

Ombudsman's Determination

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| Applicant | Mrs W |
| Scheme | Pilgrim SIPP (the SIPP) |
| Respondent | Mattioli Woods Plc (Mattioli Woods) |

Outcome

1. I do not uphold Mrs W's complaint and no further action is required by Mattioli Woods.

Complaint summary

2. Mrs W's complaint concerns the fees applicable to the SIPP. She believes that an incorrect charge has been applied to the SIPP, which has resulted in a financial loss. She is also concerned about potential fees that she or her beneficiaries could be charged in the future and would like Mattioli Woods to provide her with a "viable means" to leave the SIPP.

Background information, including submissions from the parties

3. In June 2010, Mrs W established the SIPP following a pension sharing order (**PSO**). Mattioli Woods did not advise Mrs W in relation to the SIPP. City Trustees (**the Administrators**), now part of the Mattioli Woods Group, were appointed by Bank of Scotland to take over the administration of the SIPP in 2012.
4. Mrs W has an asset in the SIPP that has a value and also an asset that has a nil value. She is currently being charged an annual core administration fee, and a multiple/bespoke asset fee, in relation to the SIPP.
5. On 13 June 2018, Mrs W wrote to the Administrators concerning the fees she was being charged for the SIPP. In the letter she said:

"I intend to challenge my need to pay a fee for zero holdings once these working syndicates have been sold...I cannot agree that [the Administrators'] fees are liable, on a technicality, when no real work is involved..."

6. Between 19 June and 14 August 2018, there were further exchanges between Mrs W and the Administrators concerning the fees charged in respect of the SIPP. The exchanges also concerned the options available to her in relation to her investments. During the same period, Mrs W raised a complaint about these issues.

7. On 14 August 2018, the Administrators sent Mrs W its final response to her complaint and said:

“We understand you are unhappy with the charges levied to your pension scheme as you don’t believe you should be charged for investments that have a nil value. To explain, the charges have been applied for the type of pension scheme and the number of individual assets held, rather than the value of the pension scheme itself. You are currently being charged an annual administration fee of £450 (plus VAT) and a multiple asset fee of £410 (plus VAT). The multiple asset fee covers the cost of holding more than one investment in your pension scheme – as you currently hold 9 separate investments and syndicates, this fee will continue to be charged regardless of the value of the investment themselves. The multiple asset fee will continue to be charged until such time as the investments are removed from the scheme...

As your complaint relates to the charges being levied to your pension scheme, we are not able to uphold it as charges have been levied correctly for the number of assets currently held. And until the number of assets is reduced, the charges will continue to be charged at the same level...”

8. Between 16 August 2018 and 30 September 2019, there were further exchanges between Mrs W and the Administrators concerning the same issues. This resulted in Mrs W referring her complaint to The Pensions Ombudsman’s Office (**TPO’s Office**).

9. As part of her submissions, Mrs W made the following comments:-

- She challenged the Administrators’ policy of charging fees on investments with a nil value, which have never given her any distribution and are not saleable or transferable.
- She had two working syndicates that were being marketed by the Administrators. However, there only needed to be one nil value holding in the SIPP for the Administrators to continue to charge her and keep the SIPP open until her death. The responsibility for paying the fees would then fall on her children and grandchildren.
- It seems “incredible” that the Administrators should contemplate charging her over £1,000 on investments with a nil value.
- She accepted that she had not suffered an actual financial loss because she had two working syndicates that produced distributions that went towards the SIPP’s

fees. She could potentially suffer a loss if the only assets in her SIPP had a nil value and administrative charges were applied for those.

- She did not dispute that the Administrators should charge administrative and multiple asset fees while she had working syndicates.
- She wanted the Ombudsman to direct that no fees were chargeable if the only investments in the SIPP had a nil value.

10. In response to Mrs W's complaint, Mattioli Woods provided a copy of the SIPP's Trust Deed and Rules (**the Rules**). It also provided copies of communications exchanged between Mrs W, Mattioli Woods, and the Administrators between 13 June 2018 and April 2019. Mattioli Woods made the following points:-

- The SIPP's terms and conditions (**T&C**) are set out in the Rules.
- Mrs W was being charged an annual core administration fee of £480 +VAT and an annual multiple/bespoke asset fee of £440 +VAT.
- She had two active property syndicates in her portfolio, Home Reversions and Ohmic House, managed by Custodian Capital Ltd (**CCL**). This was the reason the multiple/bespoke asset fee was being charged.
- In addition, she held the Dukes Equity syndicate, that was not being managed by CCL. Mattioli Woods valued this investment at nil at the time, as it believed the investment was likely to be liquidated without a value. This asset had no bearing on the fee that was being charged.
- Mrs W was also being charged an annual payroll fee until last year, when she stopped receiving income from her SIPP.

Adjudicator's Opinion

11. Mrs W's complaint was considered by one of our Adjudicators who concluded that no further action was required by Mattioli Woods. The Adjudicator's findings are summarised below:-

- Mrs W held assets in the SIPP that had a value. She accepted that she was being charged an annual multiple/bespoke asset fee on this basis. Mattioli Woods has confirmed that the investment, with a nil value, did not have a bearing on the fees Mrs W was being charged at the time, as the fees were fixed and not dependent on the number of assets held.
- The Adjudicator appreciated that Mrs W considered the Administrators should not charge her fees in future, if her remaining assets had a nil value, as the work required to administer the SIPP would be minimal. However, the fundamental purpose of the SIPP was to provide retirement provision by way of assets that increased in value through investment. It was therefore assumed that

administration and multiple asset fees would be charged throughout the life of the product. In the Adjudicator's view, there would be little purpose in retaining a SIPP with a nil value. However, it was for Mrs W to decide whether to continue with the SIPP and incur charges for assets that had no value.

- Mrs W had not suffered a financial loss and any loss she believed she would incur in future was speculative. Consequently, in the Adjudicator's view, the Ombudsman would not direct that the Administrators or Mattioli Woods waive the fees, based on a hypothetical loss.

12. Following the Adjudicator's Opinion there were further exchanges between Mrs W, my Office and Mattioli Woods, concerning:-

- The number of investments with values Mrs W had in the SIPP.
- Why Ohmic House was considered to be a bespoke investment.
- Why the investment with a nil value was not being archived.
- The death benefits, and the charges that were applicable to the SIPP, with Mattioli Woods providing copies of the Standard Fees document that were sent to Mrs W in 2015 and 2018.

13. Following these exchanges, Mrs W requested that her complaint be referred to me for a binding Determination. She made some additional comments, a summary of which is provided below:-

- When she originally referred her complaint to my Office, she had three investments in the SIPP that had a value and six investments that had a nil value. However, she now only has one investment in the SIPP: Ohmic House, and one investment that has a nil value: Dukes Equity. The other two investments with a value were sold; Mattioli Woods sold one of the investments with a nil value and archived four.
- She believes there has been an incorrect charge applied to her SIPP, which has resulted in her incurring a financial loss. Without a ruling by me, this charge will continue to be applied.
- She believes Mattioli Woods provided conflicting information on why she was being charged the "multiple or bespoke asset fee." Mattioli Woods had originally said that this fee was being charged because she had multiple investments in the SIPP that had a value. However, when the amount of investments she had in the SIPP with a value reduced to one, Mattioli Woods changed its explanation and said that the fee was being applied because of the "complexity" of Ohmic House.
- When questioned about when Ohmic House became complex, Mattioli Woods asserted that the investment was always complex. Consequently, the multiple/bespoke asset fee should have been applied at the outset.

- Mattioli Woods has failed to provide her with a viable means to close the SIPP. While it is thought that there might be a process to find a buyer for Ohmic House, Mattioli Woods seems unable to provide a solution for the disposal of Dukes Equity. It appears unwilling or unable to sell it. It also appears reluctant to adopt the approach it used to archive other nil value investments in the SIPP.
- Mattioli Woods has said that Dukes Equity is an active investment in the SIPP and that it is currently being reviewed. However, it has not provided evidence to show why Dukes Equity is considered an active syndicate.
- Acting in good faith and following Mattioli Wood's explanation of the structure at the time, she sought to reduce the fees levied on the SIPP by reducing the number of active investments in the SIPP.
- Having achieved this, Mattioli Woods now says that the fees will not be reduced, admitting that its previous explanations for the fees were misleading. Furthermore, the fees are payable because of the complexity of Ohmic House.
- Her decision to buy an annuity was a direct result of wishing to make the SIPP more cost effective.
- It is unfair that she is continually being penalised by having to pay the same management fees for the SIPP.
- Without the Ombudsman ruling that the multiple/bespoke asset fee should not be applied, it will continue to be applied annually.
- Mattioli Woods has yet to explain how the SIPP can be closed. This would prevent additional fees being unfairly charged either on investments with nil values or because of the complexity of the investment. Otherwise, the fees will continue to be levied for future generations. If the SIPP remains open this is certain to perpetuate the financial loss.
- Mattioli Woods has also changed its position on whether there will be extra fees on inheritance and has provided conflicting information on the cost of managing the SIPP on inheritance.
- She wants the Ombudsman to make a ruling for Mattioli Woods to provide her with a viable means to leave the SIPP. This is essential for her to decide if the SIPP is suitable to be retained or not.
- Dukes Equity is not a saleable investment as it has a nil value. It has not produced any distribution since inception in 2010. Mattioli Woods has said that because of the way the investments are set up, the only way to remove the investment from the SIPP is for it to be sold. Alternatively, for one of the other investors to purchase it from the SIPP. This is not a viable option for closure.
- When Ohmic House is sold, Mattioli Woods will still charge an annual core administration fee, without any income from Dukes Equity to off-set it. This is

“certain” to result in a financial loss. This will also be the case for the “pooled” fee of £330+VAT for each beneficiary after her death.

- There only needs to be one nil value asset in the SIPP to keep it open and allow Mattioli Woods to levy fees for managing the SIPP, containing only a nil value investment.
- She questioned whether Mattioli Woods could change the T&C of the SIPP unilaterally. She has not been given the option to accept or decline the new terms, as it has not provided her with a viable means to leave the SIPP.
- The Ombudsman should rule that Mattioli Woods is prevented from resurrecting or unarchiving investments that have a nil value, or very low value. They do not generate sufficient income to off-set the additional fees levied as a consequence of having them in the SIPP. She does not want such investments to prevent or delay the SIPP from being closed.

Ombudsman’s decision

14. I note that Mrs W has raised several questions she would like Mattioli Woods to respond to. This Determination only deals with the original complaint that was accepted for investigation. I am not considering any matters that fall outside the scope of that complaint.
15. I have carefully considered all the information provided by all parties to the complaint. Having done so, I find that there are two parts to Mrs W’s complaint. Namely: (i) the fees payable for the administration of the SIPP and (ii) being able to leave/close the SIPP. I will give my findings on each part of the complaint in turn below.

Fees payable

16. Mrs W asserts that an incorrect fee has been applied to her SIPP. Consequently, I should direct that the fee be refunded. She also asserts, that the fee will continue to be applied if I do not also direct that Mattioli Woods waive the fee going forward.
17. Mattioli Woods asserts that the multiple/bespoke asset fee was charged because of the complexity of Ohmic House and not because Mrs W has more than one investment in the SIPP. Therefore, the fee has been applied correctly.
18. The Rules state that the member agrees to pay an annual fee to the Scheme Trustees or Administrator and to the deduction of those fees from the member’s funds. The Rules also state that the SIPP’s Trustee shall have the power to levy such additional fees incurred in connection with the banking, administration, management, transactions, and investment of the Scheme, as the Scheme Trustee may determine necessary. Relevant sections of the Rules are displayed at the Appendix.
19. I find that there has been no maladministration by Mattioli Woods in applying an annual core administration fee and a multiple/bespoke asset fee to Mrs W’s SIPP.

The Rules allow Mattioli Woods to apply fees and charges that it determines are appropriate for the SIPP. Furthermore, the Standard Fees document, that was sent to Mrs W in 2015, included a flat rate annual “core administration fee” of £420, and an annual flat rate “multiple or (my emphasis) bespoke assets fee” of £400. These fees were also listed in the 2018 Standard Fees document Mrs W was sent in 2018. At the time, the fees were £450 and £420 respectively. So Mrs W was aware that these fees were applicable to her SIPP and that they increased from time to time.

20. Mattioli Woods’ letter dated 14 August 2018, explained why the multiple/bespoke asset fee had been applied to Mrs W’s SIPP. While I accept that the explanation could have been clearer it was not factually incorrect. The fact that Mrs W does not accept Mattioli Woods’ explanation is not sufficient reason for me to direct that the multiple/bespoke asset fee should not be applied to her SIPP in future. Nor is it sufficient reason for me to direct that the fee be refunded.
21. I note that Mrs W has provided details of fees and charges that she considers may be incurred at a future date. At present, these are speculative and do not constitute actual fees and charges.
22. Provided any future fees or charges levied on the SIPP are not precluded under pension legislation, Mattioli Woods would be entitled to charge its normal business fees in accordance with the SIPP’s T&C.
23. I do not uphold this part of Mrs W’s complaint.

Viable means to leave the SIPP

24. Mrs W asserts that Mattioli Woods has not provided her with a viable means to leave the SIPP. She says that unfair fees will be levied for future generations if she is not provided with a viable means to do so.
25. I understand Mrs W’s frustration. However, Mattioli Woods is not under any legal obligation to provide Mrs W with financial advice. Mrs W may wish to consult an independent financial advisor to discuss her options in this regard.
26. I note that Mrs W inherited the SIPP following a PSO. At the time, neither Mattioli Woods nor the Administrators advised her in relation to the SIPP; nor were they responsible for the SIPP. I empathise with the situation Mrs W is in but find that she is not in this position because of any maladministration on the part of Mattioli Woods.
27. I do not uphold Mrs W’s complaint.

Anthony Arter

Pensions Ombudsman
14 April 2021

Appendix

Relevant extracts of the establishing Trust Deed and Rules of the Pilgrim SIPP

“ ...

25. All expenses in connection with the administration, management and investment of the Scheme may, subject to the agreement of the Administrator and the Scheme Trustee, in relation to any or all such expenses, be paid directly to the Administrator or the Scheme Trustee by the Member or may be paid on any other basis which the Administrator and the Scheme Trustee agree to, otherwise such expenses shall be paid by the Administrator out of the designated account in respect of the Individual SIPP or the Group SIPP in respect of which the costs have been incurred (for the avoidance of doubt the Scheme Trustee or Administrator may at any time direct that payment of such expenses shall be made out of the designated account, notwithstanding any agreement to the contrary). A joining fee and an annual fee may be levied by the Scheme Trustee on each Member on an annual basis, the basis of any fee to be levied by the Scheme Trustee to be determined by the Scheme Trustee and to be notified to the Member. The Scheme Trustee shall also have power to levy such additional expenses incurred in connection with the banking, administration, management, transactions, and investments of the Scheme as the Scheme Trustee may in its sole discretion deem necessary. Any expenses, fees or other sums whatsoever to be levied or paid under this clause 25 shall be paid to the Administrator or the Scheme Trustee in such proportions and on such basis as the Scheme Trustee on its sole discretion may determine and notify to the Member...”