

Ombudsman's Determination

Applicant	Mr L
Scheme	James Hay Modular iSIPP (the SIPP)
Respondent	James Hay Partnership (James Hay)

Outcome

1. I do not uphold Mr L's complaint and no further action is required by James Hay.

Complaint summary

2. Mr L complained that he received a lower tax-free cash (**TFC**) lump sum than a representative of James Hay told him he would receive, and also that James Hay failed to send him cancellation rights after the lower value had been paid.
3. Mr L also complained about the processes implemented by James Hay when he requested access to his TFC lump sum, the subsequent delay in paying the TFC and the delays in dealing with his complaint.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between the parties.
5. Mr L opened the SIPP with James Hay in 2005 with a transfer-in from Standard Life.
6. In November 2019, Mr L received a SIPP statement which stated the value on 1 November 2019 was £1,447,325.20. The statement also said that the figures were examples and not guaranteed and any annuity income depended on how his investments grew and the interest rates at the time he retired.
7. On 18 November 2019, Mr L telephoned James Hay and requested a Benefit Payment form in order to commence taking benefits from the SIPP.
8. On 7 February 2020, James Hay updated Mr L's SIPP records to show that the valuation of the Tilney Portfolio held in his SIPP was £1,431,421.36 as at 3 February 2020. In addition to this, James Hay held the sum of £193.35 in the SIPP bank account giving an overall plan valuation of £1,431,614.71 on that date.

9. On 19 February 2020, Mr L posted a SIPP Benefit Payment form to James Hay to access the maximum 25% TFC from his SIPP. On this date, the valuation of Mr L's SIPP was £1,431,614.71.
10. On 5 March 2020, James Hay telephoned Mr L to request his HMRC Fixed Protection Certificate (**FPC**) as this was needed as evidence before completing a calculation of the benefits due.
11. On 6 March 2020, James Hay received Mr L's FPC.
12. On 9 March 2020, James Hay wrote to Mr L enclosing information about his request to take pension benefits from his SIPP. This letter advised that James Hay would wait 14 days before proceeding with his request and that if he got in contact earlier, it could begin processing his request to take benefits earlier. Alternatively, if he did not want to proceed with taking benefits from the SIPP, the letter asked him to contact James Hay within 14 days. Enclosed with the letter was an illustration that showed the valuation of Mr L's SIPP was £1,431,614.71 with TFC of £357,903.68. This document stated that the SIPP did not contain any guaranteed benefits and the level of benefits Mr L would receive depended on the value of his investments held within his SIPP at the time they were sold.
13. On 10 March 2020, Mr L telephoned James Hay and was advised that the plan value on 19 February 2020 was £1,431,614.71 and this would be the value used to calculate his pension benefits (**the Call**).
14. On 23 March 2020, the 14-day risk warning period expired.
15. On 25 March 2020, James Hay updated its valuation records for the Tilney portfolio held in Mr L's SIPP to show that on 9 March 2020, its value had reduced to £1,386,200.49. This allowed James Hay to produce an up-to-date valuation, which showed an overall SIPP value of £1,386,393.84 with TFC of £346,598.46.
16. On 3 April 2020, James Hay issued an email to Tilney requesting a transfer sum of £345,868.46 from the portfolio to Mr L's SIPP bank account.
17. On 9 April 2020, James Hay received the sum of £345,868.46 from Tilney, which brought the total into Mr L's SIPP bank account to £345,911.81. This amount was insufficient to pay the TFC to Mr L.
18. On 20 April 2020, James Hay arranged an interest free loan of £686.65 to be paid to Mr L's SIPP bank account in order to pay the TFC without further delay.
19. On 21 April 2020, James Hay made the TFC payment of £346,598.46 to Mr L's bank account bringing the SIPP bank account balance to zero.
20. On 22 April 2020, James Hay emailed Tilney requesting the transfer of £686.65 from the portfolio to the SIPP bank account to enable the interest free loan to be repaid.

21. On 5 May 2020, Mr L telephoned James Hay and raised a complaint as the amount of TFC paid to him was below the sum illustrated in March 2020 and he had not been notified of this large drop in value.
22. On 12 May 2020, James Hay wrote to Mr L to acknowledge the complaint. This letter stated that Mr L could refer his complaint to The Pensions Ombudsman (**TPO**) if it had not issued its response within eight weeks.
23. On 14 May 2020, Mr L invested the monies received from James Hay with Tilney.
24. On 16 June 2020, James Hay issued an update letter to Mr L regarding his complaint and explained it could not evidence having previously issued cancellation rights. This letter enclosed a cancellation notice and stated that Mr L could return the money paid to him and cancel the benefits within 30 days.
25. On 22 June 2020, Mr L contacted James Hay by secure message and explained that cancellation of the TFC paid to him was not an option as the money had been re-invested. He said this might not have been the case if he had received cancellation rights on 22 April 2020.
26. On 21 July 2020, James Hay issued its initial response to the complaint.
27. On 29 July 2020, Mr L wrote to James Hay confirming he was unhappy with the response.
28. On 13 August 2020, Mr L contacted James Hay by secure message and raised additional concerns.
29. On 14 August 2020, James Hay issued a further response to Mr L by secure message.
30. On 6 April 2021, James Hay confirmed it was of the view that Mr L had received the correct TFC but offered him £500 in recognition of any inconvenience caused by the delay in paying it from 10 April to 21 April 2020. Mr L rejected James Hay's offer.

Mr L's position

31. In the Call, it was not explained to him that the value of his pension benefits would change if the value relied upon by James Hay was out of date at the time of the eventual benefit calculation. As a result, he was led to believe the value quoted in the illustration of 9 March 2020 was what he would receive.
32. He never received the illustration of 19 February 2020.
33. When he received the sum of £346,598.46 into his bank account on 21 April 2020, he recognised that this was lower than he had expected. He received no explanation as to why he had received the lower amount until the letter of 21 July 2020. He could not have made an informed decision to unwind or cancel when he had not yet received an explanation for receiving the lower amount.

34. James Hay failed to issue cancellation rights on 22 April 2020.
35. He is unhappy with James Hay's handling of the complaint.
36. He rejects James Hay's comment that he invested the monies received, even though the amount paid was in dispute at this time. There was no dispute other than his complaint that James Hay failed to give him any explanation leaving him with no idea how the amount paid had been calculated. Had he been advised that the valuation was fluid in the Call, given the state of the market, he would have put matters on hold as he had no pressing need to take the benefits at that particular time.
37. He did not consider that the £500 offered is the right level for this case given the history of this matter.

James Hay's position

38. The illustration sent on 9 March 2020 was produced when it received Mr L's benefits payment form using the valuation of his portfolio it held at the time. Warnings were provided within the 9 March 2020 illustration and the enclosure titled "Important Information about taking benefits from your pension" stated, "the SIPP does not contain any guaranteed benefits and the level of benefits you will receive depends on the value of your investments held within your SIPP at the time when they are sold."
39. The risk warnings sent alongside the 9 March 2020 illustration had a 14-day cooling off period before any payment could be made and Mr L did not contact it during this period to waive the payment. It accepted that misinformation was provided in the Call but concluded that it would always need a new valuation before making a TFC payment and it is not its process to inform members of any drop in value.
40. The illustration of 19 February 2020 was an internal note of the value held for Mr L's SIPP on this date but was never issued to him. The value was also not guaranteed.
41. On 23 March 2020, the 14-day period provided with the risk warnings expired. However, its records had not been updated with a valuation of the Tilney Portfolio since 7 February 2020 which was valued on 3 February 2020. This valuation was nearly two months out of date and was too old for calculating a new Benefit Crystallisation Event. Consequently, a fresh valuation of Mr L's SIPP had to be arranged which confirmed the correct TFC value was £346,598.46. Mr L was paid what was due to him at the time and the 25% payment reflected the value of his SIPP portfolio at the time.
42. It made an error in requesting an incorrect sum from Tilney on 3 April 2020. The payment of the TFC could have been made to Mr L on 10 April rather than 21 April 2020, if this error had not occurred. It considered the potential loss of Mr L not being able to invest his TFC between these dates by referring to the FTSE UK Private Investors Balanced Total Return Index (**the Index**). The Index showed that the

benchmark fell during this period and so it concluded that Mr L did not materially incur any investment losses as a result of the delay.

43. The Benefit Statement and a Cancellation Notice do not appear to have been sent to Mr L as intended on 22 April 2020, but it did provide a cancellation notice on 16 June 2020.
44. Mr L invested the TFC he received even though the amount paid to him was in dispute at the time.
45. It offered £500 for the distress and inconvenience caused by its handling of matters and the mistakes made.

Adjudicator's Opinion

46. Mr L'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 in paragraphs 47 to 57 below.
47. Although James Hay issued its initial response three-weeks after its eight-week deadline, it did provide Mr L with an update within the eight-week period and subsequent responses were issued in a timely manner. The three-week delay in the initial response being issued does not amount to maladministration.
48. While the provision of incorrect information in the Call amounts to maladministration, it does not mean that Mr L is automatically entitled to the higher amount.
49. It was not reasonable for Mr L to have relied on the incorrect information provided. He was given adequate warnings that the values were not guaranteed, on two prior occasions, which contradicted the information given in the Call. If he was in any doubt, Mr L could have queried this further with James Hay before proceeding. As it was not reasonable for Mr L to have relied on the misinformation, financial loss does not need to be considered.
50. The illustration provided with the letter of 9 March 2020 stated that the SIPP did not contain any guaranteed benefits and the level of benefits received depended on the value of the investments held within the SIPP at the time when they are sold. The earlier illustration of 1 November 2019 also stated that the figures were examples and not guaranteed, and annuity income depended on how Mr L's investments grew and the interest rates at the time he retired. Therefore, when Mr L requested payment on 18 November 2019, he was aware that the value was subject to change until the investments were sold.
51. While James Hay's error in not issuing cancellation rights on 21 April 2020 amounted to maladministration, it took steps to put this right when the error was identified by giving Mr L cancellation rights on 16 June 2020. So, Mr L was given the opportunity to return the TFC paid to him, albeit at a later date, but he chose not to exercise this option.

52. Mr L recognised as soon as he received the payment of £346,598.46 from his SIPP on 21 April 2020, that it was not the amount he was expecting. While he was not provided with an explanation of the difference, the illustration had made clear that the amount was subject to change and there was no promise to inform him if it did change.
53. Despite recognising that the amount received was less, Mr L chose to invest the TFC with Tilney on 14 May 2020. Mr L contended that had he received cancellation rights on 22 April 2020 this might not have been the case. In the Adjudicator's opinion, if Mr L had seriously been considering returning the TFC, he would have expected Mr L to have contacted James Hay upon receipt of the money to instigate cancellation, or at least query the amount and ask for his options.
54. Mr L invested the TFC in the knowledge it was not the amount he was expecting, which suggests he accepted the amount he had been paid. He could have held onto the funds whilst he was querying the matter with James Hay, which would have made reinstating the investment a relatively straightforward process. James Hay was not responsible if Mr L did not consider returning the TFC to be a viable option when cancellation was offered in June 2020.
55. Despite the errors made by James Hay, it would appear more likely than not that Mr L would still have proceeded to take the TFC at the lower amount had James Hay correctly informed him in the Call that the value could change.
56. While there was a short delay of 11 days in settling the TFC payment, James Hay has established that no financial loss resulted from the delay. However, this would have caused significant distress and inconvenience to Mr L.
57. James Hay's offer of £500 accords with the Ombudsman's guidance on non-financial injustice for significant distress and inconvenience.
58. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, and I will respond to Mr L's additional comments which are summarised below:-
 - It is not for the Ombudsman to maintain that the maker of a negligent representation is not bound. It is perverse not to uphold the complaint on this basis.
 - He has suffered a financial loss as he acted on the information he was given to his detriment. He does not accept that his actions in doing so were unreasonable.
 - Insufficient weight has been given to the complete history of the matter complained about and undue weight was given to the three-week delay after the eight-week deadline for James Hay to issue a response to the complaint.
 - Undue weight has been given to the SIPP illustration issued in November 2019, which was issued three-months before the SIPP Benefit payment was made.

The request for a form on 18 November 2019 is not tantamount to him having requested payment. No decision was based on the illustration issued in November 2019.

- The conclusion that it was not reasonable for him to have relied on the incorrect information provided in the Call does not give sufficient weight to the clear representation made in the Call. The opinion reached that he could have queried this further is based on hindsight. It also gives insufficient weight to the fact that there was no need for him to query it further given the clear representation made in the Call and gives no weight to the fact that he could not get information or an explanation from James Hay. This was the precise reason why he had to complain to TPO in the first place.
- No weight is given to the fact that the letter of 16 June 2020 giving cancellation rights was only issued because he had complained. It should also be noted that the 30-day notice of cancellation expired before any explanation had been received from James Hay.
- He accepts that he knew that the amount received was not what was expected but it is not reasonable to conclude that he accepted the amount paid. Undue weight is given to the fact that he could have returned the TFC. The payment was received on 21 April 2020 and no substantive explanation for the calculation was received until three-months later on 21 July 2020. No weight is given to the fact that it was perfectly reasonable for him to assume that prior to receiving any explanation it was entirely possible that James Hay had made a simple error in its calculation, which could have been reversed.

Ombudsman's decision

59. There is no dispute that Mr L was provided with incorrect information during the Call. During the Call, James Hay's representative stated that the value of £1,431,614.71 as of 19 February 2020 was "set in stone" unless anything changed, or Mr L requested a new valuation. This amounts to maladministration by James Hay. However, in cases where incorrect information has been given, redress will only be provided if it can be shown that financial loss or non-financial injustice has flowed from the reliance on the incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
60. Having considered the information provided during the Call, it was not unreasonable for Mr L to have accepted this information as correct in isolation. However, I do not agree that it was reasonable for him to have relied on it to the extent that he did. That is, to conclude that James Hay had simply miscalculated his benefits and to reinvest the TFC before establishing why the amount received was not in line with his expectations. Given the nature of the investment decisions that Mr L was

undertaking, I would have expected him to have contacted James Hay upon receipt of the money to instigate cancellation or at least establish why the TFC payment was much lower than he expected. However, he did not raise this with James Hay until 5 May 2020, two-weeks after receiving the money.

61. I note Mr L's comments that when he did ask for an explanation at the point he raised his complaint on 5 May 2020, he was unable to obtain information from James Hay promptly about the difference in the TFC amount he was informed he would receive in the Call and the amount he actually received. James Hay could and should have provided this information more promptly.
62. I do not agree with Mr L's comments that there was no need for him to query the lower TFC payment given the clear representation made in the Call, or that until he received an explanation for the lower figures on 21 July 2020, it was perfectly reasonable for him to have assumed James Hay had made a simple error. This is because I do not consider that the comments given in the Call should have been taken in isolation and if it was a simple error why did he not query this on receiving the lower amount.
63. The information provided in the Call contradicted the information given in the illustration provided with the letter of 9 March 2020, issued the day before the Call and the statement given in November 2019. The illustration included in the letter of 9 March 2020 stated the SIPP did not contain any guaranteed benefits and the level of benefits received depended on the value of the investments held within the SIPP at the time when they are sold. Whether Mr L received this letter before or shortly after he made the Call, it should have been apparent to him that he had been given conflicting information.
64. The earlier statement provided in November 2019 also stated that the figures were examples and not guaranteed and that annuity income depended on how Mr L's investments grew and the interest rates at the time he retired. I note Mr L's comment that undue weight has been put on the November statement, however the information given within it was consistent with the information given in the 9 March 2020 letter and makes it less reasonable for Mr L to have accepted the statement given within the Call as correct, when a lower TFC figure was then paid.
65. In addition to this, during the Call, Mr L expressed concerns about falling markets and the effect this could have on the value of his fund. Mr L was also considering rescinding his withdrawal application due to these concerns. As such, I find that Mr L did have an understanding before the Call took place that falling markets could affect the value of his eventual benefits, and therefore, it was not reasonable for him to have assumed the only reason for the lower TFC being paid was an error, and not query the difference and information he had been given.
66. I find that Mr L should have raised this with James Hay more promptly upon receipt of the TFC. Especially as he has said he knew immediately that the amount received was not what he expected. He does not appear to have been immediately concerned

as he did not raise the matter with James Hay for two weeks. On the balance of probabilities, had Mr L been informed of the correct position in the Call, I find it is more likely than not that Mr L would still have proceeded to take the TFC in the knowledge that the value could change. Similarly, Mr L invested the TFC he had received after querying the figure with James Hay and prior to receiving a response from James Hay. If the difference in value had been a major concern to Mr L it would have been prudent for him to have waited for a response before investing the money.

67. I acknowledge Mr L's comment that the 30-day notice of cancellation, sent in June 2020, expired before any explanation had been received from James Hay. However, I find that the reason he rejected the offer to cancel the payment had nothing to do with the fact he had not received a full explanation. If it had been, I would have expected Mr L to have said so in his message to James Hay on 22 June 2020 when he explained that he could not return the money as he had already invested it.
68. I also find, for the reasons set out above in paragraphs 63 to 65, that Mr L should reasonably have been aware that there was a strong possibility that the fund value had simply dropped as opposed to a miscalculation by James Hay. For this reason, I find that Mr L could have reinstated the investment after the cancellation was offered in June 2020 had he not already chosen to reinvest the money.
69. While I have every sympathy with Mr L that the value of his SIPP and therefore his TFC reduced, I do not believe that he has suffered to his detriment, directly as a result of the provision of incorrect information in the Call taking into account all other factors.
70. I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
28 December 2022