

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

| | |
|----------------------|--|
| Applicant | Mr Simon Evans |
| Scheme | North Star SIPP (the SIPP) |
| Respondent(s) | 1. Mattioli Woods plc (Mattioli Woods) 2. JB Trustees Ltd (the Trustees) |

Subject

Mr Evan's complaint is that Mattioli Woods, the administrators of the SIPP, and the Trustees, of the SIPP, failed to secure ownership of the legal titles for four plots of land for the SIPP.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against the Trustees and Mattioli Woods because I am unable to find that there has been any maladministration by them.

DETAILED DETERMINATION

Material Facts

1. Mr Evans set up the SIPP in December 2006. At that time, the Trustees were the independent trustee for the SIPP and North Star SIPP LLP (**North Star**) were the administrators. In February 2008 Mattioli Woods acquired the Trustees and North Star.
2. Around the time the SIPP was set up, Mr Evans made a request via his IFA, Mr W, for four plots of land to be purchased by the SIPP at a total cost of £37,265 from Development Land Holdings plc (**DLH**).
3. In February 2007 the Trustees transferred £37,265 to DLH to purchase the four plots of land. Between then and October 2008 either Trustees or North Star wrote to DLH regarding the documentation needed to complete the purchase of the four plots of land. During this period, the Trustees sent DLH three Land Transaction Returns for three of the four plots. It was discovered in August 2007 that there was the risk of contamination with one of the plots and the Trustees asked DLH for a refund of £9,100. Later it was suggested that another plot of land would be purchased in place of the plot that was contaminated and therefore there would be no refund. Throughout this correspondence, Mr Evans and Mr W were kept informed as to what was happening.
4. According to HMRC's website, unless a transaction is exempt from Stamp Duty Land Tax (**SDLT**) or meets certain specific criteria, the purchaser is responsible for notifying HMRC of the purchase or transfer by completing a Land Transfer Return and for making sure that SDLT is paid on time. In practice, most people employ a solicitor or conveyancer to complete the return for them. When HMRC receives a valid return, it issues a SDLT Certificate. The transfer of the property cannot be registered at the Land Registry without this certificate.
5. On 22 October 2008 the Trustees sent Mr W an email stating:

“Further to my conversation with Solicitors at J R Brown [the solicitors engaged by SDLT who were dealing with the sale of the plots of land] and Sally at [DLH]. I can confirm the following:

Having checked Mr Evans file I can see that you called me 04/07/2008 to give you full review of the plots as to what has been bought etc. I then emailed Sally to give me breakdown as we have transfer £37,265 on 22/10/2008<sic>. According to my email to yourselves Sally has advised

me that she is going to see the solicitors and will reply after that meeting. However to date I didn't receive any update.

I then received the SDLT from<sic> re Plot 20 from HMRC as they needed the effective transaction date on the SDLT form. Which is bit confusing as I have already received the SDLT form from HMRC advising is<sic> has been registered. However the SDLT was sent to solicitors on 23 June 2008 to complete and forwarded<sic> to HMRC.

Now – Solicitors have advised me that he is still to register these plots and Sally is finally going to reply [to] me with the breakdown.

I am going to fax the SDLT form I have received from HMRC to solicitors and ask him to come back to me as soon as possible. As you can see that<sic> I have chased both parties previously and seem to receiving<sic> no response from them.

I will keep reminder for myself this time and will chase them on regular basis if I do not receive response.

Please let me know should you have further queries.”

6. On 28 October 2008 in an email, DLH sent the Trustees a breakdown of the £37,265 paid in February 2007 between the four plots. On 31 October the Trustees emailed Mr W attaching DLH's email of 28 October 2008 and stating that DLH had confirmed the purchase of the plots. They added that they had spoken to J B Brown, the solicitors acting for DLH, who confirmed that the application form had been submitted to HMRC and were awaiting to receive confirmation.
7. On 12 August 2011 the Trustees wrote to DLH saying that they understood from Mr W that there had been a query regarding the completion of the purchase of the plots. They asked for the matter to be investigated and to be informed of the situation as soon as possible. The Trustees chased DLH for a response on 14 and 28 September 2011.
8. The Trustees wrote to J B Brown on 28 September 2011, and chased them on 5 and 26 October 2011, asking for copies of the documentation confirming the purchase of the plots.
9. J B Brown responded on 3 November 2011 stating that the person who dealt with the purchase of the plots, Mr N, had retired. They said that they did not deal with the actual arrangements for the sale of the various plots by DLH, which was in fact dealt with by DLH itself “in house”. They explained that although Mr N was asked by DLH to advise with regard to various aspects of the transactions,

the file of papers were returned to DLH, and they had not taken any actual involvement so far as any of the disposals were concerned.

10. On 14 November 2011 in a letter to Mattioli Woods, J B Brown said:

“We have now been able to speak to [Mr N] who instructs us that, as previously advised the plot sales were conducted by [DLH] itself with the various buyers. It was part of the arrangement that DLH would also arrange to deal with the registration of the various transfers at the Land Registry. My colleague who has been dealing with the sale on behalf of DLH has left the company, and my firm was approached in order to ascertain whether we could assist with completing the registration procedures.

In the event, however, [Mr N] was unable to obtain the required SDLT certificates which were required in order to allow for the application to be submitted to the Land Registry. Ultimately, [Mr N] returned the papers to DLH advising them that he could not take matters any further.

As far as we are aware, DLH still hold the original transfer forms and we would therefore suggest that a formal approach is made to DLH.

...”

11. On 6 December 2011 the Trustees wrote to DLH asking for copies of the signed and dated transfer forms for the purchase of the four plots. They said that Land Registry were unable to confirm any plots of land had been registered in the name of Mr Evans and the Trustees.
12. DLH responded to Mattioli Woods on 22 December 2011 saying that they were making enquiries with Allied Irish Bank and were expecting to hear back from them in the middle of January.
13. On 26 March 2012 Mattioli Woods wrote to Mr Evans informing him that the monies in respect of the plot which was not purchased due to contamination issues, was not refunded but remained with DLH in order to purchase another plot. They advised him that it was questionable whether any of the plots were in the name of the SIPP. They said that they felt it prudent, and in the best interest of the SIPP, to threaten DLH with legal action to protect the SIPP. They had recently been made aware that DLH may be suffering financial difficulties. They enclosed a draft of a letter to DLH for his approval/comments and said that they would be guided by him as to whether to mention legal action in the letter, as the cost of any legal representation will be a cost to the SIPP.

14. On 29 May 2012, Mattioli Woods sent a letter to DLH stating that in the absence of any concrete explanation to show that the plots were held by the SIPP, they had no option but to seek legal representation.
15. DLH are now insolvent and in receivership.

Summary of Mr Evans' position

16. The Trustees failed to secure ownership of the title for the four plots as requested in 2006. He expected the Trustees to perform this transaction in a thorough and responsible manner.
17. He received correspondence from the Trustees to say that the transfer of the four plots was successfully executed on or around 22 February 2007.
18. He did not expect the Trustees to hand over the sum of £37,265 until they were satisfied that they had obtained full legal title for all four plots. He expected this to include the appointment of a reputable solicitor to oversee the transaction. This should have unearthed the fact that the plots were subject to a legal charge from the bank.
19. He believes Mattioli Woods' comments in relation to taking legal action against DLH is a red herring. He does not have the funds available to pursue this route. Furthermore, he understood that Mr A, the director of DLH, had been declared bankrupt and do not see the merits in this exercise.
20. He believes that Mattioli Woods has been negligent in their duties. As scheme administrator they began a process that they did not see through to a satisfactory conclusion. It beggars belief that as administrators of his SIPP, Mattioli Woods continued to send him valuation statements as late as 15 December 2011 showing ownership of five assets, four of which he did not own.
21. Mattioli Woods continued to charge him hefty annual fees for administration and management of scheme assets that the SIPP did not in fact own.
22. If Mr W had not inadvertently uncovered the problem, following a routine call to DLH, he suspects that the whole issue of ownership of the plots would never have been brought to light even now.

Summary of the Trustees' and Mattioli Woods' position

23. They understand that Mr Evans was introduced to the investments in the plots of land by Mr W.
24. Investments in purchasing plots of land are well documented in the press as being speculative and high risk. As the SIPP offered a third party administration service and no advisory service, the responsibility to undertake due diligence and understand the investments remained with Mr Evans, acting as a trustee and a member directed vehicle, and Mr W.
25. In all such investments, it is normal practice for investment monies to be given to the investment company for their auctioning. In the majority of cases the land is not purchased until the development company holds sufficient monies from investors to proceed.
26. DLH appointed a third party solicitor to undertake the conveyancing of the plots. They have evidence that the correct forms were signed and returned to the solicitor and originally believed that the solicitor was responsible for failing to secure the correct legal titles. Having queried the solicitor's role in the purchases, and with a better understanding of their involvement, their attention returned to DLH as being the culpable party. It also transpired that some of the land offered by DLH had security in place (which they do not believe was disclosed to investors at the outset) and consequently some of the land has since been seized and re-sold by the bank holding security. This may be linked to the fact that Mr A has been declared bankrupt.
27. With hindsight, it is clear that DLH was fraudulent which is why they feel that the most obvious avenue of resolution would be for Mr Evans to take legal action against DLH. While they doubt that this will resolve matters, it may help to bring about an actual understanding of the transaction and reveal potential ways to resolve the situation.
28. On 8 January 2008 they chased for the return of the monies on one of the plots of land and Mr W was advised of the lack of evidence regarding completion dates and return of funds. On the same day, Mr W confirmed that "he was waiting to hear from them" regarding the completion of the transactions. It was noted that DLH were in direct contact with Mr W regarding the purchase of the plots of land.

29. After October 2008, they are unable to find any further communication between themselves and any of the other parties about the plots of lands until September 2009 when DLH wrote raising a query over the missing SDLT5 Land Transaction Return for one of the plots, which they were unable to locate.
30. The next communication about the plots of land was in June 2011, when Mr W made contact regarding his concerns over the ownership of the plots. It was apparent that Mr W was aware of a situation with DLH that they were not a party to.
31. Based on the information they pieced together on the transactions, they liaised with the Land Registry to try to ascertain the position regarding the plots. This led to numerous dead ends, but implied that the plots were in the name of DLH and not the Trustees.
32. In December 2011, DLH finally responded to their queries stating that they were “currently making enquiries with Allied Irish Bank and [were] expecting to hear back from them by the middle of January”. Mr W was made aware of the situation and confirmed that he would pursue the matter. During the course of the year, they were aware that while DLH were neither responding to their letters nor telephone calls, Mr W had been in contact with them.
33. In May 2012 a letter indicating legal action was issued to DLH, by special delivery, with Mr Evans’ consent. A response was received to this, requesting until August to resolve the matter. Mr W was advised of this communication, and was inclined that DLH should be given until August before legal action was taken.
34. No further documentation is on file until a mailing from the Insolvency Service (31 August 2012) and FRP Advisory (30 August 2012). The resulting action to these two communications is that proofs of debt are currently being lodged with both parties. Mr A has also been in contact with Mr W regarding the ownership of the plots. It would appear from these emails that the titles on all the plots will be released by Allied Irish Bank.
35. The only evidence they have of ownership of the plots was from DLH in July 2008. They have not received HMRC evidence of full ownership at any stage for any of the plots. However, this is not unusual for investment in plots of land.

36. They can see no evidence that the administrator of the SIPP has been negligent in their duties to process such an investment, and based on evidence received from the Land Registry and the events, they can see no evidence that had anything been done differently, he would currently have clear evidence of clearly owned plots of land.
37. They can see that numerous legal documents were signed by all the trustees (including Contract & Standard Conditions of Sales, Land Transaction Returns, Land Registry Forms such as TPIs and APIs and site maps), and the processing (and complications faced) would not raise any concerns. Likewise, numerous letters were sent by the scheme administrator asking for verification of ownership.
38. No party involved in the administration of the SIPP provided advice and had no obligation to undertake any review of the investments, including their stability or merits. All advice and decisions to investments were made by Mr Evans and Mr W.
39. Mattioli Woods do not act as a trustee for the SIPP. The trustees of the SIPP are Mr Evans and the Trustees. All investments were placed in the name of the trustees and all documents were co-signed by Mr Evans as trustee of the SIPP.
40. No solicitor was appointed by Mr Evans, and the normal procedure of passing the monies to DLH was agreed to by virtue of his signing the application forms and payment methods.

Conclusions

41. Apart from arranging for the necessary documents to be completed, Mattioli Woods as administrators of the SIPP would have no responsibility for registering the plots with the Land Registry. Therefore, I am unable to find maladministration on the part of Mattioli Woods in this matter.
42. Mr Evans says that in February 2007 the Trustees had confirmed that the transfer of the legal titles for the plots had been successfully executed. In fact, the Trustees had confirmed to Mr W that the four plots of land had been purchased, which is not the same as saying that the legal titles for the plots have been secured for the SIPP.

43. The main reason why the legal titles for the plots of land were not secured for the SIPP is because they have not been registered with the Land Registry. In theory the registration of a plot of land is the responsibility the purchaser, in this case the Trustees and Mr Evans, who would send the SDTL Returns to HMRC. HMRC would in turn issue SDTL Certificates which are required by the Land Registry for the plots to be registered.
44. SDTL Returns were completed for three of the plots, but they were sent by the Trustees to DLH. According to JB Brown, part of the arrangement was that DLH would deal with the registration of the plots with the Land Registry. It would therefore appear that in agreeing to buy the plots there was an understanding that DLH would deal with the registration with the Land Registry.
45. JB Brown say that Mr N, who worked for them, was unable to obtain the required SDLT Certificates and the papers were returned to DLH. No reason was given as to why the SDLT Certificates could not be obtained, but it has been suggested by the Trustees that as some of the land which had security in place had been seized by the bank holding the security and resold. Mr Evans has not denied this.
46. Due diligence checks should have been carried out on DLH and the plots of land before a purchase was made. If these checks were carried out, the issues regarding the security held on some of the land may have come to light before the purchase was made. I would concur with Mattioli Woods that Mr Evans and his adviser were primarily responsible for carry out these checks.
47. Mr Evans says that he did not expect the Trustees to hand over the sum of £37,265 until they were satisfied that they had obtained full legal title for all four plots. He also commented that he expected the Trustees to appoint a reputable solicitor to oversee the transaction. Mattioli Woods say that Mr Evans agreed to the monies being passed over by virtue of his signing the application form and payment method, and it is normal practice in such investments for the investment money to be paid in full to the investment company.
48. Mr Evans was definitely aware in August 2007 that the monies had been passed over to DLH because he was informed that if he did not wish to proceed with the purchase of one of the plots, the Trustees would retrieve the funds from

DLH. There is nothing to show that at that time he objected to the Trustees paying the whole amount to DLH.

49. With regard to the appointment of a solicitor to oversee the purchase of the plots, as trustee and the sole beneficiary of the SIPP Mr Evans could have appointed one if he felt one was necessary. I do not agree that it was solely the Trustees responsibility to appoint a solicitor.
50. For the reasons given above, I do not uphold the complaint against the Trustees.

Jane Irvine
Deputy Pensions Ombudsman

30 December 2014