

The complaint

Mr H has complained about delays in accessing his pension held with Mattioli Woods PLC ('Mattioli').

This had been transferred in from other providers in 2015 and had an element of protected tax-free cash.

Mr H has stated Mattioli took too long to calculate his available tax-free cash causing financial losses in the process.

I would note here that Mr and Mrs H both underwent the same process at the same time and have both registered complaints. Whilst the complaints have been dealt with separately, given the similar issues and timeframes involved, I make no apologies for the similarities in the decisions issued in these cases.

What happened

The chain of events which transpired in this case is well known to all parties involved, as such I have only included a summary of the key dates within this decision.

In June 2015 Prudential – one of Mr H's pension providers - wrote to Mr H's IFA to provide information on the level of protected tax-free cash available. This information was subsequently provided to Mattioli.

In May 2023 Mattioli were asked for tax-free cash calculations for both Mr and Mrs H. Whilst figures were provided these did not include the proceeds of the sale of a commercial property held within their pensions. Mattioli explained that as the sale had not actually been completed, the expected sale proceeds could not be included in their "notional" figures.

Following the completion of the property sale, Mattioli received the relevant pension benefit application forms from Mr and Mrs H on 14 August 2023.

Mr H and his IFA kept in contact with Mattioli following submission of the forms to try and progress the tax-free cash calculations and the eventual payment of the monies due.

Mattioli requested further policy information from Prudential and Aviva over the phone on 13 September 2023.

In response to chaser emails from both Mr H and his IFA, and also on 13 September 2023, Mattioli explained further information was needed from the previous pension providers before their protected tax-free cash calculations could be completed. Mattioli explained that they expected that the relevant information would be available by the end of September 2023.

Mr H's IFA contacted Mattioli on 14 September 2023, stating that tax-free cash figures had already been calculated in June 2023 and that all the relevant policy information had previously been provided to Mattioli in 2015 and 2019.

Mattioli wrote to Prudential on 19 September 2023 to clarify further policy information with this being chased up on 29 September 2023.

On 5 October 2023 both Prudential and Aviva wrote to Mattioli to provide the information requested.

Tax-free cash was paid to Mr H on 27 October 2023.

Given the delays incurred in completing the calculations and paying the tax-free cash, Mr H sent Mattioli a spreadsheet calculating his losses, this had been based on the interest he could have earned had the delays not occurred.

In response Mattioli explained that they did not believe compensating for lost interest was appropriate, re-stating the point that they had to contact Prudential and Aviva to clarify policy information and ensure the correct tax-free cash was paid. Mattioli did however offer £200 each to Mr and Mrs H to cover the stress and inconvenience caused.

Unhappy with Mattioli's response, Mr H forwarded his complaint to this service in November 2023.

Also, in November 2023 Mr H applied to have his scheme transferred from Mattioli to Aviva, citing poor service as the reason for transfer.

Our investigator looked into things and concluded that Mattioli had not acted fairly.

The investigator explained that Mattioli had been clear that the initial tax-free cash calculations completed in May and June 2023 were notional calculations and that further calculations would be required when the property sale had completed, and the relevant documentation was submitted. As such the investigator concluded that Mattioli could not be held accountable for any time delay before the appropriate documentation was submitted on 14 August 2023.

However, from the point that Mattioli had received the relevant paperwork from Mr and Mrs H, our investigator concluded that Mattioli should have requested and chased information from previous providers more quickly. Had they done so, our investigator said Mr and Mrs H would have received their tax-free cash more quickly. The investigator went on to provide redress recommendations to compensate Mr and Mrs H for the fact that they should have received their tax-free cash sooner.

Mattioli did not agree, stating that the calculation process was complex, that information had been sought from previous providers as soon as it became clear that this was necessary, and that they had remained in contact with Mr H and his IFA throughout. Overall, Mattioli remained of the opinion that their offer of £200 each for Mr and Mrs H was sufficient.

Our investigator was not minded to change their opinion and as no agreement could be reached the case was passed to me for a final decision.

I initially issued a provisional decision which stated:

"I have firstly considered the time before the appropriate application forms were submitted to Mattioli on 14 August 2023.

In line with what our investigator has already said I do not consider it reasonable to hold Mattioli responsible for any period before the property sale was completed and the relevant application forms were received.

Whilst I accept that Mattioli had been asked to complete tax-free cash calculations earlier in 2023, and that Mr H had been making financial plans based on these earlier calculations, Mattioli had been clear that these calculations were “notional” and further work would be needed once the commercial property sale had been finalised and the funds paid into the relevant pension bank accounts.

As per the conversations highlighted by our investigator, Mattioli informed Mr H’s IFA on 25 May 2023 that:

“Please note that these are notional calculations which are subject to change. When benefits are taken from the scheme, we will need to prepare formal calculations. These would require a formal valuation of any scheme property remaining in the scheme”.

The fact that the May / June 2023 calculations were notional and that further calculations would be needed was repeated by Mattioli more than once and as such I do not believe it is reasonable to hold them accountable for the time before they had all the relevant documentation.

Our investigator did conclude that following Mr H’s submission of the relevant paperwork on 14 August 2023 Mattioli should have acted differently in order to pay tax-free cash more quickly and, based on the chain of events outlined above, I have reached the same conclusion.

Having looked at the documentation Mattioli already had access to (which had previously been provided in 2015 and 2019), I agree with our investigators conclusion that further information was required from Prudential and Aviva. The information previously provided was ambiguous as to whether Prudential had factored Mr H’s Aviva pension provision into their calculations, with clarity on this being required to ensure the correct amount of tax-free cash was paid.

As such there was a clear need for Mattioli to contact Prudential and Aviva for further information.

However, from receipt of the application forms, it took Mattioli until 13 September 2023 to request this further information from Prudential and I agree with our investigator’s conclusion that this timeframe should have been shorter. In the findings already issued, a period of ten working days from receipt of the relevant paperwork for Mattioli to assess the information they had, recognise that more information was required and request that information (from Aviva and Prudential) was suggested. I do not consider this an unreasonably short period of time.

I have considered Mattioli’s point that the information which needed to be reviewed in this case was paper based, and that the original file needed to be retrieved from their archives before it could be assessed. However, I do not believe that this is sufficient justification for Mattioli taking nearly a month to establish that they needed further information from Prudential / Aviva.

Using the ten working day timeframe suggested by our investigator means Prudential and Aviva should have been contacted – in writing – on 29 August 2023. Given the required information was not requested by Mattioli in writing until 19 September 2023 this equates to a 15 working day delay.

Once the relevant information had been requested by Mattioli, it took Aviva and Prudential until 5 October 2023 to provide this. Whilst it may have been appropriate for Mattioli to chase the outstanding information on Mr H’s behalf, I do not consider it reasonable to hold Mattioli

accountable for the time take by Prudential and Aviva to provide what had been requested.

However, once all the requested information was available to Mattioli on 5 October 2023, it took until 27 October 2023 for the payment of tax-free cash to be finalised. Again, in line with what has already been outlined by our investigator, I consider this timeframe to be too long, and, in my opinion, the ten working day timeframe recommended by our investigator as a reasonable period of time for Mattioli to complete their calculations and pay tax-free cash to Mr H is appropriate.

Overall, had Mattioli acted in a timelier manner, relevant information would have been requested on 29 August 2023. Based on this request date the information would have been provided on 14 September 2023. From there, allowing a ten working day timeframe for calculations to be completed and tax-free cash paid, Mr H would have received his monies on 28 September 2023 rather than 27 October 2023 – a total delay of 21 working days.

I have included redress instructions below which reflect the fact that Mr and Mrs H should have received their tax-free cash 21 days earlier than they actually did.

In the findings already issued our investigator explained that they did not believe any further consideration needed to be given to the fact that Mr and Mrs H subsequently moved their pensions to Aviva, stating that as the reason given on the transfer form was “poor customer service” they had concluded the decision to transfer was made after the completion of the tax-free cash delay.

I disagree.

Once the commercial property had been sold, tax-free cash calculations completed and the appropriate amounts paid to Mr and Mrs H, the remainder of their pensions were held in the Mattioli pension bank account. This account did not pay a significant amount of interest, with the documentation on file showing that Mr and Mrs H were fully aware that higher returns could be made elsewhere.

In my opinion, it is not reasonable to conclude that once the protected tax-free cash payments had been made, Mr and Mrs H would have continued to hold such significant amounts of cash in a pension bank account paying little interest. In my opinion, even if Mattioli had acted differently and made the relevant tax-free cash payments to Mr and Mrs H as soon as could reasonably be expected (21 days earlier than actually occurred) Mr and Mrs H would still have transferred their pensions to Aviva in order to seek better returns. In this case, I have concluded those transfers would also, most likely, have happened 21 days earlier than they did.

As such, to try and ensure Mr and Mrs H are put back into the positions they would most likely now be in were it not for Mattioli’s errors, the redress instructions below also provide for the fact that the transfers, and subsequent investments made with Aviva, were also delayed.”

In addition, I asked all parties to provide any further evidence or commentary they wanted taken into consideration by 14 August 2024.

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.

In response to the provisional decision issued Mr H confirmed he had nothing further to add.

Mattioli confirmed that they were prepared to accept the outcome outlined in my provisional decision.

Given this, I am not making any changes to the outcome communicated in my provisional decision, I remain of the opinion that it represents a fair outcome in this case.

The redress instructions below are in line with those included in my provisional decision.

Putting things right

There are two parts to the redress calculation Mattioli must complete. Firstly, a calculation to account for the fact that Mr H would have received his tax-free cash 21 days earlier than he actually did.

And secondly, that Mr H would have transferred his pension away from Mattioli to Aviva 21 days earlier than he did. The redress instructions included below for this second part have been designed to account for the fact that Mr and Mrs H would have made their new investment choices (within their new Aviva pensions) earlier and as such may have lost out on further investment growth / interest had this 21-day delay not occurred.

Delay in receiving tax-free cash.

Mattioli should calculate:

- A) Total of the notional tax-free cash sum Mr H should have received from the Mattioli pension, with interest added at 8% per year simple from the date it was due (28 September 2023) to the date of settlement.
- B) Total of the actual tax-free cash sum payments Mr H received from his Mattioli pension, with interest added to each payment at 8% per year simple from the date it was paid to the date of settlement.
- C) Compensation payable = A – B.

Any loss from the calculation above should be paid directly to Mr H and be considered separate from the second calculation below.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr H's tax-free cash was delayed, with the above calculation designed to account for the fact that Mr H was deprived of access to this capital for a period of 21 days.

Delay in the transfer of the Mattioli pensions to Aviva

Mattioli should:

- Mattioli should calculate the transfer value of Mr H's pension had it been transferred 21 days earlier.
- This value would then have been invested into the Aviva pension 21 days earlier than it actually was.
- The hypothetical '*fair*' value of these investments based on this new timeline should be compared with their '*actual value*'. If the fair value of the investments is higher than the

actual value, then a loss has occurred, and redress is payable.

- Mattioli should pay into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Mattioli is unable to pay the total amount into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.
- In line with the findings issued I am not making any changes to the amount offered to cover the distress and inconvenience the delays caused Mr H – an amount of £200 should be made to Mr H in this regard if this amount has not already been paid.

Actual value

This means the actual value of Mr and Mrs H's current Aviva pensions.

Fair value

This is what the Aviva pensions would have been worth at the end date had they been funded 21 days earlier than they actually were.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Aviva pension should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Barclays totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr H's pension transfer to Aviva was delayed with the redress detailed above accounting for the fact that the investments subsequently made within this Aviva pension would in my opinion, most likely, have been made 21 days earlier than they actually were.

My final decision

I am upholding this complaint and require Mattioli Woods PLC to calculate and pay redress in line with the instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 September 2024.

John Rogowski
Ombudsman