

Ombudsman's Determination

| | |
|-------------|---|
| Applicant | Mr Y |
| Scheme | Foley Steels Executive Pension Scheme (the Scheme) |
| Respondents | Mattioli Woods plc (MW) |

Outcome

1. Mr Y's complaint against MW is partly upheld, but there is a part of the complaint I do not agree with. MW have already complied with the proposed action in the Adjudicator's Opinion and therefore no further action is required.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that MW has charged and are continuing to charge the Scheme unjust and unreasonable fees for administrative and corporate Trustee services without an agreement being in place and even after MW had been removed as a Trustee in July 2016. Mr Y has also complained that he has been appointed as Scheme Administrator without his knowledge or authority.

Background information, including submissions from the parties

4. The Scheme is a small self-administered pension scheme which was established by Mr Y in 1987. The original corporate Trustee was Robinson Gear (Management Services) Limited (**Robinson Gear**) with Mr Y and another member also trustees of the Scheme.
5. In March 2015 MW sent Mr Y a new Trust Deed and asked for this to be signed and returned. MW say this was never returned.
6. In July 2015 SSAS Reviews Limited (**SSAS Reviews**) contacted MW and asked for copies of its files as Mr Y had asked them to review the administration of the Scheme. MW say the information was provided straight away.
7. On 26 May 2016 SSAS Reviews sent a letter to MW enclosing a Deed of Appointment and Removal (**the Deed**) to appoint SSAS Reviews and remove MW as

a Trustee and Scheme practitioner. The Deed was signed by MW and returned to SSAS Reviews on 13 June 2016.

8. Mr Y is represented by SSAS Reviews who say that according to Mr Y, the only fee agreement that the Scheme or the Sponsoring Employer had entered into was with Ashcourt Rowan Administration Limited (**ARAL**) which was dissolved in June 2016. Robinson Gear was a dormant subsidiary of ARAL and provided corporate trustee services to the Scheme administered by ARAL. Both ARAL and Robinson Gear were acquired by MW in 2013.
9. Mr Y's complaint is that the agreement was with ARAL to provide administration services and not with MW to provide a Scheme Practitioner service. If MW were not continuing the services previously provided and agreed with ARAL and no new agreement was entered into, then they should not have engaged in any work for the Scheme or issued any invoices as a result. The Sponsoring Employer has settled a number of MW's invoices since 2013 under the threat of legal action by MW if they were not paid.
10. Robinson Gear and MW jointly executed a deed to formally remove themselves as a Scheme Administrator and Corporate Trustee on 20 June 2016 and there should be no further work required by MW to complete the takeover of administration.
11. Mr Y's further complaint is that up until SSAS Reviews Limited replaced him as the Scheme Administrator, he was completely unaware that he was registered with HMRC as the Scheme Administrator (as defined by Section 270 of the Finance Act 2004) and out of a total of three Trustees for the Scheme, he ended up as the only one registered.
12. Mr Y is aware that as a Trustee he was jointly responsible as an Administrator of the Scheme, but he is adamant that he has never made the required declarations to HMRC himself, or authorised anyone else to make those declarations on his behalf, or had any knowledge of the online account held with HMRC under the Scheme Administrator ID.
13. Mr Y does not believe that MW has or ever had a right to raise fees against the Scheme as they have provided a different service to the one that was previously agreed with ARAL.
14. MW say that the Deed of Appointment and Removal was signed in August 2016 and the change updated online. Although Mr Y believes he did not give permission for MW to act as administrator and practitioner the establishing deed proves otherwise. If MW had not continued in the role of practitioner, the Scheme would not be compliant and this could have resulted in significant tax charges being levied.
15. There has been significant correspondence around the level of fees and there are invoices amounting to £4,868 outstanding. These are:-

PO-17725

| Invoice No | Date | Description | Amount | VAT | Subtotal | TOTAL |
|------------|----------|---------------------|--------|-----|----------|--------------|
| | | Payroll | | | | |
| 18753 | 31.12.16 | Administration | 170 | 0 | 170 | |
| 18753 | 31.12.16 | Core Administration | 1600 | 320 | 1920 | |
| 18753 | 31.12.16 | Property Admin | 880 | 176 | 1056 | 3146 |
| | | 2016 Lifetime | | | | |
| 18293 | 30.11.16 | Allowance Update | 75 | 15 | 90 | |
| 18293 | 30.11.16 | Takeover | 1360 | 272 | 1632 | 1722 |
| | | | | | | £4868 |

16. The annual administration charges are charged in advance and invoice 18753 above is for the period 1 January 2017 to 31 December 2017.
17. MW say as a gesture of goodwill and in an attempt to move the situation forward, it proposed to pro rata the core administration fee and property administration fee and refund any full months remaining once the takeover had been completed. MW also agreed to credit the payroll administration fee as Mr Y is not receiving an income payment at present. Under the terms and conditions the residual cash will not be transferred to the new provider until the outstanding fees have been settled.
18. MW also say the takeover has not been completed as the property held in in the pension scheme has not been re-registered in the name of the new trustees and HSBC have not been advised of the changes. This is something that the new administrator should complete.

Adjudicator's Opinion

19. Mr Y's complaint was considered by one of our Adjudicators who concluded that some further action was required by MW. The Adjudicator's findings are summarised below.
20. Mr Y's complaint is primarily concerned with the level of fees that he is being asked to pay following the transfer of the Scheme to SSAS Reviews. The second part of Mr Y's complaint concerning the declarations made in respect of the online account with HMRC is easier to deal with and the Adjudicator dealt with that aspect first.
21. MW say that the initial Trust Deed appointed Mr Y and the other member as the Scheme Administrators. The Trust Deed then authorised Robinson Gear to act as the practitioner on behalf of the Scheme. However, MW have not been able to provide a copy of the establishing deed and there is no reference to these appointments in the Definitive Deed dated 14 September 1988. MW have provided a copy of ARAL's Terms of Business which say:

“These Terms set out the basis on which Ashcourt Rowan Administration Limited ("ARAL") will provide practitioner and trustee services for its clients (each the "Client") as trustees and sponsoring employers of a member-directed registered scheme (the "Scheme").

...

These Terms and (sic) shall remain valid until replaced, by ARAL or until termination in accordance with the termination clause below.”

The Adjudicator considered, on the balance of probabilities, that ARAL were appointed to provide both trustee and practitioner services to the Scheme and that Mr Y and his fellow member were appointed as Scheme administrators.

22. As Scheme practitioner MW had ensured that the Scheme complied with the requirements of the Finance Act 2004 and notified HMRC that Mr Y was the Scheme administrator. The Adjudicator did not consider that action unreasonable and that this element of the complaint should not be upheld.
23. The first part of Mr Y’s complaint concerns the fees that MW have charged which he considers are unjust and unreasonable. Mr Y considers that he does not have an agreement with MW for administrative and corporate Trustee services and that there was certainly no agreement in place after MW was removed as a Trustee in June 2016.
24. On the first of these points the Adjudicator considered that there was an agreement with MW to provide corporate Trustee and administrative services as the ARAL agreement remained in place even though the name of the provider had changed. MW had provided a copy of a letter issued to Mr Y on 27 June 2014 by City Trustees (part of the MW group) confirming the acquisition of ARAL and giving 30 days’ notice of a change in the fee structure. The letter said that as Mr Y’s fee structure was based on a similar tariff to the City Trustees model, the fee structure going forward would be based on its standard SSAS fee structure from 1 August 2014. A copy of the fee tariff was enclosed. Mr Y was therefore subject to the new fee structure and the ARAL Terms of Business remained in place from 1 August 2014.
25. Mr Y has argued that as the agreement was terminated in June 2016 then any fees invoiced from that date are not payable. The Adjudicator reviewed the ARAL agreement and found the following sections were relevant:

“Remuneration

ARAL shall be entitled to the payment of its Charges as set out in its fee schedule and time-cost fee schedule, which form part of these Terms.

The Charges for a Scheme Year shall be invoiced annually on (or, at ARAL’s discretion, after) the first day of that Scheme Year. On termination of services

during a Scheme Year, the Client will be entitled to no rebate of any Charge already made for that Scheme Year unless services are withdrawn by ARAL.

All Charges are subject to VAT at the applicable rate.

...

Termination

Any party may terminate this Agreement with effect from the date of expiry of three months' notice in writing given to the other parties or such earlier date as the other parties may agree in writing.

Termination of this Agreement shall be without prejudice to any rights or obligations of any party."

26. The Adjudicator considered that it was clear from the above section that the agreement could be terminated by either party on the expiry of three months' notice. The Adjudicator considered that the letter issued by SSAS Reviews on 26 May 2016 was notice of Mr Y's decision to terminate the agreement and MW's signing of the Deed and letter of 13 June 2016 acknowledged the termination. Therefore the effective date of termination of the agreement, allowing for the three months' notice period, was 26 August 2016.
27. MW, however, continued to issue invoices after 26 August 2016 and the Adjudicator did not consider that all of these are valid. Looking at these individually, invoice 18753 was issued on 31 December 2016 in respect of the standard fee for 2017. But the ARAL agreement had already been terminated by that date and the Adjudicator considered invoice 18753 to be invalid and it was unreasonable to expect Mr Y to pay this.
28. Invoice 18293 was issued on 30 November 2016 and was in respect of an update on the 2016 lifetime allowance changes and for work associated with the takeover by SSAS Reviews. It was not clear to the Adjudicator when the update on the lifetime allowance changes was issued but if this was after 26 August 2016 then it should not be payable. In addition MW had not provided a breakdown of the charges incurred for the takeover. Therefore the Adjudicator considered that MW should provide a breakdown and timeline of the charges incurred for the takeover and agree the amount payable with Mr Y. The Adjudicator also considered that any agreement on the amount payable should not hold up the transfer of the balance of Mr Y's account to SSAS Reviews as there is nothing in the ARAL agreement that allowed for this.
29. MW accepted the Adjudicator's Opinion and agreed to cancel invoice 18753 and to write off the fee for the lifetime allowance update but not the fee for the takeover by SSAS Reviews.
30. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I

agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr Y for completeness.

31. Mr Y says he does not accept that MW have the right to charge him a takeover fee of that size and he has not received a copy of the fee agreement that MW claim was sent to him when it purchased Robinson Gear. Furthermore, neither he nor MW have a copy of the original agreement that was signed many years ago.

Ombudsman's decision

32. Mr Y has raised an objection to the size of the takeover fee and says that he has not received a copy of the fee agreement that MW claim was sent to him when Robinson Gear was purchased. MW acquired ARAL and Robinson Gear in May 2013 and issued the updated terms on 27 June 2014 (see paragraph 24 above). Although Mr Y says he never received the updated fee agreement, for whatever reason, on the balance of probabilities, I find that it was issued and therefore Mr Y is subject to the fees for the takeover and indeed these follow on from the original ARAL agreement.
33. MW did carry out some work in respect of the transfer or takeover by SSAS Reviews and this agreement was not terminated until August 2016. Mr Y should therefore meet the fees incurred for the takeover.
34. As MW have agreed to cancel invoice 18753 and reduce part of invoice 18293 in relation to the update on the lifetime allowance the following direction has been complied with and is repeated here for completeness only.
35. Therefore, I uphold part of Mr Y's complaint.

Directions

36. To put matters right MW should within 21 days of the finalisation of this complaint cancel invoice 18753 and provide a further breakdown and timeline of the charges incurred under invoice 18293. If any of the charges under invoice 18293 occurred after the ARAL agreement was terminated on 26 August 2016 then these should also be cancelled.

Karen Johnston

Deputy Pensions Ombudsman
16 March 2018