

The complaint

Mr H (and his advisers “TWP”) have complained about delays in encashing a proportion of Mr H’s pension. Following a divorce and the issuing of a pension sharing order (“PSO”) Mr H and TWP have stated that IPS Pensions Limited trading as James Hay Partnership (“James Hay”) caused unnecessary delays in the encashment of the underlying investments – held with Aviva - so the PSO could be honoured.

During the delay movements in the investment values meant the value of Mr H’s residual pension was negatively impacted.

What happened

I would like to note that not all points of contact between the parties have been included in the summary below, with only key dates included. Whilst not every conversation or communication is included, I would like to reassure all parties that all the evidence on file has been fully considered.

In January and February 2022 James Hay chased Mr H for documentation relevant to his divorce and the associated PSO.

This information was again chased in May 2020. In addition to the letter, James Hay included a Pension Sharing Order Factsheet which detailed their process when dealing with such requests.

On 25 July 2022, James Hay issued a letter confirming they had all the documentation in relation to the divorce. It was stated that 8 August 2022 had been selected as the date for valuation of the pension.

This letter stated:

“Once you are in receipt of our subsequent letter confirming the final figures, we will request your sale instructions in order to fund the pension credit. Unless advised otherwise these instructions will be held on file until we are in receipt of the transfer request form completed by your ex-spouse and her pension provider.”

On 10 August 2022 James Hay issued a letter to Mr H (and TWP) stating that sale instructions should be provided to liquidate funds to facilitate the transfer of a proportion of his pension to his now ex-wife.

This letter also stated:

“If we have not received your instructions at the time we receive Mrs [H’s] completed Pension Sharing Credit Transfer Form then, under normal circumstances, we will obtain the necessary amount, as far as we are able, from selling proportionately across all funds held.”

There were calls between Mr H and James Hay on 15 August 2022 and 22 August 2022 where it was confirmed that there remained issues outstanding, including the provision of a sale instruction. Mr H was made aware of this and confirmed he would speak to his advisers about the instruction required.

On 30 August 2022 another call took place between Mr H and James Hay. Mr H required updated login details for online access to his account and questioned whether all the information required was now available to complete the PSO. Here it was again confirmed that the instruction to trade form remained outstanding.

On 12 September 2022 James Hay were sent the relevant details from Mrs H's pension provider to allow the funds to be moved, this was received on 14 September 2022.

On the same day, James Hay sent a follow up letter to both Mr H and TWP. This letter stated:

"I can confirm we have now received Mrs [H's] completed Pension Sharing Credit Transfer Form. If we do not receive your sale instructions or sufficient funds in 10 working days then, under normal circumstances, we will obtain the necessary amount, as far as we are able, from selling proportionately across all funds held."

Following issuance of the letter above Mr H called James Hay on 15 September 2022. During this call Mr H confirmed he had received the letter dated 14 September 2022. The call handler explained that whilst there was a balance of cash within the pension, this was insufficient to make the payment to Mrs H and as such an instruction to trade was still outstanding. Mr H confirmed he would contact his financial adviser to clarify next steps.

An instruction to trade form was submitted on 17 September 2022, however this related only to Mr H's regular withdrawals with no instructions provided in relation to the PSO.

With the process still incomplete TWP contacted James Hay on 28 September 2022. It was during this call that a complaint was made on Mr H's behalf.

This call on 28 September was a lengthy call, with TWP trying to gain clarity on several issues. During this call James Hay confirmed that it had all the required documentation from Mrs H. When questioned as to why the investments had not been sold automatically as per the 10 August 2022 letter, James Hay referenced the 14 September 2022 letter with TWP confirming this had not been received. When pressed as to why the investments had not been sold as per 10 August 2022 letter James Hay provided various responses including stating that the funds were in "suspension" and could not be sold.

Unhappy that the investments had not been sold as expected TWP raised a complaint with James Hay on Mr H's behalf.

There was a follow up call the following day where TWP again tried to understand why the investments had not been sold as per the content of the 10 August 2022 letter.

Investment sale instructions were raised by James Hay on 29 September 2022, were processed by the relevant trading team, and then sent to Aviva on 4 October 2022.

The complaint response was issued by James Hay on 11 October 2022. This did not uphold the complaint. The various letters James Hay had sent requesting an instruction to trade form were referenced with James Hay noting the 14 September 2022 letter had detailed the 10-working day timeframe in which they would sell the investments automatically if no instructions were received.

Whilst James Hay noted the adviser comments around not receiving the 14 September 2022 letter, it was stated that the calls with Mr H between 15 August 2022 and 26 September 2022 had indicated he received all the letters.

James Hay stated that they raised the sale instruction needed to fund the payment to Mrs H on 29 September 2022 (10 working days after the 14 September 2022 letter) and that this had been processed by their trading team and sent to Aviva on 3 October 2022 – within 4 working days of the instruction being raised.

Unfortunately, this coincided with Mr H's advisers submitting a separate instruction to trade form and as a result Aviva asked for further clarity on the two instructions. Whilst this had resulted in a further delay, James Hay had then provided the further information to Aviva, allowing the sales to be completed.

Mr H's advisers did not agree and noted the content of the 10 August 2022 letter was clear - that if no instruction to sell was given investments would be sold when the relevant documentation was received from Mrs H – and that they had been told this was on 2 September 2022.

James Hay did not agree and stated that the content of their communication had been taken out of context, as such their outcome remained unchanged.

In November 2022 Mr H registered the complaint with this service for further consideration.

Our investigator looked into things and concluded that James Hay had not done anything wrong.

The investigator concluded that the 10 August 2022 letter did not give any timescales for when investments would be sold once all the relevant documentation had been received by James Hay. Additionally, whilst TWP had been told this had been received on 2 September 2022, this was an error, with the documentation on file being dated 12 September 2022. The letters issued by James Hay following receipt of this information clearly stated the 10-working day timeframe with the call from Mr H on 15 September 2022 confirming this letter had been received.

As the actual sale instruction had been given on 29 September 2022, the 11th working day after James Hay's letter, the investigator concluded there was no undue delay.

Whilst there had been subsequent issues in the sale of the investment, this was due to Aviva seeking clarification on instructions they considered contradictory, with these delays not being James Hay's responsibility.

Mr H and TWP did not agree stating that the wording of the 10 August 2022 letter was clear that the funds would be sold proportionately automatically upon receipt of the relevant documentation from Mrs H. Additionally, it was stated that James Hay had confirmed verbally over the phone that this information was in fact received on 2 September 2022 and not 14 September 2022. Whilst there had been numerous letters stating an instruction to trade form could be submitted, they considered there to be no need for this given the 10 August 2022 letter said that this would be done automatically once all the paperwork had been received.

Our investigator noted these comments but remained of the opinion that James Hay had acted reasonably.

As no agreement could be reached the case has been passed to me.

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.

In addition to the documentation assessed as part of the original investigation I have additionally been provided with the recorded calls between Mr H, James Hay, and TWP.

Dealing firstly with the content of the 10 August 2022 letter, our investigator concluded that the letter did not include any specific timescale for James Hay to complete any required investment trades and as such Mr H and TWP should not have expected investments to have been sold as soon as James Hay had all the relevant information.

I can appreciate the point made by TWP that their reading of this letter is that the investments would be sold proportionately as soon as possible, however I have reached the same conclusion as our investigator.

In reaching this conclusion I have additionally considered the content of the James Hay Pension Sharing Order fact sheet.

This fact sheet was included with several the letters sent by James Hay and states:

"We have four months to organise the transfer of the pension funds (the pension credit) due to the ex-spouse's/civil partner's chosen pension provider. This period starts on receipt of the above-mentioned documents and the completed Pension Credit Transfer Request Form, which is available from our website www.jameshay.co.uk or on request"

And

"We require disinvestment instructions as soon as possible to ensure the payment of the pension credit can be made promptly. Please note that disinvestment instructions must be received on the appropriate literature which may be found on the James Hay website. Please call our general enquiry number, 03455 212 414, if in any doubt. In any event we require disinvestment instructions within ten business days of us receiving your ex-spouse's/civil partner's Pension Credit Transfer Request Form. Unless advised otherwise, these instructions will be held on file until we are in receipt of the Transfer Request Form completed by your ex-spouse/civil partner and their pension provider.

The amount of the pension credit is fixed at the valuation date and, subject to funds being available, will not change."

Regarding Mr H's type of pension, the fact sheet confirms:

"If we have not received confirmation of which funds to sell within the confirmed time period we will, under normal circumstances, disinvest the required amount proportionately across all funds held, as far as we are able to. We would always prefer you to provide disinvestment instructions and will normally use our discretion only if there is a danger that the four-month deadline may not be met."

Overall, Mr H and TWP were asked for instructions to trade numerous times throughout the process outlined above, including in the 10 August 2022 letter itself. Whilst TWP assumed that the content of the 10 August 2022 letter meant that investments would be sold

automatically as soon as James Hay had the required paperwork, this is not what the letter offered and is not what the accompanying fact sheet explained.

James Hay was in receipt of all the required documentation on 14 September 2022.

I appreciate that in their calls with James Hay TWP were told that this had been received on 2 September 2022 however this information was incorrect.

The documentation from Mrs H's pension provider is on file. This is signed and dated 12 September 2022 and as such simply could not have been received on 2 September 2022. Whilst James Hay subsequently confirmed an incorrect date to TWP, this incorrect information itself did not actually cause any delay to the sale of Mr H's investments.

James Hay wrote to both Mr H and TWP the same day to confirm that all paperwork was now in order and that investments would be sold automatically after 10 days if no other instructions were given.

TWP have stated that this letter was not received, and whilst I see no reason to doubt this, it is clear from the evidence on file that Mr H did receive the copy sent to him.

I have listened to Mr H's call with James Hay on 15 September 2022 where he clearly states the letter has been received. During this call James Hay explained that an instruction to trade form was still required with Mr H confirming he would speak to TWP about this.

I have no information on what was discussed between Mr H and TWP from 15 September 2022 onwards, with TWP next contacting James Hay on 28 and 29 September 2022.

Having listened to these calls it is clear incorrect information was provided to TWP by James Hay on these calls.

Whilst TWP were informed that the relevant documentation was received from Mrs H on 2 September 2022 the paperwork itself clearly shows this date is incorrect. Additionally, TWP were informed of a number of incorrect reasons why the sale trades had not been carried out thus far (such as the investment funds being in "suspension").

Whilst James Hay should have been able to provide clear and correct answers to the questions asked by TWP at that time, and I accept that the incorrect information provided confused the process, the actual impact of this to Mr H's pension was negated by the fact the required trades were ultimately requested by James Hay on 29 September 2022. Even if full and correct information was provided by James Hay on these calls, the date of the trades would have remained the same.

I have looked into the subsequent delays in selling the investments after James Hay's 29 September 2022 instruction. Having assessed the communications between James Hay and Aviva (the underlying investment provider), it is clear that Aviva did pause the transaction in order to question the two instructions they had received.

As such, whilst there was a further delay at this time, I do not consider it reasonable to hold James Hay accountable for Aviva wanting further clarity on what was being asked of them.

As such, having concluded that the 10 August 2022 letter should not have been taken to mean investments would be sold as soon as paperwork was received from Mrs H, and having established Mr H did receive the 14 September 2022 letter which stated the 10-day

timeframe, I have decided James Hay did not unduly delay the sale of the investments within Mr H's pension and as such am not upholding this complaint.

I appreciate that this is not the outcome Mr H wanted and accept that the chain of events above led to more than 50% of his pension having to be sold in order to fund the payment to his ex-wife, however I have concluded that this was not as a result of any error on James Hay's part.

My final decision

As per the rationale above I am not upholding this complaint and do not require any further action of James Hay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 January 2024.

John Rogowski
Ombudsman