

Ombudsman's Determination

Applicant	Mr N
Scheme	North Star SIPP (the SIPP)
Respondents	Mattioli Woods plc (Mattioli Woods)

Outcome

1. Mr N's complaint is upheld and to put matters right Mattioli Woods plc should pay redress to Mr N as directed.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained that Mattioli Woods failed to ensure that three pieces of land he intended to purchase through the SIPP were not transferred despite the fact that they have applied annual charges and valuations of the land.

Background information, including submissions from the parties

4. Following a recommendation by Mr Abel (**RA**) of Development Land Holdings plc (**DLHP**), Mr N agreed to purchase three plots of land between November 2007 and August 2008. He intended that these should be held in the SIPP.
5. Mr N established the SIPP with Polaris Pensions Limited (**PPL**) and North Star SIPP LLP (**NSSL**) in 2007 as his existing pension scheme did not permit property investment. The Trustees were Mr N and JB Trustees Limited (**JBTL**).
6. Mr N initially agreed to purchase two plots of land. He completed and signed the necessary documents and returned these to PPL/NSSL. The documents were countersigned by the Trustees and the purchase price of £18,350 was transferred to DLHP on 8 November 2007.
7. Mr N says that at that point he assumed that his SIPP had acquired the title to the two plots.
8. 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.

9. On 16 November 2007, Mr RA wrote to Mr N inviting him to invest in a further plot of land. This plot was held in Mr RA's name, not DLHP. On 7 January 2008, Mr N completed and signed a Property Purchase Questionnaire (the **Questionnaire**), which he returned to PPL/NSSL.
10. At the end of the Questionnaire, under the heading "Member Agreement", was the statement "Please instruct your solicitors to act on behalf of the pension scheme". Mr N says that this was a clear instruction to PPL/NSSL to use solicitors in the transaction.
11. In February 2008, Mattioli Woods acquired the business of the Trustees and PPL/NSSL.
12. On 20 August 2008, a payment of £7,550 was transferred from the SIPP bank account to Mr RA to complete the purchase. Again, Mr N says that at that point he assumed that his SIPP had acquired the title to this third plot of land.
13. An annual renewal statement at 24 July 2008, issued by Mattioli Woods, showed the three plots of land as assets of the SIPP. There was a note relating to the third plot, which said:

"We have recently become aware that due to a banking error, monies were not transferred to the solicitor for this purchase on the date that we sent the transfer instruction to the bank. These monies were transferred on 20 August 2008".
14. On 16 July 2012, Mr RA was declared bankrupt and at the same time DLHP went into receivership.
15. In 2013, Mr N conducted a Land Registry search which showed that none of the three plots was held in his name.
16. On 31 January 2014, Mattioli Woods wrote to Mr N. They said:

"I have again reviewed our files and there is no evidence to support that the three plots of land were registered to the pension scheme, despite all relevant transfer documentation being signed and submitted according (sic).

As you are aware, the solicitor acting on behalf of Development Land Holdings was responsible for completing the transfer."

17. Mr N has concluded that, despite having paid the full purchase price of £25,900, his SIPP never acquired title to any of the three plots and, given that Mr RA is now bankrupt and DLHP is in receivership, has no prospect now of ever acquiring the title.

Summary of Mr N's position

18. He contends that the SIPP administrator and/or Trustee owed basic duties of care to him to ensure that:
- title to the properties should be secured prior to the release of any monies;
 - the services of a solicitor were engaged to secure the title, or to advise him to do so;
 - to draw his attention to any obvious defects in the title prior to the purchase price being released;
 - to comply with his express instructions to use a solicitor in connection with any proposed transaction.
19. He expected the administrator and/or Trustee to exercise a basic degree of skill and care to protect the position of the SIPP and himself by ensuring that good title to the assets was acquired.
20. Mattioli Woods failed either to instruct solicitors to represent the interests of the SIPP or to advise him to do so himself. This was in direct breach of a clear written instruction in relation to the third transaction.

Summary of Mattioli Woods' position

21. The investments Mr N wished to make were not mainstream property purchases, but were land bank investments. As such, the process for such purchases is that the investment monies are remitted to the development company, who then appoint a solicitor to act in the registration of the plots of land. One solicitor is usually appointed to oversee all registrations and the development company hold the money.
22. The first two plots had legal charges over them which would have prevented Mr N from ever acquiring title to them. This would only have become apparent after the purchase money had been transferred.
23. DLHP appointed a third party solicitor to undertake the conveyancing. The correct forms were signed and returned to the solicitor. As a member trustee, Mr N signed an instruction to transfer monies to DLHP.
24. It was the responsibility of the solicitor, acting for DLHP, to register the plots. The SIPP administrator has no responsibility for registering the plots with the Land Registry, and at no point did Mattioli Woods confirm to Mr N that the legal titles had been secured for the SIPP. The failure of this solicitor to act on instructions in a

professional manner, and the now obvious intention of Mr RA to defraud Mr N are the main reasons the plots were not secured for the SIPP.

25. From the date that monies were remitted, the SIPP administrators actively chased up evidence of ownership. Whilst DLHP confirmed to Mr N that the plots had been purchased, this was confirmation the purchase money had been transferred and all appropriate forms completed and sent off.
26. Mr N refers to the fact he assumed ownership. In order to secure title, SDLT returns would have been needed to lodge legal titles. Such forms were completed and sent to DLHP for actioning.
27. The Questionnaire did not include the question regarding the appointment of solicitors when Mr N decided to purchase the first two plots of land. Therefore, he provided no instruction for a solicitor to be used in the purchase of those two plots.
28. Mattioli Woods dispute that Mr N gave clear directions for the instruction of a solicitor when he completed the Questionnaire to purchase the third plot of land. At no point did he raise queries regarding the costs of a solicitor and, without knowing the costs, they find it difficult to agree that this was a clear instruction. Furthermore, they argue that, had they reverted to Mr N, it is likely that he would have agreed to use the solicitor appointed by DLHP as this would be free of charge.

Adjudicator's Opinion

29. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Mattioli Woods. The Adjudicator's findings are summarised briefly below:
 - The main reason why the legal titles for the plots of land were not secured for the SIPP was because they had not been registered with the Land Registry. HMRC make clear the registration of a plot of land is the responsibility the purchaser, in this case the Trustees and Mr N.
 - Mr N completed a later Questionnaire which included an instruction to appoint solicitors to act on behalf of the SIPP in relation to the purchase of the third plot of land. Whilst Mattioli Woods argued that the instruction was not clear, the Adjudicator did not agree. He considered the instruction was quite specific and, once Mr N had given it, he did not consider that it was entirely up to Mr N to question whether or not it had been complied with.
 - In the Adjudicator's opinion, had Mattioli Woods complied with Mr N's instruction it is more likely than not that the solicitor, acting on behalf of the SIPP, would have identified the issues with the submission of the SDLT return and ensured that the proper course of action was followed.

- He also thought that, had the issues with the submission of the SDLT return for the third purchase been identified, it is probable that the similar issues with the purchase of the two earlier plots would also have been recognised at an early stage and that Mr N would have had the opportunity to take corrective action.
 - However, he disagreed with Mr N that the responsibility rested entirely with Mattioli Woods. In addition to being a member of the SIPP, Mr N was also joint trustee and with that role came a certain degree of responsibility. The Adjudicator thought that, in this role, Mr N had a duty to ensure that his instructions were being acted upon.
30. Mattioli Woods plc did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mattioli Woods plc provided their further comments, many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mattioli Woods plc for completeness.

Ombudsman's decision

31. Mattioli Woods have referred to a previous, similar, case (PO-3017) which was not upheld by the then Deputy Pensions Ombudsman. However, in that case whilst the complainant said that he expected Mattioli Woods to appoint a solicitor to act on his behalf, there was no evidence that he had asked Mattioli Woods to instruct one.
32. Mattioli Woods say that Mr N's financial adviser had a responsibility to review the status of the SIPP and ensure it reflected Mr N's expectations. Be that as it may, it does not detract from the fact that Mr N had a reasonable and legitimate expectation that Mattioli Woods would act on his instructions.
33. With regards to redress, Mattioli Woods say that the objective should be to put Mr N back into the position he would have been in and that, in this scenario, the position would have been that the SIPP would hold title to the three plots which they believe would have little value. Whilst I acknowledge that this is a potential outcome, in my view it is equally possible that, with proper representation, Mr N would have withdrawn from the investment. I therefore consider that a return of the purchase price is the appropriate method of redress.
34. They also say that the SIPP fees should not form part of any redress as they are contractual and would have been chargeable regardless of the investments. However, the only investments held by the SIPP were the three plots of land, which may not have proceeded had Mr N received suitable, independent legal advice. It is therefore appropriate that he should receive some redress in the form of a return of a proportion of the fees paid.
35. Whilst I acknowledge that these purchases were undoubtedly high risk and that Mr N has possibly been the victim of a fraud, although, I have not taken representations on this aspect, so I cannot express a view, I am nonetheless of the opinion that the

position would have been made clearer to him, allowing him to take corrective action before it was too late, had he and his co-trustees been properly represented by an independent solicitor as he had instructed.

36. Therefore, I uphold Mr N's complaint.

Directions

37. Mattioli Woods are to pay

- £12,950, being one half of the purchase price of the three plots of land, to his SIPP with James Hay Pension Trustees.
- £2,884.28, being one half of the SIPP fees incurred by Mr N, to his SIPP with James Hay Pension Trustees.
- Interest to be paid on the above from the date the purchase monies were transferred from the SIPP to the date of payment. Interest to be at the rate declared from time to time by the reference banks.

Anthony Arter

Pensions Ombudsman
4 July 2016