications were sent in August and September 2020.

In September 2020 Mr Z wrote to James Hay confirming members of the syndicate had received its notification of the banking changes. He asked it to amend the standing orders so that rent would continue to flow to member SIPPs. James Hay responded saying that as the Bank A account was external it had no control over the standing orders.

Between October and November 2020 there were further communications between Mr Z and James Hay as he sought to clarify requirements, such as the number of standing orders to be established and the new bank details. In January 2021 Mr Z wrote to Bank A again asking for it to action his instructions to make the necessary changes.

It wasn't until November 2021 that Mr Z contacted James Hay noting that Bank A still hadn't made the necessary changes to the banking details. He asked for assistance from James Hay, but it said he'd have to chase the bank.

In March 2022 James Hay received an email from Mr Z confirming that since the closure of the individual SIPP bank accounts all the rental monies have been returned to the Bank A account. He confirmed he'd instructed the bank on several occasions to cancel the old standing orders and set up a new one.

For a new standing order to be set up Bank A had explained the request would need to be signed by people from the authorised signature list. James Hay replied a week later explaining the signatory list held by the bank was out of date. A current signatory list was provided to Mr Z, together with a power of attorney (PoA) document. It asked Mr Z to confirm with Bank A it would accept the new signatory list and PoA.

Towards the end of April 2022 Bank A confirmed that any instruction should be signed by a person on the signatory list they currently hold, or alternatively, the banking mandate would need to be updated with a new signatory list.

At this point James Hay acknowledge that due to internal communication errors, it continued to follow up with Mr Z to seek confirmation that Bank A could accept the new signatory list, rather than sending him the required information to update the mandate and then provide instructions for the standing order. It didn't do this until the end of June 2022, around 2 months after it should've.

Between July and September 2022 James Hay chased Bank A to confirm whether the paperwork that had been provided met its requirements and the changes to the arrangements could be made. The position wasn't finalised until October 2022.

As well as the communications between Mr Z, James Hay and Bank A, other members of the syndicate were also in touch with the SIPP administrator. This concerned matters such as rental payment reconciliation, as well as about the non-receipt of income into their SIPPs.

From January 2022 Mr C's independent financial adviser (IFA) sought to clarify what had happened to the rental income payments he should've been receiving. And on 21 June 2022, unsatisfied with James Hay's responses to date, she raised a formal complaint on his behalf about what was happening.

James Hay responded to Mr C's complaint on 29 July 2022. It noted the syndicate had lead responsibility for property management matters. And that its actions had to be directed by members. It did accept responsibility for some of the delay in getting the banking arrangements put right due to poor communications with Mr Z about what needed to be done between April and June 2022. But it didn't agree it should refund any fees he'd paid. It apologised for the things it had got wrong and offered him £150 in recognition of this.

Mr C didn't accept James Hay's response and he brought his case to this Service. An Investigator reviewed his complaint but didn't uphold it. She didn't think it would be fair to blame James Hay for all the delays and errors. She considered the role of third parties to have been significant. And she thought it had made a reasonable offer in recognition of the things it had got wrong.

Mr C didn't accept the Investigator's findings and conclusions. He reiterated that James Hay had cancelled the banking arrangements without putting new ones in place. He said that its poor housekeeping, including not having an up to date list of signatories, had led to Bank A's account being frozen. He said its actions meant syndicate members couldn't effectively manage their interests. And he said it took too long for it to respond to his concerns.

As both parties couldn't agree to the Investigator's view, Mr C's complaint has been passed to me to review afresh and to issue a decision.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr C's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by James Hay for Mr C. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr C's complaint.

In bringing his complaint to this Service Mr C said:

"James Hay unilaterally cancelled established standing orders without setting up new ones resulting in no income being paid into my account from May 2021 to October 2022. The account was not incremented yet James Hay withdrew their fees totalling £1,334.74 depleting the account and irrespective of the lack of funds being paid in."

James Hay decided to change its banking arrangements in 2020. It isn't for this Service to determine how it runs its operations. Nevertheless we would expect that in making any changes it treats its customers fairly and communicates with them effectively.

James Hay notified its customers of the changes it was making in July 2020 and concluded that letter in the following terms:

"If you're happy to accept the changes we're making, you just need to start using the new bank details provided overleaf from 7 September 2020. No further action is then required."

"If you're not happy to accept the changes, you have the option to transfer your SIPP to another provider, so please carefully read the relevant section in the enclosed information for more details. Please note that even if you decide to transfer away, you'll still need to use the new bank details if you make any payments into your SIPP from 7 September 2020."

"The bank details above are to be used for all single payments and any standing order payments made into your SIPP from 7 September 2020."

James Hay followed up the initial communication with further letters in August and September 2020. We know that members of the syndicate received notification of the changes it was making. And Mr Z engaged with the issue on its behalf from September 2020. But after some initial activity and him pursuing matters with Bank A there was a lag in his contact with James Hay for nearly a year until November 2021 at which point he informed it the bank hadn't taken the action he'd requested.

I don't think it would be reasonable to hold James Hay responsible for this hiatus.

Having reviewed the terms and conditions of Mr C's SIPP, I'm satisfied members of the syndicate were primarily responsible for matters related to management of the commercial property. That included receiving rent into an external bank account. And as administrator, James Hay could only act on their instructions.

James Hay has accepted responsibility for contributing to a delay in getting the banking arrangements in place. That's because it was informed by Bank A in April 2022 what would be required in terms of updating the mandate and the authorised signature list. But it failed to relay this to Mr Z until June 2022. It offered an apology and compensation of £150 for this failing.

The other third party which had an influence on what happened between 2020 and 2022 was Bank A. I note that both syndicate members and James Hay have raised complaints about the services it provided during the relevant period.

Mr C complained about not receiving rental income into his SIPP for 18 months. I recognise his concern and frustration. But when I consider the role of the main parties involved in the delay in putting the new banking arrangements in place, I've concluded the impact of James Hay's failings was more likely than not of a second order of magnitude.

Mr C said he hadn't received rental income payments into his SIPP between May 2021 and October 2022. But if there hadn't been a gap in communications about the new banking arrangements between Mr Z and James Hay for nearly a year from November 2020, then I think it's more likely than not matters would've been resolved much earlier and prior to the period of missing payments Mr C now complains about.

James Hay did contribute to the delay in getting rental income from the commercial property held by the syndicate into members SIPPs. It apologised for its failings and offered Mr C £150 in recognition of the trouble and upset caused. I think that was a reasonable offer in the circumstances.

I don't think it would be fair to direct James Hay to refund all Mr C's fees for the period between May 2021 and October 2022. That's because it was still fulfilling a service to him and, as established, its role in the problems that emerged were less significant than the impact of the acts and omissions of third parties.

If it hasn't done so already, James Hay Administration Company Limited should honour its offer to Mr C.

My final decision

For the reasons I've set out, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 September 2023.

Kevin Williamson

Ombudsman