

## **The complaint**

Mr T complains Mattioli Woods PLC (“MW”) failed to correctly invest the cash held in his SIPP.

## **What happened**

The facts of this dispute are well known to both parties, so I won’t repeat them in full here. But in broad summary:

- Mr T has a SIPP with MW. He gave instructions for cash held in his SIPP to be invested in a specific fixed rate bond he’d seen with Bank P, paying a rate of 2%.
- When MW executed Mr T’s instructions, an administrative error meant his cash was left in an account with Bank P that paid no interest.
- Mr T wasn’t told the attempts at arranging the investment with Bank P had failed. So as far as he was aware, his money was where he’d instructed it to be.
- The error was then spotted and Mr T complained to both MW and Bank P. The firms arranged for interest to be backdated on Mr T’s cash, but not at the rate he wanted.
- It transpires the bond Mr T asked for was never actually available. So his backdated interest was paid at a rate of 1.2%, and MW offered £150 by way of an apology.
- Mr T referred his complaint to our service. He argued that if MW had been unable to achieve the rate he’d asked for, it should’ve told him and awaited further instructions.
- Our investigator upheld the complaint along these lines, eventually concluding that had MW gone back to Mr T, he’s likely to have achieved a rate of 2.5% for his cash.
- The investigator directed MW to pay Mr T the difference in interest between the rate of 1.2% he was given by Bank P, and the rate of 2.5% he should’ve ended up with.
- The investigator noted the payment would ideally be made to Mr T’s SIPP, but that this wasn’t possible. So they said MW should pay Mr T directly, less a deduction for tax Mr T would eventually have paid if the money had been in his SIPP.
- The investigator directed MW to calculate and pay simple interest at 8% on top of the amount MW was paying to Mr T, and noted this part of the award may be liable for income tax.

After some discussions around the calculations and the way that any payments would affect Mr T’s tax liabilities, both parties appeared to accept our investigator’s proposed resolution. However, Mr T simultaneously began a conversation with HMRC regarding the payment that was due to him. Across his discussions with HMRC, Mr T developed an understanding that our investigator’s recommendations would leave him worse off than he should be. As the dispute remained unresolved, the matter has been referred to me for a final decision.

## **What I’ve decided – and why**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having reviewed the facts of this dispute to date, it's clear both parties broadly accept MW made a mistake in handling Mr T's original instructions, and that it should compensate him as a result. To date MW has made the following payments to Mr T:

1. £5,878.87 to cover the difference in interest between the 1.2% interest paid by Bank P, and the 2.5% interest our investigator found Mr T would likely have achieved had MV treated him fairly.
2. £145.67 in interest to compensate Mr T for the period he's been deprived of the amount listed above.
3. £150 for the distress and inconvenience caused as a result of its error.

For ease of reference, I'll refer to these amounts as Fig 1, Fig 2, and Fig 3 respectively.

Having made these three payments to Mr T, I'm satisfied that:

- By paying Fig 1, MW has fairly and reasonably compensated Mr T for its failure to ensure his cash was invested in line with his instructions.
- By paying Fig 2, MW has compensated Mr T for the time he's remained out of pocket as a result of the failure to invest his cash correctly.
- By paying Fig 3, in my opinion, MW has fairly addressed the distress and inconvenience Mr T has experienced in the events of his complaint.

What remains in dispute from Mr T's perspective, is how these payments affect his tax position. He believes any compensation due to him will be liable for tax. He argues that, but for MW's mistakes, Fig 1 would've been money he earned within a SIPP wrapper. And because that payment has been made to him directly, and not into a SIPP, that it's now liable for tax. He's suggested MW should cover this tax liability, whatever it may be, to settle his complaint fairly.

In making this argument, Mr T is citing an ongoing discussion he's had with HMRC about his tax position in the wake of this complaint. In a letter to Mr T dated 6 June 2024, amongst other things, HMRC told Mr T that:

*"You told us that you have been offered compensation from a SIPP and have asked us to confirm if this payment, along with the interest, would be liable to tax."*

*Based on the information you have provided us; it is likely that the compensation payment you will receive will be exempt from income tax. However, the interest is taxable, and you will need to declare this on your Self Assessment (SA) tax return".*

As Mr T sees it, Fig 1 is a payment of interest. And because "*the interest is taxable*" he'll have to declare Fig 1 on his self-assessment with a view to paying tax on it. I've considered the matter carefully, but I don't agree with Mr T's interpretation of what the revenue's saying here.

Fig 1 is clearly derived from interest. Interest that Mr T should've earned tax free within a SIPP wrapper, but was deprived of the opportunity to do so. Fig 1 therefore is a payment of compensation, and not a payment of interest. And as per the message from HMRC above "*the compensation payment you will receive will be exempt from income tax*". Prior to making my decision, I put this to Mr T to give him the opportunity to comment further. He didn't agree with me. He shared what I told him with HMRC who replied to him saying:

*"Any interest that you do receive from the compensation payment will be classed as taxable income".*

In my view, this changes nothing. As I see it, HMRC is simply reinforcing the message it gave him in its letter dated 6 June 2024. Compensation isn't likely to be taxable, but interest on this compensation is. Therefore Fig 1 and Fig 3 aren't likely to be liable for any tax, because they're payments of compensation. Fig 2 however is a payment of interest. It's interest that, but for the compensation payment at Fig 1, Mr T wouldn't have earned. It's therefore likely to be liable for tax, as per the message from HMRC.

Having heard Mr T's arguments on this point, I'm not persuaded he's likely to suffer any additional losses as a result of MW's mistake. As a result of this, I won't be asking MW to make any further payments to him with respect to this complaint.

### **My final decision**

My final decision is that I uphold this complaint against Mattioli Woods PLC. But as the firm has already compensated Mr T, I don't require it to take any further action in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 October 2024.

Marcus Moore  
**Ombudsman**