

The complaint

Mr and Mrs F complain that Mattioli Woods PLC agreed to carry out a calculation to see if they had suffered a loss as a result of it leaving their funds uninvested, but the valuation dates used in the loss calculation were manipulated to produce no loss.

What happened

Mr and Mrs F were customers of Mattioli Woods. They had a family trust, with funds invested through a Self-invested Personal Pension (SIPP) of which they were the two members.

They advised Mattioli Woods they wanted to transfer the pension to a new provider and returned the signed forms on 30 June 2021. The transactions to sell the assets took place on 1 and 2 July.

On 20 July 2021 Mr F chased Mattioli Woods to see what was happening with the transfer. Mattioli Woods said that in error, the funds had been left in cash. It proceeded with the transfer on 23 July. On 5 August Mattioli Woods advised that it had processed the transfer forms and these would be signed by the trustees the following day. The transfers were completed on 9 August for some of the funds and 10 August for the remainder.

Mr and Mrs F were unhappy about the delay. Mattioli Woods agreed to assess whether the delay had caused any reduction in the fund value between 1 July and 23 July 2023. After completing the process, it said there had been no loss.

When Mr and Mrs F complained about this, Mattioli Woods issued a response saying:

- it apologised for the delay;
- having conducted the assessment, it had found no loss;
- it had used the settlement date of 23 July as agreed, but that meant unit prices had to be from several days earlier, to allow time for funds to settle, so it had used 20/21 July;
- it wouldn't be accurate to use 23 July for both the fund prices and the withdrawal date.

Mr and Mrs F remained unhappy and referred their complaint to this service. They said the transfer should have completed around 20 or 21 July, rather than 9 or 10 August. As Mattioli

Woods had no control over where they reinvested their funds, they had agreed the impact should be looked at by assessing the affect of the funds being held in cash between 1 and 23 July. But they said Mattioli Woods had used an earlier date for the fund value, which happened to give a lower value, and they felt the dates had been manipulated.

Our investigator didn't think the complaint should be upheld. He said deciding which dates to use involved a number of factors and was inevitably a compromise. He thought it was reasonable to take a median date for cashing the assets and using 20 July would have allowed time for a transfer on 23 July.

Mr and Mrs F disagreed and requested an ombudsman's decision. They made a number of

comments, including:

- they had agreed to a calculation using the dates 1 and 23 July;
- Mattioli Woods later decided to use 20 July, but that's not what was agreed;
- a three to four day timescale is at odds with the settlements they see in their statements;
- the actual timeline when the assets were cashed was that the instructions to sell were given on 30 June, proceeds from four funds were received on 1 July and the proceeds from the others on 2 July – so it only took one day or two days;
- 23 July is the date agreed so that should be used but if not, a compromise would be to go back one or two days earlier – not three days.

I issued a provisional decision saying I intended to uphold the complaint. In my provisional decision I said:

- Mattioli Woods accepted there had been an error, so that wasn't in dispute – what I had to do was consider the impact of that error and try to put Mr and Mrs F in the position they would have been in, but for the error.
- Mr and Mrs F had agreed that a calculation would be carried out to assess if they had lost out in investment gains between 1 and 23 July 2021.
- I appreciated there was a difference between a settlement date and a trade date – it's unlikely assets could be settled and transferred on the same day. Mattioli Woods had based its calculation on an average of how long it would usually take. But Mr and Mrs F said that wasn't what they agreed – and in any event, we didn't need to look at what usually happened when we knew what had actually happened.
- Based on what had happened, I thought it wouldn't be fair to go back three days. So I intended to direct Mattioli Woods to carry out calculations using 21 and 22 July and take an average of those two dates to calculate whether there was a loss.
- I set out my proposed directions for calculating the loss and, if there was a loss, for how the payment of compensation should be made.

Replies to the provisional decision

Mr and Mrs F accepted the provisional decision. They said the compromise of using the two dates seemed fair.

Mattioli Woods did not agree that the proposed resolution was appropriate. It said the one to two days it took for the monies to be paid had nothing to do with the settlement time of three days – the trades had already been completed and the funds were settled and waiting to be paid. However, although it didn't agree with the methodology it provided some calculations showing:

- a comparison between the actual trade dates and if the trades had been on 20 July;
- the same comparison if the trades had been on 21 July; and
- an average of the differences.

Mr and Mrs F made some further comments following Mattioli Woods' response:

- they do not think Mattioli Woods has taken ownership of its failing or completed the calculations in the correct way – which was to use the average price between 21 and 22 July;
- the agreement was to look at the impact between 1 and 23 July 2021 and they had agreed to that in good faith, accepting this as a compromise;

- the clear facts are that they returned a signed sale agreement on the afternoon of 30 June and the funds settled at closing prices on 1 and 2 July respectively – it seemed to be Mattioli Woods that was unsure about how the settlement dates work;
- on this basis, while they were willing to accept the settlement in the provisional decision as a compromise, their actual position should be that Mattioli Woods honour the closing prices on 23 July or at worst should use 21 and 22 July for the respective funds;
- there should be no brokerage or PTM levies as this is not an actual trade, simply a calculation of the impact of the error.

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 considered the additional comments from both parties I see no reason to change my provisional decision. While there may be a difference regarding settlement and trade dates, I find Mr and Mrs F's arguments persuasive. As they say, they returned a signed sale agreement on the afternoon of 30 June and the funds settled at closing prices on 1 and 2 July – one and two days respectively.

Taking everything into account it still seems to me a fair way of resolving the complaint to calculate the loss on the basis I proposed in the provisional decision. The settlement is in any event a compromise, so won't necessarily mirror precisely what would happen.

For the avoidance of doubt, the basis of the calculation is not to calculate the values on 20 and 21 July respectively and take an average of the differences – it's to obtain the fund values on 21 and 22 July 2021 respectively, take an average of those fund values, and then use that figure to calculate whether there is a loss.

Mr and Mrs F have questioned whether the calculations should include brokerage fees or PTM levies. While these are not actual trades, I consider it fair when calculating values to take into account charges that would have applied, bearing in mind the aim to try and put them in the position they would have been in, had the transfer taken place at that time.

Putting things right

Mattioli Woods PLC must carry out a loss assessment as follows:

- Obtain the fund values as at 21 July 2021 and 22 July 2021 respectively and take an average of the values on those two dates.
- Using that figure, calculate whether Mr and Mrs F suffered a loss.
- If there is a loss, the difference should be offered to Mr and Mrs F. The compensation amount should if possible be paid into their pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If a payment into the pension isn't possible or has protection of allowance implications, it should be paid directly to Mr and Mrs F as a lump sum after making a notional reduction to allow for future income tax that would have otherwise been paid.
- If Mr and Mrs F haven't yet taken any tax-free cash from their plan, 25% of the loss would be tax free and 75% would have been taxed according to their likely income

tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

- Interest should be added a 8% simple per year from 23 July 2021 to the date of settlement.

Mattioli Woods PLC must also pay £250 compensation for the distress and inconvenience caused to Mr and Mrs F.

My final decision

I uphold the complaint and direct Mattioli Woods PLC to pay the compensation set out above.

Details of the calculations should be provided to Mr and Mrs F in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 13 March.

Peter Whiteley
Ombudsman