

## Ombudsman's Determination

Applicant	Mr T and Mr T ( <b>the Applicants</b> )
Scheme	Hursley Hill Garage (Bristol) Limited Pension Scheme ( <b>the SSAS</b> )
Respondent	Mattioli Woods plc ( <b>Mattioli Woods</b> )

## Outcome

1. I do not uphold the Applicants' complaints, and no further action is required by Mattioli Woods.

## Complaint summary

2. The Applicants as beneficiaries of the SSAS have raised a complaint of negligent misstatement against Mattioli Woods. They assert that their reliance on Mattioli Woods' negligent misstatement has resulted in them suffering a detriment as the SSAS has incurred a financial loss and they have also suffered distress and inconvenience.

## Background information, including submissions from the parties

3. Flowers Hill (**the Property**) was purchased by the Applicants' Self Invested Personal Pension (**SIPP**) in 2007. At the time the SIPP was administered by another company. In addition, the Applicants held the SSAS which was also administered by another company. The SSAS held one property, Bath Road that was opted to tax.<sup>1</sup>
4. In 2013 the administration of the SSAS was transferred to Mattioli Woods. In 2014, following discussions with Mattioli Woods, the Applicants transferred their SIPP arrangement to the SSAS. In August 2014, the Property was transferred in-specie to the SSAS<sup>2</sup>. The Applicants are Member-Trustees of the SSAS and Mattioli Woods is the professional Trustee.
5. The Applicants' company (**the Company**) rented the Property from 2007 to 2022.

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<sup>1</sup> The Option to Tax allows an entity to choose to charge value added tax (**VAT**). Doing so would allow the entity to recover VAT on related costs.

<sup>2</sup> This information is detailed on the Land Registry TR1 form.

6. The SSAS is governed by the Trust Deed and Rules dated 28 November 2018 (**the Rules**). Rule 6.2 states:

“Subject to subsection 33 of the Pensions Act 1995, no Trustee shall be liable for the consequence of any mistake or forgetfulness whether of law or fact of the Trustees, their agents, employees or advisers or of any of them or for any maladministration or breach of duty or trust whether by commission or omission except to the extent that it is due to his own personal conscious bad faith (or negligence in the case of a professional Trustee).”

7. In 2015, the SSAS held non-secured loan backs and rent arrears totalling £90,646.13. The rent arrears totalled £57,100.
8. On 15 January 2015, Mattioli Woods wrote to the Applicants following a meeting they had had late in the year before. The letter covered various points and in relation to the Property, Mattioli Woods said in summary:-
- As at 11 November 2014, the Property had rental arrears equating to £52,450 from the Company. As the Company was a connected party, if the rental arrears were not settled, there would be significant tax charges applied to the SSAS by way of an unauthorised payment.
  - At the meeting the Applicants had confirmed that work had been completed to the Property. The Applicants estimated that this work could total approximately £150,000 and they had since provided invoices detailing the work undertaken and the costs.
  - Noting that the invoices had already been paid by the Company, the monies could be used to offset rental arrears and/or the payment of the loan backs. It would require an invoice from the Company inclusive of VAT, in order to offset/reimburse these costs.
9. In October 2015, there were email exchanges between Mattioli Woods and the Applicants concerning the non-secured debts. During these exchanges Mattioli Woods said:-
- One of the Applicants had already provided the invoices for the development works which were settled by the Company. It still required an invoice from the Company for £90,646.13 dated on or prior to 5 April 2015.
  - VAT would need to be included on the invoice, but this could be reclaimed via the VAT return.
10. Following this, there were exchanges between Mattioli Woods and the Applicants concerning the invoice for the development works.
11. On 5 August 2016, Mattioli Woods reclaimed the VAT totalling £29,869 from His Majesty's Revenue and Customs (**HMRC**). HMRC repaid this sum on 28 December 2016.

12. In late 2017, the Applicants contacted Mattioli Woods to discuss further development works for the Property. This triggered a review of the matter. During this review Mattioli Woods realised that an error had been made and the Property should have been opted to tax before the VAT reclaims were submitted to HMRC.
13. On 1 December 2017, Mattioli Woods telephoned one of the Applicants to inform him of the mistake.
14. On 3 January 2018, Mattioli Woods emailed the Applicants to confirm the position concerning the error in reclaiming the VAT from HMRC, and the options they had to rectify this issue. These were:
  - the Property could be opted (it may have been possible to belatedly opt based on the correspondence and intention for the Property in 2015) and rent charged with VAT from that date; or
  - the Property could remain exempt from VAT. This would have meant the SSAS' VAT registration needing to repay the VAT recovered erroneously. It had calculated the repayment within the registration as £31,153.
15. On 22 January 2018, the Applicants emailed Mattioli Woods and informed it that they did not authorise it to take any payments from the SSAS' bank account to repay the VAT to HMRC.
16. This resulted in further exchanges between the Applicants and Mattioli Woods concerning this issue and the options the Applicants had in this regard.
17. On 15 October 2018, Mattioli Woods wrote to the Applicants and said in summary:-
  - It had done all it could on behalf of the SSAS, so the only option was for the VAT to be returned to HMRC. The SSAS should never have received the VAT, and although it had confirmed it would set the SSAS back into the correct position with regards to any charges incurred from the erroneous reclaim of the VAT, there was categorically no prospect of Mattioli Woods funding a payment that it had no liability for.
  - It appreciated that this was something that had already been discussed at length but it felt that they were missing the underlying point. The SSAS would not be making a loss; it was currently (and incorrectly) in positive territory and earning interest on money that did not belong to it.
  - The only saving the SSAS could have made during the offset process would have been to process the invoice on a disbursements basis. This was something which the Applicants were reluctant to do. However, as a gesture of goodwill and in order to finalise the matter it had agreed to credit the difference (£4,042.45) by offsetting future fees.
  - As administrators and Trustees of the SSAS it had a duty to notify HMRC of the error, at which point HMRC would seek payment from the SSAS along with

interest due for the time in which the SSAS had held the funds. If payment was not made, then the SSAS would incur further costs and possible legal action from HMRC for the pursual of the payment of which Mattioli Woods would not be willing to cover.

- Its efforts to resolve this matter were being done to help them and the SSAS avoid the costs that would arise if they continued down the path they appeared to be pursuing.
  - It could not stress enough how serious this could be for the SSAS if payment was not made. Its next step as administrator of the SSAS was to notify HMRC of the position and expect to receive HMRC's request for payment in due course. If they could reach agreement as to how this situation could be resolved by close of business on 19 October 2018 then the situation could be averted.
18. Subsequently, the Applicants made a complaint to Mattioli Woods concerning the repayment of the VAT as they believed the repayment should have been made by Mattioli Woods and not taken from the SSAS.
  19. On 25 January 2019, Mattioli Woods replied to the Applicants' complaint. A summary of its response is detailed below, in paragraphs 20 to 36.
  20. At the time it took over the administration of the SSAS it was keen for the Applicants to bring the rental payments up to date. It should have reported the non-payment of rent to HMRC, which would have resulted in tax charges being applied to both the SSAS and the Company.
  21. In an attempt to help the situation and aid cash flow, it agreed to offset some of the arrears against development costs of the Property and planning was put in place to facilitate this. It asked the Applicants to provide it with copies of the development invoices settled by the Company and send it an invoice to the value of £90,646.13 dated on or before 5 April 2015. It noted that the development works had already taken place between 2007 and 2010, which was before the administration of the SSAS had transferred to Mattioli Woods.
  22. By October 2015, it had still not received the invoice from the Company, so it contacted the Applicants about it. It was during this email communication that it incorrectly informed them that VAT could be reclaimed from HMRC by completing and submitting a VAT return. This followed discussions about the invoice.
  23. The Applicants subsequently sent it an invoice for £140,924.94 plus VAT of £28,188.59. The intention to offset the Company invoice in relation to the development work on the Property was confirmed in a Trustees' minute which it had sent to them to sign and return on 4 January 2016.
  24. Regrettably, it took until 6 August 2016 for it to reclaim the VAT from HMRC, due to a change of administrator and the VAT being missed. HMRC initially refused to pay the reclaimed amount as the VAT had not been declared on the Property VAT output

returns and so could not be processed. This resulted in further correspondence with them about this issue.

25. After discovering the mistake in reclaiming the VAT from HMRC, it provided the Applicants with several options so the position could be corrected.<sup>3</sup> This resulted in further correspondence with the Applicants about this issue.
26. On 19 October 2018, the Applicants told it that had they known the VAT could not have been claimed, the invoice would not have been issued and the outstanding rent and amount due on the loans would have been paid.
27. After taking into account the level of arrears accrued at the time and given the clear and persistent requests for payment of the rent arrears and loan backs ahead of the offset, it was clear they were unwilling to make these payments from the Company. Had funds been available, the arrears would not have accrued in the first place.
28. Following submission of the correction notice to HMRC, HMRC confirmed that the incorrectly claimed VAT must be returned to it as soon as interest and charges had been calculated. The final figures were still being calculated and those would be sent to the Applicants upon receipt, along with a formal request from HMRC for the monies to be repaid.
29. It was clear that it had made a mistake when it told the Applicants that VAT could be reclaimed. This was not something it had done deliberately. It was a genuine human error that was realised sometime after the event had taken place. Since this time, it had been trying to find a resolution that the Applicants were happy with.
30. Several discussions and meetings had taken place with the Applicants and the Applicants' accountant (**the Accountant**), and it noted that the Accountant agreed with its assessment of the position. The Accountant had also confirmed to the Applicants that the funds needed to be repaid to HMRC.
31. It accepted that this situation had caused significant upset and inconvenience and had tried to offer sensible and realistic solutions to resolve the issue. However, it would not pay HMRC the full amount owed by the SSAS as it had never been the intention of the SSAS to opt the Property to tax.
32. By returning the funds to HMRC, the SSAS would not be financially impaired in any way as it would simply be returning funds which should not have been reclaimed in the first place. As a result of the error, the SSAS had benefitted from a significant sum of monies it was not entitled to.
33. The Applicants had to also appreciate that there could have been serious consequences to the SSAS if the monies were not repaid. It was important to note that the invoicing for the property development would still have had to be done, as the work paid for was in relation to the development of the Property held in the SSAS.

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<sup>3</sup> Mattioli Woods listed these options and the Applicants' responses to those options.

Had the completed work not been invoiced, this would have resulted in a large tax charge against the SSAS.

34. To date, it had offered to offset fees to the value of £4,042.25,<sup>4</sup> along with all costs and interests charged by HMRC.
35. Until the mistake was made, the Applicants had a good relationship with it and it considered the Applicants valuable clients. The last thing it wanted to happen was for things to go wrong and it was genuinely sorry for the position the Applicants were in.
36. It was keen to find a workable solution and wanted the Applicants to consider the following in full and final settlement of their complaint:-
  - It would pay a sum of £4,042.25 into the SSAS as opposed to offsetting future fees.
  - It would pay HMRC interest and charges upon receipt of the request for such payments.
  - It would personally pay the Applicants £1,000 each.
  - It would arrange for the total VAT due following HMRC's audit (minus interest and fines) to be paid from the SSAS upon receipt of the request for payment.
  - It would cover all associated time costs attributed to resolving this issue.
  - It would not pay the full VAT refund to HMRC.
37. On 27 February 2019, the Applicants replied to Mattioli Woods and said in summary:-
  - They were extremely disappointed to have been placed in the position they were currently in. At all times they relied upon the professional services provided by Mattioli Woods. They considered that Mattioli Woods failed to meet the required standards and this resulted in financial damage.
  - They were prepared to issue proceedings for negligence and to refer the matter to the Financial Ombudsman Service.
  - Mattioli Woods had admitted liability, so any claim of negligence would comprise an exercise in the assessment of quantum. They reserved their position in this respect. However, for insurance purposes, they anticipated that any claim would be less than £50,000.
  - Mattioli Woods was responsible for this issue. So, in the circumstances, Mattioli Woods was required to correct the position entirely. If Mattioli Woods was not prepared to do so, they anticipated it would lead to a dispute which would inevitably cause all concerned to incur significant legal fees.

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<sup>4</sup> This amount was the savings that would have been made had the disbursements invoice been made.

- The proposals put forward by Mattioli Woods to date were not acceptable as they did not feel they reflected the true damage. Unless Mattioli Woods confirmed within the next 14 days that it would repay the amount required by HMRC and their legal costs, they would issue a formal letter of claim.

38. Subsequently:-

- Mattioli Woods repaid the VAT to HMRC from the SSAS' bank account.
- There were further exchanges between the Applicants and Mattioli Woods.
- The Applicants referred their complaints to The Pensions Ombudsman (**TPO**).

39. The Applicants and Mattioli Woods provided further submissions to TPO, and these have been summarised below.

### **Summary of the Applicants' position**

40. The Applicants submitted:-

- They do not have a copy of the relevant Property questionnaire or equivalent.<sup>5</sup> There was a discrepancy with the lease and the original SIPP which resulted in the Company underpaying rent. Mattioli Woods notified the Company of the arrears, (the existence of which was not known until then), but was also aware that the Company had incurred costs refurbishing the Property which, in turn, increased the value of the Property.
- The guidance given by Mattioli Woods was that the refurbishment costs could be offset against the arrears and that this would resolve the situation. They and the Company followed that guidance.
- Mattioli Woods asked for invoices to evidence the refurbishment work and to provide an invoice from the Company to the SSAS for the total cost of the works. Mattioli Woods confirmed (in response to being specifically asked) that VAT should be applied to that invoice and that it would be reclaimed by the SSAS. It later transpired that the SSAS was not registered for VAT resulting in the reclaimed VAT having to be repaid to HMRC.
- They acted solely in reliance on Mattioli Woods' guidance. Mattioli Woods was under a duty to give correct guidance.
- VAT was not charged on the rent. They assume this was because neither the original SIPP nor SSAS chose to elect the Property for VAT. This would have been a decision by the SIPP/SSAS, not them or the Company. The Company has always been VAT registered.

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<sup>5</sup> The Property questionnaire is a document that should have been completed by the Applicants upon the transfer of the Property to the SSAS. This would have highlighted whether or not the Property was opted to tax.

- Mattioli Woods has admitted that it made a mistake and provided incorrect guidance in relation to the SSAS. Mattioli Woods breached its duty of care to them and fell short of the standard required of a specialist firm administering and providing guidance on such schemes.<sup>6</sup>
- They relied and acted on the guidance Mattioli Woods gave them. It was reasonable for them to have done so given Mattioli Woods' professional status. Had Mattioli Woods correctly guided them in relation to the VAT, they would not have followed the mechanism of payment set out by Mattioli Woods. Instead, they would have directed the Company to pay the arrears owed to the SSAS. This would have avoided the SSAS incurring VAT costs, which they understood had been paid to HMRC. In addition, the SSAS also failed to charge VAT on invoices to Mattioli Woods, which they understood totalled £4,042.25.
- They had incurred time and financial costs in pursuing this matter, along with a significant degree of stress and anxiety. They rely on the SSAS for their retirement fund. To have the value of the SSAS significantly diminished and for it to be subject to a high degree of uncertainty solely due to Mattioli Woods' error had caused great anxiety.
- They also had to take a significant amount of management time from their business and experienced the inconvenience of several meetings with their accountant and solicitor. They consider that compensation of £3,000 would be an appropriate additional remedy in this respect.
- They would like to be restored to the position they would have been in as beneficiaries if it were not for Mattioli Woods' negligent guidance. They were seeking damages in the sum of £39,911.25.

### **Summary of Mattioli Woods' position**

41. Mattioli Woods provided copies of the establishing documents of the SSAS and copies of correspondence between itself and the Applicants concerning this issue. It also submitted:-

- It upheld the Applicants' complaints and always agreed that an administrative mistake had been made because of genuine human error. This was not something it had done deliberately. The error was realised sometime after the event had taken place, and since then, several discussions had taken place with the Applicants and the Accountant, who agreed with its (Mattioli Woods') assessment of the position.
- It accepted the situation had caused upset and inconvenience and it had tried to offer sensible and realistic solutions to resolve the issue. However, it would not pay HMRC the full amount owed by the SSAS as it had never been the intention of the SSAS to opt the Property to tax. By returning the funds to HMRC, the SSAS

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<sup>6</sup> The Applicants referred to PRIN 2.1.1(2) of the Financial Conduct Authority's Handbook.



had not been financially impaired as it had simply returned funds which should not have been reclaimed in the first place.

- Importantly, the invoicing for the property development would still have had to be done, as the work paid for was in relation to development of the Property held in the SSAS. At the point the complaint was made, it had offered to offset fees to the value of approximately £4,042.25 along with all costs and interest charged by HMRC. An additional sum of £1,000 was offered to each of the Applicants and it agreed to cover all time costs associated with resolving this issue. However, the Applicants rejected this offer.
- It noted that the Applicants wanted to be put back into the position they would have been in as beneficiaries if it were not for its negligent advice. However, it wanted it to be noted that the complaints did not concern the financial advice they received, but about an error made with an administrative process.
- It is not a tax adviser so could not advise the Applicants on the VAT treatment, to which the Applicants sought advice from their accountant at the time.
- It had tried to work alongside the Applicants to reach a mutually agreed solution, but to date, no agreement had been reached.

## **Adjudicator's Opinion**

42. The Applicants' complaints were considered by one of our Adjudicators who concluded that no further action was required by Mattioli Woods. The Adjudicator's findings are summarised below, in paragraphs 43 to 55.
43. Mattioli Woods had agreed that it provided the Applicants with misinformation in relation to reclaiming the VAT concerning repairs at the Property, so there was no dispute that a problem had occurred.
44. For a claim of negligent misstatement to be successful, certain circumstances must be satisfied, including, in summary:-
  - Mattioli Woods owed the Applicants a duty of care;
  - Mattioli Woods breached that duty;
  - It was reasonably foreseeable that the Applicants would rely on the incorrect information; and
  - The Applicants relied on the incorrect information to their detriment.
45. The measure of loss for negligent misstatement is to seek to put the Applicants in the position they would have been in had the negligent misstatement not been made.
46. In the Adjudicator's opinion, as the professional Trustee of the SSAS, Mattioli Woods owed the Applicants as members of the SSAS a duty of care, to provide them with

correct information concerning whether or not VAT could be reclaimed from HMRC, for the costs of the refurbishment works the Company did to the Property.

47. It was also the Adjudicator's view that there had been a breach of the duty of care as information Mattioli Woods provided to the Applicants concerning the VAT being able to be reclaimed in this regard, was incorrect and would not have been made by someone exercising reasonable care.
48. However, it was the Adjudicator's view that it was not reasonable for the Applicants to have relied on what Mattioli Woods had informed them, concerning the VAT being reclaimed from HMRC. This was because the Applicants owned the Property prior to it being transferred in specie to the SSAS from the SIPP.
49. It was unfortunate that neither the Applicants nor Mattioli Woods were able to provide a copy of the Property questionnaire as this would have highlighted whether or not the Property had been opted to tax. Nevertheless, in the Adjudicator's view, as the Property was previously owned by the Applicants prior to it being transferred to the SSAS, on the balance of probabilities, they would have been aware that the Property was not opted to tax, especially as they owned the Property in their own right and they sold it to the SSAS, which made it a connected party transaction.
50. In addition, the Applicants' business rented the Property from 2007 to 2022, and VAT was never added to the rent.
51. Because of this it was the Adjudicator's view that the Applicants should not have accepted what Mattioli Woods had said at face value. In addition, as Trustees of the SSAS, they also had a duty of care to ensure that the SSAS was managed properly, ensuring that it could reclaim VAT from HMRC before any such claim was made.
52. It was also the Adjudicator's view that the SSAS had not incurred a loss as the Applicants had claimed. This was because the Property was never opted to tax. So, the SSAS was never entitled to the VAT it had received from HMRC, in relation to the Property. Mattioli Woods was correct to repay the VAT to HMRC from the SSAS' bank account as the SSAS had indeed received monies that it was not entitled to. The SSAS can reclaim the monies owed directly from the Company.
53. Although it was the Adjudicator's view that neither the Applicants nor the SSAS suffered a detriment as a result of the incorrect information the Applicants received from Mattioli Woods, the provision of incorrect information by Mattioli Woods amounted to maladministration.
54. In recognition of its maladministration Mattioli Woods offered:-
  - A payment of £4,042.25 into the SSAS as opposed to offsetting future fees.
  - To pay HMRC interest and charges upon receipt of the request for repayment of the VAT.

- To pay the Applicants £1,000 each for the distress and inconvenience this matter caused.
  - To cover all time costs associated with resolving this issue.
55. In the Adjudicator's view, Mattioli Woods' offer was reasonable in the circumstances. So, the Applicants could contact Mattioli Woods directly, if they wished to accept its offer.
56. Following the Opinion, there were further exchanges between the Adjudicator and the Applicants concerning the contents of the Opinion.
57. The Applicants also queried whether the Adjudicator had considered one of the issues they had raised as part of their complaint which was Mattioli Woods' failure to elect the Property for tax. In relation to this issue the Applicants said in summary:-
- The position is that the SSAS owned two properties, the Property and a site at Bath Road.
  - Mattioli Woods elected the Bath Road site for VAT but did not do the same for the Property. That failure to elect the Property (and subsequently to assume that it was elected and to give the advice it did) is fundamental to the complaint and what has led to the loss to the SSAS.
  - No explanation or justification has been given for the failure to elect the Property for VAT, nor why one SSAS property was elected but the other not. The only conclusion that could be reached was that it was an oversight on the part of Mattioli Woods for which the SSAS, and they, had now suffered a loss as a result.
  - It is that failure to elect the Property to tax which they did not believe had been addressed in the Adjudicator's Opinion.
58. In response to the Applicants, the Adjudicator quoted the following from the Applicants' submissions to TPO:-
- “The complaint relates to incorrect advice provided by [Mattioli Woods] in relation to the Scheme. In particular [Mattioli Woods] incorrectly advised [us] that VAT was recoverable in relation to the Property. However, contrary to that advice, the Property was not suitably VAT-elected and the Scheme has been required to pay an avoidable VAT bill.”
59. The Adjudicator also said in summary:-
- The complaint they had raised concerned the incorrect information Mattioli Woods had given them in relation to being able to reclaim VAT to the SSAS.
  - Although, as part of their submissions to TPO, they said: “contrary to that advice, the Property was not suitably VAT-elected”, they had not raised a complaint concerning Mattioli Woods' failure to elect the Property for tax, so this was not considered as part of the Adjudicator's investigation.

- If they wished to raise this issue, they would first need to do so with Mattioli Woods and if they were unhappy with its response in this regard, they could refer the matter to TPO as a new complaint.
60. Subsequently, the Applicants confirmed to the Adjudicator that they did not accept her Opinion and they were also dissatisfied with the Adjudicator's assessment of their complaints. They requested their complaints be referred to me. In summary they said:-
- They believe the Adjudicator failed to address a fundamental part of their complaints. The issue of the non-election to VAT was raised in the original complaint as confirmed by the extract the Adjudicator had quoted from their submissions to TPO.
  - It is clear that the complaint relates directly to Mattioli Woods' failure to provide advice in relation to the election of the Property for VAT, and that as a result, advised that VAT was recoverable. One follows from the other and must be considered as a whole comprising the advice Mattioli Woods gave or did not give in relation to the VAT solution they were offering them.
  - To have correctly advised them, Mattioli Woods should have identified that the Property was not registered for VAT and advised that it should be in order to achieve the aim it had proposed.
  - They do not accept that the complaints can be read in the narrow way the Adjudicator had interpreted them. The complaints relate to the advice (including the lack of advice or inappropriate advice) given by Mattioli Woods relating to how to deal with VAT in relation to the Property/SSAS. That was clear from the outset and in their recent exchanges.
61. As the Applicants did not accept the Adjudicator's Opinion, the complaints were passed to me to consider. I agree with the Adjudicator's Opinion, and note the additional points raised by the Applicants.

### **Ombudsman's decision**

62. The Applicants have said that they believe that the Adjudicator did not consider a fundamental aspect of their complaints, that is, that Mattioli Woods had failed to opt the Property for tax. They also assert that the Adjudicator should not have interpreted their complaints in the narrow way that she has.
63. I disagree with the Applicants' assertions and do not agree that Adjudicator's interpretation of the complaints was narrow or that she had failed to consider a fundamental aspect of their complaints. I consider that the two issues: (i) Mattioli Woods providing the Applicants with incorrect information concerning the SSAS being able to reclaim the VAT from HMRC; and (ii) Mattioli Woods' failure to opt the Property to tax are two very distinct complaints.

64. In correspondence to the Applicants and to TPO (which TPO shared with the Applicants), Mattioli Woods said it had never been the intention of the SSAS to opt the Property to tax (see paragraph 31 and the second bullet point of paragraph 41 above). I consider that if it was the intention of the Applicants to raise the issue of Mattioli Woods failure to opt the Property to tax as part of their complaints, they would have explicitly said so in their submissions to TPO.
65. I can see no evidence from the submissions the Applicants provided to TPO, prior to the Adjudicator's Opinion, that it was their intention to also raise the issue concerning Mattioli Woods' failure to opt the Property to tax, as part of their complaints. Nor could I see that they had previously raised this issue with Mattioli Woods. I note the details of the complaint to TPO state as follows:

"This complaint relates to incorrect advice provided by [Mattioli Woods] in relation to the [SSAS]. In particular MW incorrectly advised [the Applicants] that VAT was recoverable in relation to the Property. However, contrary to that advice, the Property was not suitably VAT-elected and the [SSAS] has been required to pay an avoidable VAT bill. (...)

Chronology:

(...) At all relevant times the [SSAS] contained two properties:

- Bath Road (elected to tax)
- Flowers Hill (not elected to tax)"

66. Nothing in the details of the complaint submitted to TPO refers to a failure to opt the Property to tax. Indeed, the complaint states that: "had [Mattioli Woods] correctly advised [the Applicants] that VAT was not recoverable in relation to the Property then they would not have followed the mechanism of payment set out by [Mattioli Woods]. Instead they would have directed [the Company], a company of which they have control, to pay the arrears owed to the [SSAS]. This would have avoided the incurrence of VAT costs by the [SSAS]."
67. The mechanism of payment referred to was the offsetting of the non-secured loan backs and rent arrears totalling £90,646.13 in 2015 (including c.£57,000 in rent arrears) against the development costs on the Property for which an invoice was sent by the Applicants in the sum of £140,924.94 plus VAT in December 2015. To be clear, the Applicants' position was that had Mattioli Woods not made the incorrect statement they would have taken a course of action based on the Property *not* being opted for tax, rather than that they would have given an instruction for the Property to be opted for tax.
68. As such, I find that the Applicants' complaint was not a complaint about Mattioli Woods failure to opt the Property to tax. I have not investigated such complaint and make no determination about such complaint as I find that no such complaint was made.

69. The complaint that was made as set out above is that Mattioli Woods incorrectly advised that the VAT on the Property development costs was reclaimable and that had Mattioli Woods correctly advised the Applicants that it was not, the Applicants would have procured that the Company pay the arrears it owed to the SSAS instead of off-setting those arrears against the development costs that had been paid by the Company.
70. I do not see any validity in the complaint: I do not see that the off-setting process could change the respective mutual liabilities of the SSAS and the Company. It is a given that the liabilities could only be offset because these were mutual liabilities of the SSAS and the Company. The Applicants were members and trustees of the SSAS and had control of the Company so could only have acquiesced in the offsetting mechanism on the basis that they acknowledged and agreed that the loan back and rent arrears were owed by the Company to the SSAS and that the Property development costs were owed by the SSAS to the Company.
71. If the Company had paid the arrears to the SSAS, the SSAS would have still owed the Company for the Property development costs (plus VAT). If the Property was not opted to tax, it must be right that it could not reclaim VAT for the Property development costs and, similarly, that it was not required to charge the Company VAT on the rent (although I make no determination as to the application of VAT). I appreciate that the Property development costs exceeded the value of the rent arrears and loan backs accrued at the time, but they were accrued costs and arrears and did not arise in consequence of any advice provided by Mattioli Woods.
72. I also find that the Applicants knew or ought reasonably to have known whether the Property was opted to tax (or elected to tax) or not. The Property had been owned by the SIPP and transferred to the SSAS, before Mattioli Woods were involved, as a transfer in specie, and the Applicants would have needed to make decisions about whether it was, should remain or become opted to tax in completing the Property questionnaire at the time. The SSAS also held another Property that was opted to tax.
73. The Applicants were members and trustees of the SSAS and therefore knew or ought to have known that the Property was not opted to tax in 2015. They also controlled the Company and ought to have known whether VAT was payable on the rent it paid to the SSAS. As such, I find the Applicants could not reasonably have relied on the statement of Mattioli Woods as to whether VAT could be reclaimed by the SSAS on the recharging of the Property development costs by the Company.
74. I find that Mattioli Woods made a mistake in reclaiming VAT on the Property development costs from HMRC on behalf of the SSAS but I also find that it had no option but to notify HMRC and repay the reclaimed amount once it realised the mistake and I find the Applicants did not suffer a loss as a result. I find that Mattioli Woods was correct to return the erroneously claimed VAT. This is because the SSAS was never entitled to receive the VAT and Mattioli Woods' failure to return the money to HMRC would have caused the SSAS to keep monies it was never entitled to.

75. I also find Mattioli Woods made a mistake in telling the Applicants that such VAT could be reclaimed but I find that the Applicants did not incur any additional expense or liabilities in reasonable reliance on that statement that they would not otherwise have incurred if the statement had not been made because the VAT that was payable and that could be reclaimed by the SSAS did not change, nor did the mutual liabilities of the SSAS and the Company.
76. I do not uphold the Applicants' complaints.

**Camilla Barry**

Deputy Pensions Ombudsman  
29 January 2026