

## The complaint

Mr T and his wife submitted a joint complaint about Mattioli Woods PLC ('MW'). The case was then split into two, one for each complainant. This decision is for his complaint. He says MW recommended an unsuitable switch from his Standard Life ('SL') Self-Invested Personal Pension ('SIPP') into a new SIPP in an MW Family Pension Scheme (the 'FPS'); and that the FPS has underperformed significantly since then, and has even performed worse than a cash holding without interest. He seeks redress for this.

## What happened

MW took over the firm that previously serviced the SL SIPP. In 2018, Mr T's longstanding adviser retired and around the middle of the year a new adviser was assigned to him. His pension arrangement was immediately reviewed by the new adviser, and then reviewed again later in the year. The pension switch was recommended in the second review (in November 2018), and then executed in April 2019.

MW disputes Mr T's complaint.

In the main, and in terms of suitability, it says the new adviser's first review in 2018 made no change recommendations; his second review later in the year recommended the joint pension fund approach for Mr T and his wife, and the switch; highlighted benefits were legal control as trustees of the FPS (which was not the case in the SIPP) including or especially in the event of one's death, the ability to add their son as another trustee, the ability to invest in commercial property, and the ability to be more active and strategic in their pension investments; the FPS was to be more costly than the SL SIPP, this was disclosed to and agreed by them at the time; the discretionary basis of the FPS' portfolio was to be similar to the SL SIPP's but the former was to be managed daily (compared to the latter's six monthly) and the management fee of 1.1% covered any associated advice from MW; the SIPP had served Mr T well but it was not correct for the next stage of his life.

MW also says that between February and March 2019 the arrangements for the switch took place (including completion of the necessary forms and advice to Mr T about using trust structures and ongoing inheritance planning for gifts to his grandson), and that he has taken monthly income payments of £2,490 from the *new SIPP*, under the FPS, since April 2019. By July 2019, MW says the structure, strategy and investments (including the details and implications of associated costs/charges) for the new SIPP's portfolio were known to and agreed by him, and that they were based around an income generating discretionary balanced portfolio, structured funds and a Real Estate Investment Trust ('REIT').

MW concedes that Mr T began to raise concerns about loss of value in the new SIPP very early, in April 2019 – including his comment around September 2019 that he was “... *yet to be convinced of the merits of the decision to switch from SL ...*” and his view that investment of the new SIPP was being unduly delayed – and that his concerns remained and continued to be repeated up to January 2020 (when he challenged both the performance and fees in the new arrangement) and thereafter. Earlier, in December 2019, the adviser had reviewed the past year and had recommended either reducing or stopping the income withdrawals from the FPS in order to increase its prospects of growth, with an alternative source of

income suggested.

Mr T's concerns remained and were repeated several times up to his complaint in September 2021. MW did not uphold the complaint. In a nutshell, it considered that its advice at the outset (and since) was suitable, that costs and charges were transparent and agreed, and that performance (which was never guaranteed) had been affected by the markets and by events beyond its control (including the pandemic). Mr T referred the complaint to this service.

One of our investigators looked into it and concluded it should be upheld. He mainly found as follows:

- Key points to consider are whether (or not) Mr T was moved from his previous SL SIPP into a more expensive alternative without good reason, and whether (or not) the switch matched his risk profile and personal circumstances.
- With regards to the reasons given by MW for the switch evidence from Mr T shows that his son had his own separate pension arrangement and financial adviser, so it was never an intention for him to join the FPS; Mr T also says he never had an intention to buy a commercial property and that his son worked from home; and, in terms of legal control upon a SIPP holder's death, it is normally the case that the beneficiary on record gains control, this is what happens generally for SIPPs so it is not clear why a different approach was viewed as cause for the switch.
- There was no compelling reason to justify Mr T facing higher costs (administrative and advisory) under the FPS as there was no justification for the switch.
- The balanced risk profile attributed by MW to Mr T, and the medium to high capacity for loss that he was assessed as having, conflicted with the following – his selection, in the risk profiling questionnaire, of a conservative portfolio; his limited investment experience and knowledge; and his history of having only ever taken small risks with past financial decisions. In this context, the structured products recommended for the new SIPP's portfolio would have been more suited to very experienced investors.
- There were a large number of investment funds available under the SL SIPP to achieve a rebalancing for Mr T for the income generation objective.
- The ability to have his pension investments managed on a daily basis was either irrelevant or unnecessary.
- Overall, Mr T should have been advised to retain the SL SIPP and there was no good reason to switch to the new SIPP under the FPS. He should be compensated for the unsuitable switch advice, using the notional value of the SL SIPP as the redress benchmark.

MW disagreed with the investigator's view and submitted its comments to explain why.

It mainly said its engagements with Mr T and his wife included discussions about them gaining more control over their finances in life and in death; it was not a primary reason for the pension switch, but the FPS gave more oversight and control to meet this objective; establishing potential access to the FPS (and to commercial property investment) for their son was also discussed, this too was not a primary driver for the switch but it added to its overall justification; Mr T's previous portfolio was invested for growth, it had to be revised to invest for income; the SL policy did not allow the sort of discretionary fund management and

structure MW could offer and it did not have the specific income portfolio recommended to him and his wife (which was needed for the prospects of sustaining withdrawals without eroding capital); despite assessment of a balanced risk profile for him (5 out of 10 on the risk scale) the recommended underlying portfolio was slightly more cautious (4 out of 10 on the risk scale); and the facility for daily active management in the new SIPP meant that could be done when and where necessary, not that it would be done unduly, and it stood in contrast to the limited facilities (one review and two rebalances per year) available in the SL SIPP.

MW also commented on factors related to the performance of the recommended portfolio, the need to have been committed to it for longer than Mr T was, in order to see its rewards, and its concerns about us giving his present claims more weight than the weight given to what he discussed with MW at the time(s) of advice.

The investigator was not persuaded to change his view and the matter was referred to an Ombudsman.

### **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 have reached the same conclusions (on merit and redress) as expressed by the investigator. I endorse and echo broadly the same main reasons he gave. I incorporate those reasons, as summarised above, into this decision.

Having gone through evidence from the period in which Mr T was assigned the new adviser, and in which the adviser conducted the first two financial reviews for him, it is reasonably clear that the pension switch was wholly or mainly MW's idea. There is no evidence of initiation from Mr T for it and arguably no evidence of circumstances (or a change in circumstances) that called for it. I appreciate that this does not automatically make it unsuitable, but as I explain below, on balance, the switch was unsuitable.

The following summary of evidence illustrates how MW, in the main, initiated the switch:

- In the adviser's initial letter to Mr T (of 30 July 2018), after their first meeting, he said – *"In terms of the structures you currently have, I see no immediate need to make any significant changes. Over time, things will naturally evolve and we will ensure things are streamlined and as efficient as possible to provide you with the best possible outcomes"; and "In the interim though, we agreed we would start to consider the possible establishment of a family pension fund as this will allow for continuity from generation and generation and as you are now approaching age 75, the rules around death benefits will effectively change"; and "A pension scheme, such as I will be suggesting, could have some possible advantages for [Mr T's son] in terms of funding, possible purchase of commercial value, etc. Nonetheless, we can discuss this further when we next meet, together with the advantages associated with more flexible pension funds and the possible creation of efficiencies in terms of your investment exposure". [my emphasis]*
- The letter states that there was no cause for a change to Mr T's pension arrangement at the time. There is wider evidence that suggests his previous adviser, up to his retirement, had serviced the SL SIPP well and that the new adviser was aware of this. Furthermore, Mr T appears to have raised no major concerns about the SL SIPP at the time. I have not seen evidence of circumstances, or a change in circumstances, at the time to warrant a change to the SIPP, and the aforementioned letter essentially acknowledged the same. Even reference in the letter to the

adviser's idea of a family pension appears to have resulted from what could be regarded as his *blue sky thinking* at the time, as opposed to precise factors or instructions prompting the idea. In addition, and as the investigator was concerned about, the letter shows – or at least suggests – that the notion of Mr T's son potentially benefitting from a family pension and from a 'possible purchase of commercial value' was initiated by the adviser, not by Mr T and not by circumstances.

- The adviser's letter to Mr T of 20 November 2018 presented featured a pension review; recommendation of the pension switch, the FPS and its underlying discretionary portfolio (to occupy 45% of the new FPS SIPP); recommendation of discreet holdings in the portfolio; recommendation of the REIT holding (to occupy 30% of the new SIPP); recommendation of the structured products holding (to occupy 10% of the new SIPP); recommendation of a cash holding for the remaining 5% of the new SIPP; an invitation to consider MW's High Net Worth private investors club; and suggested will arrangements.
- This letter also referred to "*the possibility of further flexibility*" in the FPS "... *should [Mr T's son] need it in the future*". There is no evidence such a need was ever presented by Mr T as an objective and the uncertain words used in this quote shows it was a somewhat surplus consideration. Indeed, as I summarised in the background above, MW accepts it was not a 'primary driver' for the switch.
- Notably, the letter also said this – "*The pension structure you have with Standard Life has served you well over the years. The growth generated by the Select portfolio management service, which re-balances at two agreed points during the plan year, has certainly worked well throughout the last ten years of a 'bull' market. However, as we are reaching a more complex stage, I do feel there needs to be some changes in terms of investment strategy. I would like to see a more active management structure, namely one that is managed on a daily basis, rather than one which is purely reactive and look more strategically around the balance of your assets within your pension funds.*" [my emphasis]
- It seems safe to say the adviser did not consider there was anything wrong with the SL SIPP, in itself and in its performance. He acknowledged that the SIPP had served Mr T well for 10 years and had generated good growth in that period. However, *he* (the adviser) – not Mr T – wanted to see more active management in the pension arrangement, and he justified this with reference to Mr T reaching a more complex stage that warranted such a change.
- The objective for Mr T's pension arrangement was for him to define, not for the adviser. In this context, and in the absence of circumstances defeating the context, I do not consider that it was for the adviser to determine that *he* wanted to see more active management in the pension and that there should be such management. I can understand how the adviser's statement might be viewed less as defining Mr T's objective and more as proposing what he considered beneficial to Mr T. However, I consider that unlikely because by the adviser's own admission the existing arrangement that he met upon being given Mr T's account was working well, four months earlier he could not find a reason to change it and no major changes in circumstances had happened since, so there appears to have been no problem for which more active management was the solution.
- I also appreciate that Mr T's accepted the recommendation. That was not unreasonable. He engaged the services of professional advisers and was entitled to

follow the advice they gave him. That does not dilute evidence that it was the adviser, and not Mr T, who had the objective for more active management. This means the argument about the FPS matching this particular objective loses significant value, because it appears the objective was not Mr T's. Returning to his acceptance of the advice, it is also noteworthy – as MW reflected in its submissions – that he did so with a combination of qualified trust in the advice and reservations about the advice. He was somewhat sceptical and cautious about it from the outset of its implementation and there is undisputed evidence (as mentioned by MW) of him doubting the merit of the switch and of the consistent and repeated concerns he put to the adviser from the point of implementation and all the way to the point he submitted his formal complaint.

- Another key observation is about the letter's reference to Mr T reaching a more complex stage in his life. This was the adviser's justification for the more active management he wanted to see in the pension arrangement and, essentially, for the switch recommendation. In the July 2018 letter, there was no mention of an approach towards a more complex stage warranting consideration of a different pension arrangement – instead, and as summarised above, no action was deemed necessary at the time. The alleged approaching complexity in Mr T's pension related circumstances in or around November 2018 is not quite clear from available evidence. The matter also begs the question why any impending *complexity* was not foreseen and addressed in the adviser's review just four months earlier. Overall, on balance and for these reasons, I am not persuaded by the claim about an approaching complexity in his pension circumstances warranting the changes and switch the adviser recommended.

The recommendation was at a considerable initial cost and increased ongoing costs to Mr T. Year one fees for the switch advice and implementation, for establishment and administration of the new SIPP, and for HMRC reporting were around £3,000. Ongoing going fees of up to 3,000 per year then applied for administering and running the SIPP. All fees were stated as net of VAT. Previously, Mr T paid an ongoing charge of 0.27% per year for the SL SIPP, which equated to around £1,800.

The adviser revised his investment recommendations on 3 July 2019. He said he was concerned about the risk of income withdrawals eroding capital in the pension, so he recommended a change to the investment splits. He proposed placing 60% of the new SIPP into a discretionary income portfolio, 25% into the REIT, 10% into structured products and holding 5% in cash. He said this would create liquidity to sustain Mr T's income for three to four years. Notably, he also set out the associated initial and ongoing fees, which were – initial investment placement fee total of 1.2%, ongoing annual fees of 1.9% for the discretionary portfolio, ongoing annual fees of 1.47% for the REIT, and ongoing annual fees of 1.62% for the structured funds.

There is evidence from the SL SIPP's statement of January 2019 that the total average yearly cost of charges deducted from the SIPP was at the rate of 2%.

The switch recommendation and associated investment recommendations increased costs significantly. Higher costs that Mr T stood to incur at the point of advice. Higher costs that he thereafter incurred and that appear to have contributed to the loss of value in the new SIPP that he complained about.

The regulator's Principles for Businesses, at Principle 6, requires a firm to pay due regard to the interests of its customers and treat them fairly. This is partly echoed in the regulator's Conduct of Business ('COBS') rules, at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to

designated investment business carried on for a retail client. These regulatory provisions are directly relevant to a firm's responsibility for the suitability of its recommendations.

In 2009, the regulator produced a checklist for pension switching, which highlighted four key issues that advising firms were/are expected to consider seriously. MW would have – or ought reasonably to have – been mindful of this. The four considerations were/are – Charges (is the consumer being switched to a pension that is more expensive than the existing one(s) without good reason?); Benefits (is the consumer losing benefits in the switch without good reason?); Risk (is the consumer being switched into a pension that does not match his/her ATR and personal circumstances?); Ongoing fund management (is the consumer being switched into a pension with a need for ongoing investment reviews, but this has not been explained, offered or put in place?).

On balance, based on the above analysis, and on the additional findings to follow, I consider that MW recommended an unsuitable pension switch to Mr T. The switch itself was unnecessary and costly, it was prompted by objectives mainly initiated and held by the adviser, the SL SIPP was performing well and Mr T did not seek to change it, there is a lack of evidence of a change in his circumstances that required the switch, the new SIPP was more expensive for him and there was a lack of good reasons to justify the switch and/or the additional expense.

I extend my analysis by addressing the highlights of MW's post-view comments.

There is no available evidence that Mr T initiated and presented any of the following as objectives for considering a change to his pension arrangement – more legal control over his pension, more active management of his pension's investments, planned or optional access to a family pension by his son, specific rebalancing of his pension's investments, a preference for more frequent rebalancing of his pension investments. Therefore, I do not accept that any parts of the switch recommendation that addressed these matters were parts that addressed his objectives. He held and expressed reservations and concerns about the switch from the outset and to the point of his complaint. I consider it more likely (than not) that the entire affair was unreasonably taken over by the adviser, and was quite remote to what Mr T asked for, wanted or needed.

I acknowledge the points MW has made in support of its recommendation and of the merit that can be viewed within it. These points alone do not amount to a defeating response to the complaint. The facts of the FPS and the facilities within it are not in dispute. The issues to address are whether (or not) the switch was suitable for Mr T and was in his best interests, in the circumstances as they were. In a nutshell, those circumstances were that he was already retired, he was seemingly content with the SL SIPP that had been performing well, he did not ask for a switch, he did not have the key objectives expressed by the adviser as justification for the SIPP and there appears to have been no present or impending events to prompt the switch. Even if the FPS SIPP had more or better facilities than the SL SIPP, the balance of available evidence is that Mr T did not need it, especially not at the significant initial costs and then at the significantly more expensive ongoing costs associated with it.

Furthermore, even if the adviser foresaw that his financial arrangements were, either soon or further in the future, unlikely to continue sustaining his income requirements, the first port of call ought reasonably to have been rebalancing within the funds available in the SL SIPP.

As the investigator said, there is evidence that there were sufficient options to make this potentially viable. It does not appear that the adviser properly looked into this alternative. Instead, he seems to have focused on reasons to present the FPS and the recommended underlying portfolio and investments as being better products than the SL SIPP and its

underlying portfolio. This was arguably misguided. The matter was not about an isolated competition between products.

If there was cause to reconstitute pension investments for Mr T – in order to, as MW has argued, move from growth generation to income generation – that would have been the task to address. If, as it appears, such rebalancing could have been done in the existing SL SIPP, which all acknowledged had performed well, that would have been the solution to apply. Resolving any such investment related concerns within Mr T's existing arrangement where possible – and thereby protecting him from avoidable costs and/or avoidable increases in costs – would have been in his best interests and would have been what he was entitled to expect from his adviser.

Overall, on balance and for all the above reasons, I consider that Mr T was given unsuitable advice by MW to switch from his SL SIPP to the FPS SIPP. Instead, he ought to have been advised to retain the SL SIPP. The alternative that could have been explored was a rebalancing of the SL SIPP's underlying investments. However, for the purpose of this decision I have not found enough evidence to conclude that the SL SIPP required rebalancing at the point of advice in November 2018 (or at the point of the switch in 2019).

## **Putting things right**

### **fair compensation**

In deciding what is fair my aim is to put Mr T as close as possible to the position he would probably now be in if MW had not given him unsuitable advice to switch his pension arrangement.

On balance, I consider that with suitable advice he would have behaved differently. As I said above, and for the reasons I explained, he should have been advised to retain the SL SIPP. I have not seen evidence to say or suggest he would not have done that, if advised to. I refer again to evidence that he doubted the merits of the switch away from the SL SIPP from around the outset and until his formal complaint.

This serves as a basis to use the SL SIPP's notional performance/value as the natural benchmark for the calculation of redress. In other words, but for MW's unsuitable advice he would have continued with the SL SIPP, so its notional performance from the date of the switch to the date redress is settled should illustrate where his pension would now be had he not switched it. That will then be offset against the performance of the FPS SIPP (and/or any pension it subsequently changed to) during the same period.

If the notional performance and value of the SL SIPP cannot be obtained, I will provide for an alternative benchmark in the table below.

The start date for the redress calculation will be when the SL SIPP was switched to the FPS SIPP. The end date will be the date of settlement, because the effect of the unsuitable pension switch continues to date, so the calculation must reflect this.

Mr T is ordered to engage meaningfully and co-operatively with MW to provide it with all information and documentation, relevant to its calculation of redress, that it does not already have.

To compensate Mr T fairly, MW must do the following:

- Compare the performance of his FPS SIPP (and/or any pension it subsequently changed to) with that of the benchmark shown below. If the *fair value* is greater than

the *actual value* the difference must be paid to him in compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Pay any interest set out below. Income tax may be payable on any interest paid. If MW is required by HM Revenue & Customs to deduct income tax from the interest, it must tell him the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.
- Pay the compensation into Mr T’s pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation (and any interest) cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he has been or would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Provide the details of the calculations to him in a clear and simple format.

investment name	status	Benchmark	from (“start date”)	to (“end date”)	additional interest
Mr T’s FPS SIPP (portfolio)	-	Notional Value of the SL SIPP; or, if that cannot be obtained, FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	date of switch to the FPS SIPP	date of settlement	not applicable

***actual value***

This means the actual amount payable from the investment at the end date.

***fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if MW totals all those payments and deducts that figure at the end instead of deducting periodically.

***why is this remedy suitable?***

- The notional performance and value of the SL SIPP provides a natural benchmark, for the reasons given above.
- In the alternative – the SL SIPP appears to have had a broadly balanced risk profile; the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds; it is a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that SL SIPP's balanced profile can be matched by this alternative benchmark. It broadly reflects the sort of return Mr T could have obtained from the SL SIPP had it been retained.

***compensation limits***

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr T's case, the complaint event (the unsuitable pension switch) occurred in April 2019 and the complaint was referred to us after 1 April 2020 but before 1 April 2022 (it was referred to us in 2021), so the applicable compensation limit would be £355,000.

**My final decision**

For the reasons given above, I uphold Mr T's complaint and I order Mattioli Woods PLC to calculate and pay redress to him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 July 2023.

Roy Kuku  
**Ombudsman**