DRN-2711073

The complaint

Mr H complains about the way Mattioli Woods PLC (MW) has administered his Self-Invested Personal Pension (SIPP).

What happened

In 2012, Mr H's occupational pension was transferred into an 'Essential SIPP' which was operated by Stadia Trustees Limited (STL). The funds were invested into a Store First investment. Unfortunately, the investment performed badly and Mr H made significant losses, although Mr H says that STL was still able to collect rents from the Store First investment on his behalf.

Subsequently, in 2016, STL decided to stop acting as a scheme administrator for its SIPP schemes – which meant it would no longer administer Mr H's Essential SIPP. STL wrote to Mr H in February 2016 to offer him two options. The first was a default option to move to a holding SIPP with MW, which attracted an annual fee of £200 plus VAT. Or Mr H could move to a SIPP provider of his own choice.

Mr H signed an agreement to move to the MW holding SIPP and this transfer happened in March 2016. Following the transfer, MW decided that the most appropriate SIPP for Mr H's investment was its City Personal Pension SIPP. That's because it contained an active asset. This type of SIPP attracted an annual fee of £690, plus VAT. Mr H agreed to transfer into the City Personal Pension SIPP.

Separately, Mr H made a complaint about STL to our service. In brief, our adjudicator upheld Mr H's complaint as she didn't think STL had carried out sufficient due diligence on Mr H's investment before accepting the business. She recommended that STL should pay Mr H financial compensation and she also recommended that STL should buy the Store First investment at a fair price, to allow Mr H to transfer away from the SIPP without incurring further annual SIPP fees. However, STL later went into default and it didn't pay Mr H the compensation our adjudicator had recommended. Instead, Mr H's complaint was later considered by the Financial Services Compensation Scheme (FSCS), which awarded Mr H its maximum compensation amount of £50,000.

STL had provided MW with a Power of Attorney in order for it to collect rents from the Store First investment, as it had previously done. However, once STL went into default, the Power of Attorney was no longer valid. This meant that MW wasn't able to legally re-register the asset and therefore wasn't able to collect rents from the investment on Mr H's behalf until a new Power of Attorney was granted by STL's liquidators. This was finally granted in May 2020. At this point, MW was able to collect rents on Mr H's behalf and these were paid into his SIPP.

Mr H was unhappy with MW's administration of his SIPP. In summary, he was unhappy that it wasn't collecting rents on his behalf as STL had previously done and so he felt it hadn't entered into a valid contract with him. He considered that MW ought to be bound by the adjudicator's previous recommendations in respect of STL. He didn't think it was fair for MW to charge annual fees when he wasn't being paid any rents and he said the amount of these

fees hadn't been made clear each year. He said MW hadn't assisted the FSCS with its investigations into his complaint about STL. And he later complained that he wanted to close the SIPP and withdraw all of the funds to enable him to fund a property purchase, but he said MW wouldn't allow him to do so. He told us that MW's administration of his SIPP had caused him and his family significant upset and financial difficulty. He asked us to look into his complaint about MW.

MW agreed to suppress its annual fees while it was unable to collect rents and while Mr H's SIPP had been illiquid. It made it clear that it wouldn't pursue Mr H for these fees outside of the SIPP. However, it maintained that given the amount of work it'd carried out on Mr H's SIPP, the fees would be due. It told Mr H that it hadn't been in a position to collect the Store First rents until the re-registration had been completed. It accepted that Mr H was unhappy with the way it had administered his SIPP and it said that if Mr H wished to transfer his investment to a new provider, it would waive its transfer out fees. MW also said that the SIPP couldn't be closed, as Mr H's Store First 'storepod' was still tenanted and receiving rents. It said that Mr H could buy the storepod personally or sell it to a third party.

In terms of Mr H taking benefits from his pension, MW said that as the funds were currently uncrystallised, he could drawdown up to 25% tax-free cash of the scheme's value in line with his lifetime allowance, with the remaining 75% being designated for drawdown payments. Given the difficulty in valuing Mr H's investment, it said it wouldn't require a full valuation, it would simply value the investment at nil for the purposes of the benefit crystallisation event. It said when the investment achieves a value, it can recalculate the fund split to ensure that Mr H didn't lose out on any tax free payment.

Our investigator didn't think Mr H's complaint should be upheld. Briefly, he explained that MW wasn't responsible for STL's actions and therefore, it wasn't responsible for paying the redress our adjudicator had previously recommended. He felt MW had provided a reasonable explanation as to why it hadn't been in a position to collect Mr H's rents for some time. And he thought that even if Mr H had opted to move from STL to a new provider in 2016, that new provider would've encountered similar difficulties in re-registering the asset and collecting rents. The investigator was satisfied that Mr H had been made aware of what the annual SIPP fees would be when he agreed to enter the City Private Pension. He felt that MW had responded to the FSCS in a timely way.

And having considered the specific evidence MW had provided about the work it'd carried out in relation to Mr H's SIPP, in these circumstances, he concluded it was fair for it to apply its annual fee in line with the charging structure. He was also persuaded that MW had provided a clear explanation as to why it couldn't simply close Mr H's SIPP and that it had given him reasonable information about what steps he needed to take.

Mr H didn't agree and I've summarised his detailed responses to our investigator:

- In 2016, MW had promised him a smooth transition from STL to its own SIPP. But MW didn't have an agreement at this point to collect his rental incomes from the Store First investment and it'd hidden this fact from him. If he'd been aware of this fact, he'd never have agreed to transfer his SIPP to MW and therefore, there wasn't a valid contract in place;

- MW had previously stated that no SIPP fees would be applied to his account and it'd now reneged on this statement. He didn't think it was fair or reasonable for MW to charge these fees when it hadn't been collecting Mr H's rents;

- MW had indicated that it would follow the adjudicator's recommendations in relation to STL;

- Until recently, he hadn't been able to take his 25% tax-free allowance. The net effect of this was that he'd had to take out high-cost credit loans.

The complaint's been passed to me to decide.

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, whilst I'm sorry to disappoint Mr H, I think MW has treated him fairly and so I'm not directing to it do anything more. I'll explain why.

First, I'd like to reassure Mr H and MW that while I've summarised the background to this complaint and both parties' detailed submissions to us, I've carefully considered all both parties have said and sent us. In making my decision though, I won't comment on each and every point the parties have made and nor do our rules require me to. Instead, this decision will focus on what I consider to be the key issues.

Is MW responsible for STL's actions?

Mr H feels strongly that MW should fulfil the recommendations our adjudicator made when she assessed Mr H's complaint about STL's actions in June 2016. It's clear that Mr H lost a great deal of money as a result of his investment into Store First and our adjudicator found that STL hadn't met its regulatory obligations to carry out sufficient due diligence when it accepted the business. I acknowledge the impact this situation has had on Mr H and I sympathise with his position.

However, MW is an entirely separate financial business and legal entity to STL. MW was asked by the industry regulator to administer STL's SIPP assets. It isn't responsible for any of the actions STL carried out and I've seen no evidence that MW agreed to take responsibility for STL's acts or omissions when it agreed to administer its SIPP business. This means that MW isn't responsible for paying Mr H the redress the adjudicator recommended or carrying out any of the other actions she proposed.

Did MW unreasonably delay the collection of Mr H's storepod rents?

It doesn't seem to be in dispute that STL was able to collect the ground rents from Mr H's investment while it was operating his SIPP. It's also apparent that once the SIPP was transferred to MW, it wasn't in a position to collect rents until July 2020. That's because until MW had re-registered the assets, it wasn't entitled to collect any of the rents on Mr H's behalf. I don't doubt how frustrating this was for Mr H, as he was aware that rents due to him weren't being paid into his SIPP. So I've considered whether this delay was down to any unreasonable actions on MW's behalf.

Our investigator asked MW to explain what actions it had taken in relation to the re-registration of Mr H's assets. MW provided a detailed timeline, which the investigator set out in his assessment of the complaint. As both parties have seen this timeline, I'm not going to repeat it here. What is clear is that since the transfer from STL to MW took place, MW has been working to re-register the assets. Part of the delay was down to MW not being able to access STL's records once the transfer had taken place. There were some attempts to sell storepods at auction, but auctioneers later decided not to go ahead with auction sales of these assets.

However, the majority of the delay, which broadly spanned a two-year period, followed the

placing of STL into default and the winding-up of its assets. At this point, the Power of Attorney it'd previously granted MW was no longer valid. MW was working with both the liquidator and the industry regulator to try and resolve the matter during 2019 and it wasn't until May 2020 that the liquidator company granted MW a new Power of Attorney. At this point, the Official Receiver agreed to release the rent monies to MW and rents were received in June 2020.

From the evidence I've seen, MW was actively engaged with the relevant parties between March 2016, when Mr H's SIPP was transferred to it until rents were received in June 2020. Initially, STL doesn't seem to have cooperated with MW fully. And once STL was placed in default and had to be wound-up, the matter was broadly out of MW's hands until the liquidator provided it with a new Power of Attorney and the Official Receiver consented to the release of the funds. I think MW took fair and appropriate steps to try and move this matter forwards so far as it was able and to work with the relevant parties to reach a positive outcome.

In my view, it wouldn't be fair or reasonable for me to hold MW responsible for the actions of third-parties when all parties were dealing with a complex, legal matter. This means I don't find that MW was responsible for the delays in Mr H's rents being collected. Indeed, once the Power of Attorney was granted in May 2020, rental proceeds were collected the following month. This indicates to me that it was MW's unavoidable reliance on the necessary actions of third parties that led to the unfortunate delays in rent payments.

Mr H strongly feels that at the outset, MW misled him into agreeing to transfer his existing arrangements into one of its SIPPs. He says he was told the transfer would be a smooth transition and that he'd never have agreed to transfer to MW had he known it couldn't collect his rents.

I've thought very carefully about this. I've looked closely at the letter STL sent Mr H in February 2016. The letter says:

'Mattioli Woods are working closely with us in order to transfer clients and we have worked together to build a process that is as streamlined as possible.'

There's no guarantee that MW would be able to collect rents from the storepods, although I can understand why Mr H would've expected MW to be able to carry out the activities STL had previously done. But I've borne in mind that when MW agreed to take over the administration of STL's SIPP business, it couldn't reasonably have foreseen the nature and range of the difficulties it would encounter. Or that it would need to engage with the range of third parties I've set out above.

And it seems to me that whilst Mr H says he would've transferred his SIPP to a different provider, this wouldn't have led to him being in a position to access his rents any more quickly. I say that firstly because given the illiquidity of Mr H's assets at the time of the transfer in March 2016, I think it's less likely that another SIPP provider would've agreed to accept Mr H's SIPP. And even if it had, in my view, given STL was placed in default, it's more likely than not that any other SIPP provider would've faced the same legal and documentary hurdles in the investment assets being re-registered to them.

Overall then, I don't think MW misled Mr H into agreeing to transfer his SIPP to it.

Did MW delay in engaging with the FSCS?

I can see that it took some time for the FSCS to look into Mr H's concerns about STL and to pay redress. I accept this must've been frustrating for Mr H, especially after he'd already complained to our service about STL.

But the FSCS wasn't investigating a complaint about MW. It simply asked MW for some information to help it carry out this investigation. And the evidence I've seen shows that the FSCS asked for information on 20 November 2017, which MW provided seven days later. As such then, I'm persuaded that MW handled the request very promptly and assisted the FSCS in its investigation as far as it could.

Did MW disclose the annual fees?

Mr H says that MW didn't disclose its annual fees to him in breach of regulatory obligations. I've seen copies of the invoices which were sent to Mr H on 30 June 2016, setting out the 2016-17 annual fee and on 30 April 2017, setting out Mr H's fees between May 2017 and April 2018. In both cases, the fee is clearly expressed.

I acknowledge that fee invoices weren't raised after April 2017. That's because MW had agreed with Mr H that it would suppress the fees until the outcome of a legal claim he had made was known. It made clear though that fees would continue to be raised annually.

Taking this evidence together, I'm satisfied that MW did disclose the level of annual fees to Mr H and made him sufficiently aware that while it had placed the charging of fees on-hold, these would remain payable following the outcome of his legal claim.

Has MW applied the annual fees fairly and reasonably?

Principle six of the regulator's Principles for Business say that financial businesses must pay due regard to the interests of their customers and treat them fairly. I've considered then whether I'm satisfied that MW has met this obligation.

Initially, when Mr H first agreed to transfer into the Holding SIPP, he was told that he'd attract fees of £200 per year, plus VAT. At this point, MW understood that Mr H's asset held no value. However, once it realised that Mr H's investment did have a value, it wrote to him in May 2016 to confirm that instead, his investment would be re-registered to a City Private Pension, which attracted an annual fee of £690 plus VAT. The letter gave Mr H the option to transfer to another SIPP provider. Given Mr H's asset wasn't inactive and given it was generating an income, I don't find MW's decision on this point to be unfair. I also need to bear in mind that Mr H seems to have accepted this transfer. And I think the level of fees was made sufficiently clear.

It's clear that MW took over Mr H's SIPP at a time when the Store First investment was already in difficulty. I also appreciate Mr H is in a difficult situation financially, so I understand how frustrating it must be to be charged fees for an asset he considers has little value. But I need to balance those considerations against the fact that MW is a commercial business and there is a cost to it in providing administration of the SIPP. With that said, the fees MW levy upon Mr H must be fair.

I understand there are a number of tasks and responsibilities that may be required to be carried in relation to the administration of a SIPP. In this particular case, MW has provided us with evidence of just some of the work it has carried out in relation to Mr H's SIPP – particularly in regard to the re-registration of the asset. It hasn't included much of the detailed correspondence it's had with Mr H since it took over operation of the SIPP within this cost breakdown, but I can see that MW has been in regular communication with Mr H

over a number of years. This was both in regard to the rental income, but also in actively trying to assist him to either close the SIPP or access his funds.

Given the evidence I've been provided with, on the specific facts of this case, I am satisfied that MW has carried out significant work on Mr H's SIPP. And so I find that in these particular circumstances, it's fair and reasonable for MW to charge Mr H fees for each year since it took over the SIPP.

Closure of the SIPP

Mr H has told us that he'd like to close down the SIPP and draw out the funds to purchase a property. I can entirely understand why Mr H would like to close the SIPP and I appreciate that he's in a difficult position.

However, as I've set out above, MW says that at the current time, this simply isn't possible. Presently, as Mr H wasn't compensated for his full losses by the FSCS, he's entitled to continue to receive rental returns for the value of his remaining loss. As the storepod is tenanted and rent is received, it's still assigned to the SIPP. The SIPP can't be closed until the asset is sold or reassigned. In this case, MW has previously discussed the potential of Mr H buying the storepod or a third party doing so with Mr H.

MW has explained that as the scheme is uncrystallised, Mr H is entitled to take up to 25% of the scheme's value tax-free up to his lifetime allowance and leave the remaining 75% for drawdown. It isn't currently requiring a valuation in order to make such a lump sum payment to Mr H, although it's said that once the pods do realise a value, it can recalculate the fund split to make sure Mr H doesn't lose out on his tax-free amount.

In my view, MW has provided clear and persuasive reasons why the SIPP can't be closed. It also seems to discussed with Mr H potential options which are available to him. It seems to be taking a pragmatic and reasonable approach to enabling Mr H to take a tax-free lump sum of 25% of the scheme value at this point. And it's made clear that it wishes to help Mr H move forwards and resolve things fairly.

As such then, I think MW has taken reasonable steps to try and help Mr H and I'd add that I'd expect it to continue to do so. But given the position I've outlined; MW simply isn't in a position to close Mr H's SIPP at this point.

Summary

I do have a lot of sympathy for the position in which Mr H finds himself. He's lost out on his pension funds through no fault of his own and he wasn't able to receive rental income for a few years. But for the reasons I've set out, I simply don't think MW has unfairly administered Mr H's SIPP or unfairly charged him SIPP fees. And so I'm not telling MW to do anything more.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 April 2022.

Lisa Barham
Ombudsman