DRN-4815309

The complaint

Mr H complains that James Hay Administration Company Ltd trading as James Hay Partnership (JH) ought to have notified him about a corporate action that involved a share I'll refer to as share S. He says he's lost out financially because it didn't, as his shares were no longer tradeable.

What happened

I understand that Mr H opened a JH Self-Invested Personal Pension (SIPP) account alongside an execution-only dealing account with a broker I'll refer to as broker S in 1999. JH provides the "wrapper" facility through which investors can use a wide range of investment options. JH is a separate business from broker S.

I also understand that Mr H hadn't set up his online access with broker S. But that JH had an online portal which allows its customers and their advisers to manage income changes and request cash transfers to and from the investment accounts they hold with broker S.

In 1999, Mr H entered an agreement with JH and broker S on an execution-only basis. This meant the trades he carried out with broker S wouldn't include advice. Instead, Mr H would be responsible for the shares he purchased. Mr H was told that to place trades, he simply had to call broker S and quote his unique dealing number.

I understand that Mr H bought shares in share S through broker S in 2008, 2016 and 2020. At the time of these purchases, the share was listed on the Alternative Investment Market (AIM). I understand that share S delisted from the AIM in November 2021, after first announcing its intention to do so on 15 October 2021.

On 1 November 2021, broker S emailed JH to notify it of the upcoming delisting. The notification said that the last day of trading on AIM for share S would be 29 November 2021, after which the holding would trade as Nasdaq-listed American Depository Shares (ADS). JH said that its notification was marked as "*no action required*" and "*information only*". It said that broker S had also emailed a copy of a letter addressed to Mr H's home address, without any cover note asking it to forward this information on to him.

Broker S said that it didn't send Mr H notification of this corporate action separately, because it only notifies JH about corporate actions on his account, unless JH had made a request that it sent such notifications to Mr H. It said it had never received such a request from JH.

Mr H said that around January 2022 he'd noticed information in the news about share S. So he had checked his JH account and seen that his shares were static. He then sent JH a secure message asking about the share S delisting. He said that his: "*portfolio still has it listed on AIM at the price it was on the day of delisting*". And asked for advice on where this left him. JH replied to say that if Mr H wanted to sell this listing he should send a sell instruction to broker S. It further replied to state that JH only had the platform, not the decision on how the trades and pricing took place.

On 6 January 2023, Mr H's financial adviser contacted JH to ask about the status of his

share S shares. JH referred the adviser to broker S. It said it only had the platform, not the decision on how the trades and pricing occurred. It also said that it wasn't its responsibility to fill in any forms that might be required. It said this was Mr H's responsibility dealing directly with broker S. It also said that it could see on Mr H's account under corporate actions there were details about what had happened to share S. The adviser asked JH to send a copy of the corporate action notification, which it did on 10 January 2023.

Mr H's adviser made further enquiries about the corporate action notification, and what Mr H would now have to do to sell the delisted shares.

On 6 March 2023 Mr H sent JH a complaint by secure message. He said he'd held around £120K of shares in share S. But they'd delisted and were now quoted on the Nasdaq as American Depositary Receipts (ADRs). He said JH didn't inform him that he needed to make a decision on the transfer. Nor had it forwarded any of the documents it'd been sent about the delisting. He wanted to know how JH would resolve the situation.

Mr H sent a further message to JH the same day to confirm that he'd not received the November 2021 notification. He said that if he'd received it he would've been able to accept the offer of ADRs. He asked JH if he would've been able to hold ADRs in his SIPP. Mr H felt that someone had received the notification about share S and they'd then done nothing with it. He felt this had cost him £120K.

JH then shared the share S notification it'd received from broker S with Mr H. It asked him to check his messages from broker S. It also emailed broker S to ask it about the share S notification.

Broker S replied to JH on 14 March 2023 to state that it had sent the share S corporate actions notification to it on 1 November 2021 for JH to forward to Mr H.

JH issued its final response to the complaint on 28 April 2023. It said it hadn't received any corporate action notification from broker S in the period from 1 January 2020 to date. And that it wouldn't usually be involved with corporate actions as they would be dealt with by broker S. It said Mr H would need to check with broker S to see what had happened.

JH later told Mr H that it had received a corporate action letter addressed to him. But said that there hadn't been any instruction from broker S to forward it on to him.

On 8 September 2023, broker S wrote to Mr H to say it'd asked JH to confirm what it did after receiving the 1 November 2021 email about share S. It also said that it was trying to find out what Mr H's options were with his holding.

Broker S also wrote to JH the same day. It asked it if the November 2021 email notification of the share S corporate action had been sent to the correct team. And what JH had done when it'd received this correspondence.

JH replied to say that as the broker S account was an execution-only dealing account, Mr H would've received the corporate action notification through his own broker S login, which it couldn't access. It said that when it received corporate action notifications on execution-only dealing accounts, it filed them on its record. But there was no requirement to forward to the customer as they were received directly from their dealing account provider.

Broker S queried how JH confirmed to its clients that it was their responsibility to check corporate actions. JH said that its terms and conditions clearly explained to customers that it wasn't responsible for monitoring investments held under their JH self-invested pension. It said customers were expected to take an active role with their investments, especially when

they were using execution-only dealing accounts such as broker S.

Mr H contacted JH again on 6 October 2023 as he didn't think it'd answered all of his questions. He gave a specific example:

"*Separately can you advise me whether a holding in ADR's on the Nasdaq is permissible within my pension plan?".*

JH told Mr H that he could hold ADRs if broker S was able to. It said that broker S was investigating whether it was possible to convert the delisted share S shares to ADRs and what the options for the shares would be. And that it would follow up with Mr H when it had heard from broker S.

Mr H didn't think he had a relationship with broker S apart from the fact that it executed his instructions to buy/sell. He said he only used it because JH told him to. JH then provided Mr H with a copy of his broker S account application which he'd signed on 4 August 1999. It said that it couldn't hold and trade listed securities directly, so its pension members opened Investment Manager or Stockbroker accounts within their SIPPs to do that. It said that the share S shares were held within his broker S account on the SIPP.

Mr H contacted JH again on 19 October 2023 after reviewing a copy of his agreement with broker S. He felt that JH had misled him about the contract and its obligations under it. He felt that JH was a party to the agreement and that it did have obligations under it. He felt that under the agreement, JH had a clear obligation to deal with the document broker S had sent it. He also felt that broker S should've sent him the document.

Broker S then confirmed to JH that Mr H was set up to receive corporate actions by post. JH told Mr H this, but he said he'd never received any letters or correspondence from broker S.

Broker S subsequently told JH that although it did send out mandatory documents such as valuations to Mr H, this didn't include corporate actions. It said that JH had the option to ask that its clients were included in other correspondence. But if this wasn't requested, it would send such notifications to JH. Broker S specifically told JH on 23 October 2023 that it didn't post out corporate actions directly to Mr H.

Mr H brought his complaint to this service on 21 October 2023. He felt that JH hadn't acted to protect his pension and interests. He felt that only JH could instruct broker S to accept the share S offer or the cash. Mr H felt that JH should've ensured that any documents which required urgent action should've been forwarded to him for his consideration, or dealt with by JH as required. He wanted to be compensated for his financial loss. And wanted JH to be punished for its failures.

Mr H said he only found out about the corporate action about a year after it took place. He said if he'd known about it at the time, he would likely have chosen to sell the shares.

Mr H said that his share S shares still existed. And that they now traded as ADRs on the Nasdaq, with a price just a little lower than the last AIM price in 2021. But he said that the shares he held weren't tradeable on any market. He said his shares were therefore worthless. But he felt that they could have value in future if the company was sold. Mr H felt that he should've been allowed to decide whether to accept the ADRs or cash, rather than being left in limbo. He explained that this situation could lead to other potentially detrimental impacts depending on what action he wanted to take.

Mr H told our investigator that he felt that - for a fee and some form filling - the ordinary shares he held could be changed to ADRs. He didn't understand how JH and broker S had

been unable to do this.

Our investigator asked JH what information it sent to Mr H by post, email or posted in the online portal. JH said that as the pension provider, it sent him pension statements annually by post. It said that its online portal was for customers/their advisers to instruct pension income changes and to arrange the transfer of cash from and to the investment account.

JH said that the corporate action notification it received from broker S was sent to it through the online portal access it used for all of its SIPP customers who held an account with broker S. It said the portal was only used by the administration team which dealt with investment accounts.

Our investigator didn't think the complaint should be upheld. She felt that broker S hadn't asked JH to pass on the corporate action notification and the emails themselves had appeared to need no action from JH. She acknowledged that JH could've checked why broker S had sent it a letter addressed to Mr H. But felt that because that letter stated that it was for information only, it was reasonable for JH to have simply filed it.

Our investigator felt that even if she was wrong about JH's responsibility, it wasn't clear what Mr H would've done if he'd received the notification on time. She also felt that JH couldn't have acted for Mr H in respect of the notification, as the shares were held with broker S. She didn't think that Mr H had lost out financially. She felt that the shares were still tradeable, although on a US market. Our investigator also felt that JH was taking steps to find out what Mr H could do next.

Mr H disagreed with our investigator. He made the following points:

- He felt that JH was now trying to help resolve the problem. But that it was a shame it hadn't tried to do this before, or kept him informed of what it was currently doing.

- He wanted JH to clarify what market the shares were tradeable on, as it had told this service that the shares were tradable in the US.

- He asked whether it was worth complaining about broker S.

- Mr H wanted to know what our investigator thought about the significant cost of a potential solution and who would pay that cost. He said it would clearly be a loss to him if he had to pay it.

Our investigator said she understood that the shares were tradeable on Nasdaq. And that if broker S couldn't trade on the US market, Mr H would need to find a broker that could. She also told Mr H that he had up to six months from the date of broker S's final response letter to let this service know whether or not he wanted us to investigate his complaint with it.

Mr H told our investigator that the shares weren't tradeable on Nasdaq. And that they weren't tradeable on any share exchange. He said that if he could trade the shares at the price listed on Nasdaq, he would sell them that day, and he wouldn't have complained. He said that he couldn't trade the shares until they'd been converted to ADRs and that must be done by broker S or JH. He said that this would incur a substantial fee.

Our investigator asked JH if it could provide an indication of the cost to convert the shares to ADRs. She also acknowledged that Mr H was correct that his shares would need to be converted before he could sell them. She told Mr H she'd asked JH about this cost. And also said that Mr H could ask broker S about this. Our investigator said that as she still felt JH wasn't responsible for notifying him about the de-listing, she couldn't say it should be

responsible for costs.

JH told our investigator that her query about the share conversion cost would need to be raised directly with broker S, which it said was holding the stock under the execution-only dealing account Mr H had with it under its SIPP. JH said that it didn't usually get involved with corporate actions. But that it sometimes received corporate actions correspondence that needed to be forwarded to the customer, in which case, it would be explicitly asked to do that. It said that all it got from broker S in this case was an emailed copy of a letter addressed to Mr H, with nothing else. So it simply stored the email as there was no specific request for it to do anything. It also said that the corporate action notification it got through the broker S portal was clearly marked as *'no action required'*, so it again just stored this.

Mr H still didn't agree. He made the following points:

- He felt JH had a duty under the contract he had with it to act professionally and protect his pension.

- Mr H felt that JH had misled him and tried to stop him from establishing the truth. He said it'd claimed it hadn't received the notification from broker S, which was false. He said it now admitted that it had received the notification, but hadn't explained why it hadn't passed it on to him at the time.

- Mr H felt that this service should instruct JH to fix the problem at its expense, so that he could sell the shares when he chose to. He said he just wanted JH to put him into the same position he would've been in if it had acted properly.

Broker S told Mr H that every three ordinary share S shares were now worth one ADS. It said that the ADSs did have value and that they traded on the Nasdaq. It said it was looking into the possibility of exchanging Mr H's shares for ADSs.

JH told this service that it had chased broker S over several months in order to find a workable solution for Mr H. It said that broker S had confirmed in an email dated 3 April 2024 that the shares could be certificated. In the same email, broker S had explained that the cost of selling the shares, using the previous day's share price would be as follows:

- Stamp Duty – USD$2,431

- ADR fees – USD$367.

JH said it had emailed broker S on 17 June 2024 to ask it why it still needed to confirm that the shares would become tradeable after conversion with its Corporate Action team. It also asked if and when Mr H had queried whether the shares could be converted. It felt that, based on what broker S had already told it, Mr H could instruct the conversion and then sell down his holding if he wanted to.

As no agreement could be reached, the complaint has come to me for a review.

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.

Having done so, I'm not going to uphold it, for largely the same reasons as our investigator. I know this will be disappointing for Mr H. I'll explain the reasons for my decision.

Before I start, I note that Mr H holds JH responsible for the position he finds himself in with share S, but that he has also complained to broker S. My decision here only considers JH's actions.

The crux of this complaint is that Mr H feels that under his agreement with JH, it had a clear obligation to deal with the documents broker S sent it on 1 November 2021. He said that under clause 8 (e) of that agreement, it stated:

"*We shall only act on the Trustees' instructions for dealing with takeovers or other offers or capital reorganisations"*.

Mr H said that the Trustee was JH. And that it therefore could've instructed broker S to accept the share S offer or the cash. He said that he himself only had authority to trade. He felt that all corporate transactions needed to be instructed by JH under his agreement with it.

Mr H also felt that JH should've ensured that any documents it received on his behalf which required urgent action should've been either forwarded to him for his consideration, or dealt with by JH. He felt it was obvious that the failure to accept the offer would lead to the shares becoming untradeable.

JH's position is that under its SIPP arrangement, the pension trustee can be described as a 'bare' trustee, due to all investment decisions being delegated to the customer or their adviser. This means that it has no active duties to perform. It said that it didn't take part in corporate actions. And didn't accept responsibility in the event of an investment becoming suspended from trading. JH said that it was up to the customer or their advisers to manage investments and keep informed of any sensitive information about their investment to ensure they could make appropriate investment decisions.

JH said that its Terms and Conditions for the SIPP arrangement explained that it didn't monitor any aspect of the investment on behalf of its customers. And that this wasn't part of the service it offered.

JH said that because of this, the primary contact details for the investment companies for all its SIPP customers are always either the customer or their adviser, never the pension trustee. It said that it receives duplicate copies of communications to capture transactions on the SIPP and maintain records, as this is the service it offers.

JH also said that the notification it received from broker S was an emailed copy of its letter addressed to Mr H, with no request to forward it on to him. It said that when investment companies asked for corporate actions communications to be sent to the investors, it would be clearly addressed to JH as a request, but this wasn't the case here. JH said that if broker S had asked it to forward the communications on to Mr H, it would've sent it to him. But that all it had received was corporate action communications flagged as "*for information only*". And an electronic copy of a letter from broker S directly addressed to Mr H.

I've looked at the agreement Mr H has with JH. He signed an Execution-Only Agreement in 1999 between him, JH and broker S. This stated that broker S would carry out transactions when instructed by Mr H or the Trustees (JH) on an execution-only basis.

I'd expect this to be the case – that is, I'd expect broker S to carry out the required deals for SIPP holders and then to report them to JH, which looks after the wrapper within which the investments are held.

Part 3 of the Execution-Only Agreement stated:

"[Broker *S] will deal either with the Trustees or with the Client. [Broker S] will rely on the Trustees to supply any necessary information, disclosures, explanations and documents to the client, unless otherwise agreed between [Broker S] and the Trustees in writing. Transactions will be reported to the Trustees with a duplicate to the client*."

So I can see why Mr H considered that JH, as Trustee, had some responsibility to share the corporate action notification with him. But I don't agree.

I say this because Mr H also signed a member agreement with JH which detailed what its role was and which services it would provide.

Part 5 of the member agreement stated:

"*5. JHPT will maintain records of all transactions and provide the Member with statements thereof on the basis as set out in the Explanatory Booklet*".

Part 6 of the member agreement covered Investment Procedures. This stated:

"*JHPT does not provide investment advice, or act as Investment Manager to the Arrangements, or accept any liability for the performance or choice of investments or performance or choice of any Investment Manager*."

It went on to state what would happen if no Investment Manager/Adviser had been appointed:

"*Should the Member prefer not to appoint an Investment Manager/Adviser to act on his/her behalf, a direct dealing service facility with [broker S] on an execution-only basis in respect of investments which require stockbroking services including investments transferred into the Scheme may be utilised. Investments either purchased through or transferred to [broker S] will be registered in the name of Newtown Nominees Ltd. [Broker S] accepts full responsibility for safe custody and all other obligations of its nominee".*

Section 14 of the James Hay Personal Pension Plan member agreement – which Mr H signed in June 1999 - listed the 13 services JH would provide to its customers. The full list is as follows:

"*14.1 Establishment of Arrangements.*

14.2 Setting up administration record systems.

14.3 Receipt of contributions/transfer payments into/out of the Scheme.

14.4 Documentation to appoint the Investment Manager.

14.5 Maintenance of records, including Portfolio Valuation and Contract Notes received from Investment Manager/[Broker S].

14.6 Recovery of basic rate tax on contributions from an employed Member.

14.7 Recovery of tax deducted at source on investment income.

14.8 Provision of Certificates to support contribution tax reclaims.

14.9 Annual statements detailing assets, contributions and transfer payments received and amounts of tax recovered from the Revenue.

14.10 Creation of banking facilities.

14.11 Maintaining records of each investment transaction.

14.12 Settlement and payment of benefits on vesting.

14.13 Such other services as may from time to time be necessary to efficiently administer the Arrangements and to comply with Inland Revenue requirements"

There's no mention of the communication of corporate actions to its customers in this list. I'm not surprised that this doesn't appear on this list, as I wouldn't expect the administrator of the SIPP to provide such a service. I also consider that the member agreement clearly shows that JH wasn't the investment manager and couldn't provide investment advice.

I agree with our investigator that the list of services covered in section 14 of the member agreement shows that JH's role was simply to maintain its customers' SIPPs with information that broker S provided. And I've not been provided with any evidence that JH has failed to provide the services listed under the agreement.

I acknowledge Mr H's point that he should've been allowed to decide whether to accept the ADRs or cash for share S, rather than being left in limbo. I agree that he should've received the corporate action notification. And that if he had, he would've then been responsible for deciding what he wanted to do. But I don't agree that when broker S sent JH a copy of the notification marked as information only, that JH should've passed this on to Mr H.

I say this because there was no requirement for JH to so under the terms and conditions of its agreement with Mr H. And I'm satisfied that the evidence shows that JH didn't know that Mr H hadn't already received the notification. I say this because broker S also sent JH a copy of a letter addressed to Mr H that I'm persuaded appeared to have already been sent to him. This letter was signed by a broker S employee and had a broker S phone number on it.

I've also considered Mr H's point that JH hadn't acted to protect his pension and interests. And that it should've ensured that any documents which required his urgent action should've either been forwarded to him for his consideration, or dealt with by JH.

JH felt that Mr H should've received the corporate action notification through his own broker S login. But Mr H told this service that he didn't have such a login. JH said there was no requirement to forward on information a client had received directly from their dealing account provider. It also said that it was up to Mr H as an execution-only account holder to sign-up for the login with broker S. But it said that broker S had told it that Mr H hadn't done so.

Mr H said that he thought he had everything he needed for his SIPP on the JH portal. But he had recently – and for the first time - been asked to register with broker S's online portal. He said that he had also recently received an email to notify him of a corporate action on one of his other shares.

While I understand why Mr H feels that JH has let him down, I've explained above that I've found no evidence that JH failed to meet the terms of its agreement with Mr H. In summary, I'm satisfied that JH had no way of knowing that Mr H hadn't already received the corporate action notification. And I'm also persuaded that, if broker S had made it clear that the notification needed to be shared with Mr H, JH would've done so.

The evidence shows that the fees for converting Mr H's delisted shares into ADRs would be USD$367. If Mr H decides to convert and then to sell his shares, stamp duty would also be

payable.

While I'm sympathetic to Mr H's view that he shouldn't have to bear any cost for the fact that he didn't receive the corporate action notification in time to act on it, I've already explained why I can't fairly hold JH responsible for this failure. Therefore I can't reasonably ask JH to cover the cost of the conversion of the delisted shares into ADRs.

In summary, I don't agree that JH had any obligation under its agreement with Mr H to deal with the corporate action notification which broker S had marked as "for information only". And I don't agree that only JH could instruct broker S to accept the share S offer or the cash. This was always Mr H's responsibility under the terms of his agreement with JH. While I acknowledge that Mr H said he only found out about the corporate action about a year after it took place, the evidence shows that he knew about it in January 2022.

I sympathise with the situation Mr H now finds himself in. I agree that he should've been allowed to decide whether to accept the ADRs or cash at the time of the delisting. But I can't fairly hold JH responsible for the fact that Mr H didn't receive the corporate action notification in November 2021. And I'm satisfied that JH is taking reasonable steps to help Mr H get back into the position he wants to be in with his share S shares.

My final decision

For the reasons explained above, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 July 2024.

Jo Occleshaw
Ombudsman