

## **complaint**

Mr L complained that Mattioli Woods' poor administration of his self-invested personal pension (SIPP) led to a delay in the transfer of the SIPP and additional unnecessary fees. Mr L also said that Mattioli Woods deducted fees without permission.

## **background**

I issued my provisional decision on 13 June 2018. A copy is attached and forms part of this final decision. I believed that Mr L's complaint should be upheld and set out a redress calculation to see if he had been caused a financial loss.

Mattioli Woods confirmed that it accepted the Provisional Decision and had no further submissions to make.

Mr L did not accept the Provisional Decision. He:

- Reiterated that Mattioli Woods had made several errors
- Said Mattioli Woods had made assumptions about where he would have transferred to and when to minimise its financial responsibility
- Suggested that redress should be to apply interest to the money that Mattioli Woods retained incorrectly, repay fees incorrectly charged and make a payment for the distress caused
- Said that Mattioli Woods is dictating to this service how redress should be calculated to avoid paying redress
- Said that Mattioli Woods is retaining fees which have not been earned – and these should be refunded

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I would confirm that Mattioli Woods is not dictating to this service how redress should be paid or in fact dictating how any other matter should be approached. I decide what would be fair redress in the circumstances.

As discussed in the provisional decision, a fair approach to redress would be to consider the overall loss or gain caused by Mattioli Woods' actions. It is not my role to place Mr L in a better position than he otherwise would be in or to 'punish' a business for its actions. I do not believe that adding interest to the money that was transferred late is the appropriate approach to redress. As I said in the provisional decision, the transfer to Standard Life provided a likely indication of where the funds would have been sent. The 'delay period' was not based on picking a low point in the market but on the delay period that actually occurred.

I allowed for the fees incurred after May 2015 in the overall redress calculation. I do not believe it would be fair to separately refund them. Their effect is incorporated into the redress.

**my decision**

I uphold the complaint. My decision is that Mattioli Woods PLC should carry out the calculation as set out in the attached Provisional Decision. If this calculates that Mr L has suffered a loss then it should pay that sum to him.

Mattioli Woods should provide details of its calculation to Mr L in a clear, simple format.

Mattioli Woods should also pay Mr L the sum of £350 for the distress caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L either to accept or reject my decision before 18 August 2018.

David Bird  
**ombudsman**

## **copy provisional decision**

### **complaint**

Mr L complained that Mattioli Woods poor administration of his self-invested personal pension (SIPP) led to a delay in the transfer of the SIPP and additional unnecessary fees. Mr L also said that Mattioli Woods deducted fees without permission.

### **background**

Originally, Mr L had two SIPPs administered by Pilgrim Trustee Services (Pilgrim). One was a personal SIPP, referred to as the Pilgrim SIPP, collecting rental income from a property held in a separate Group SIPP. The other was an unrelated Group SIPP (E V Group SIPP) holding land in Arizona. Pilgrim didn't charge fees for their work given the reciprocal business arrangement between itself and Mr L's business.

Pilgrim went in to administration in 2012. Mattioli Woods were appointed as the new administrators and originally wrote to Mr L confirming it would maintain the same charging structure as under Pilgrim.

In May 2013 and January 2014, Mattioli Woods issued invoices on the Pilgrim SIPP for annual fees and annual property administration charges. There was an initial dispute but in April 2014, Mr L agreed the fees for which he had been invoiced, and only those fees, could be deducted direct from the Pilgrim SIPP.

In February 2015 Mr L asked his financial adviser to seek information from Mattioli Woods with a view to transferring the SIPP and investing the cash assets. Mattioli Woods provided some information on 26 February 2015.

On 11 March 2015 Mattioli Woods informed Mr L that the Pilgrim SIPP held a property asset for which they would still have to charge once the cash assets had been transferred out.

Mr L didn't agree. He said the Pilgrim SIPP had never held a property asset and Mattioli Woods records were incorrect. It was not until 21 September 2015 that Mattioli Woods located a SIPP deed that confirmed the property was actually held within the Group SIPP.

The Pilgrim SIPP was subsequently transferred from Mattioli Woods on 24 September 2015. Some of the capital was then invested within a Standard Life portfolio.

Because of the incorrect information from Mattioli Woods, Mr L says he had to open a SIPP with AJ Bell that could accommodate a property asset. He says this hadn't been his intended SIPP provider. Once the error was recognised by Mattioli Woods, Mr L says he then reverted to opening a SIPP with Standard Life, as was his original plan. He says he suffered additional unnecessary fees resulting from Mattioli Woods error.

Mattioli Woods continued to deduct annual SIPP and property related charges from Mr L's Pilgrim SIPP during the period the property asset was in dispute. Mr L said Mattioli Woods weren't entitled to deduct fees on the basis that he hadn't signed a new fee agreement since Mattioli Woods was installed as the new scheme administrator. And previously under the agreement with Pilgrim he wasn't charged any fees. Mr L wanted the fees refunded.

An adjudicator looked at the complaint and recommended it should be upheld. He found documentary evidence that confirmed Mattioli Woods were aware, or ought reasonably to have been aware, that the disputed property asset was held in the E V Group SIPP, and not Mr L's personal Pilgrim SIPP. The document in question was from 5 January 2015, so before Mr L's adviser originally sought information from Mattioli Woods.

He concluded that had Mattioli Woods records been correct, Mr L wouldn't have suffered the delay in transferring the Pilgrim SIPP.

But the adjudicator didn't agree that Mattioli Woods weren't entitled to charge certain fees. He said the 'no fee' agreement in place with Pilgrim had been a reciprocal arrangement with that specific administrator, who was no longer operating. And realistically it wouldn't be considered fair or reasonable to expect Mattioli Woods to complete its administrative duties for free.

The adjudicator put forward a suggested resolution. He asked Mattioli Woods to complete a redress calculation to establish if Mr L had suffered an investment loss due to the delay. And to pay Mr L £350 for the distress and inconvenience suffered. The adjudicator didn't ask Mattioli Woods to refund any additional advice/SIPP costs Mr L may have incurred as he hadn't been provided with sufficient evidence to support this particular claim.

Mattioli Woods said it had already waived some fees relating to Mr L's Group SIPP and these should be taken in to account. The adjudicator didn't agree on the basis the Group SIPP was under a separate agreement involving other members. Both parties subsequently agreed to the adjudicator's suggested resolution.

Mattioli Woods completed the calculation using an assumed transfer request date of 5 January 2015. The calculation showed no investment loss.

Mr L then said he'd misunderstood the proposal put forward by the adjudicator. He said he thought that in addition to the redress calculation, Mattioli Woods would refund the annual and property related fees charged during the delay as well as pay the £350 distress and inconvenience payment.

Mr L said he didn't agree with the assumed transfer request date used by Mattioli Woods. He also said it wasn't fair for Mattioli Woods to retain the additional and incorrect fees charged during the delay. Mr L also said use of the Standard Life portfolio investment as the benchmark in the redress calculation was unreasonable. He said that in early 2015 when he was originally looking to transfer the Pilgrim SIPP, he hadn't actually decided where the funds were to be invested.

The adjudicator considered Mr L's comments and agreed the assumed start date for the redress calculation was incorrect. But he maintained the view that the redress calculation should be based on the Standard Life portfolio Mr L had later invested in. The adjudicator advised Mr L that the redress calculation made allowance for the annual and property related fees charged after the date he ought reasonably to have been able to transfer the SIPP. This being the case, the adjudicator was not able to recommend Mr L also be refunded the fees as this would place him in a more beneficial position than he would otherwise have been, had the error not occurred.

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

## **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I materially agree with the adjudicator.

The documentary evidence confirms that Mattioli Woods knew, or ought to have known from as early as 5 January 2015, that Mr L's Pilgrim SIPP didn't hold a property asset. This being the case, Mr L ought to have been free to transfer the SIPP at an earlier date. My understanding is that Mattioli Woods does not now dispute this.

I've taken note of Mr L's comments that Mattioli Woods wasn't entitled to deduct fees without a fee agreement in place. But the agreement he had in place with the previous scheme administrator was specific to that relationship. No such arrangement was in place with Mattioli Woods and I don't think it would be reasonable to expect Mattioli Woods to complete its administrative duties fee free.

What is in dispute is how to establish whether Mr L has suffered a financial loss due to:

- Mattioli Woods charging property related fees where no property was present
- Mattioli Woods charging annual SIPP fees because of the period of delay caused by Mattioli Woods
- the delay in the cash assets from the Pilgrim SIPP not being invested at an earlier date

Mattioli Woods says it has waived other fees relating to the Group SIPP Mr L is also a member of. But this is a separate entity subject to a separate agreement between Mattioli Woods and the Group members. So I don't think it would be right to offset fees relating to this separate complaint and separate SIPP.

The invoices I've seen confirm that Mattioli Woods charged various administration fees for a property that didn't exist in the SIPP. But the redress proposal put forward by the adjudicator included these and other fees Mr L paid during the period in which the SIPP transfer was delayed, so I don't think Mattioli Woods should be asked to refund these as a separate payment. And my understanding is that Mr L now says fees he incurred with AJ Bell may now not be charged so I can't instruct that Mattioli Woods refund these.

I agree with the adjudicator in with respect to when the redress calculation should 'start'. It is not possible to say conclusively exactly what would have happened had the error not occurred but what I've set out below I believe is a fair resolution.

Mattioli Woods ran a calculation assuming Mr L had requested the SIPP transfer on 5 January 2015, being the date of the document confirming the property was held in the Group SIPP (it is notable that this showed Mr L had not suffered a financial loss). But Mr L's financial adviser hadn't requested any information from Mattioli Woods at this point. It wasn't until 24 February 2015 that an information request was sent to Mattioli Woods, who responded on 26 February 2015. So it seems reasonable to me that any transfer request would have come at some point after 26 February 2015.

The adjudicator set out a timeline assuming a transfer request was received by Mattioli Woods on 12 March 2015, some two weeks after it had provided the information. And

following the same timeline as the actual transfer and investment in September/October 2015, appears to me to be a reasonable approach.

It was a total of 47 days (not including weekends) from initial receipt of the transfer request to investment. So, using the assumed transfer request date of 12 March 2015 would mean an investment date of 18 May 2015. From the information I've seen it would seem reasonable that this should be the start date for the redress calculation.

In terms of the comparison with the Standard Life plan, on balance I do believe this is the correct approach. I appreciate that Mr L may not have chosen exactly where to transfer to in February 2015. But only a relatively short time after he did choose that product for the transfer. I have not seen any persuasive evidence that he would have transferred anywhere else. So a comparison taking account of where Mr L did transfer to would be the logical and fair approach.

Should the calculation show no loss, Mattioli Woods will not be required to refund the fees deducted. The redress calculation will take account of the fees paid so to also refund the fees would place Mr L in a more beneficial position than he'd otherwise have been in.

To reach a fair outcome as regards redress I will consider the overall gain/loss caused by an act occurring. In this case a delay was caused in transferring. And that could, and probably has, caused a benefit to Mr L in that the value he has now is greater than it would have been had he transferred at an earlier point. If that gain is greater than any fees charged then there will be an overall benefit to Mr L. It would not be fair in that situation to also refund fees as that would mean Mr L has benefitted twice.

### **fair compensation**

I take the view that if Mr L had transferred earlier he would have invested in the same Standard Life portfolio he chose to in October 2015.

Assuming that, Mattioli Woods should calculate the sum of (A - B - C), where:

A: The value of the Standard Life portfolio as at the actual transfer date in October 2015.

B: The value of the Standard Life portfolio as at the actual transfer date in October 2015 had the transfer occurred on 18 May 2015.

C: Any fees charged in relation to the Pilgrim SIPP after the assumed transfer date of 18 May 2015 and which were incurred in the period after 18 May 2015.

If 'A' would have been greater than the sum of 'B' plus 'C' then no loss would have been caused and no redress in this respect would be payable. If 'A' would have been less than the sum of 'B' plus 'C' then that would be the loss caused. If a loss has been caused then 8% simple interest per year gross should be added to that sum until redress is paid.

I agree that this matter would have caused Mr L inconvenience and upset and that a payment should be made in this respect. I believe the adjudicator's suggestion of £350 is fair.

**my provisional decision**

I currently intend to uphold the complaint and make the award set out above.

David Bird  
**ombudsman**