

The complaint

Mr L complained That Mattioli Woods Plc (Mattioli Woods) used an unfair voting system on a decision relating to a collective investment he held in a SIPP. This led to the decision taken being counter to the wishes of a majority of investors. He would like Mattioli Woods to move to a simple unweighted voting system and undertake a new ballot on the proposals.

What happened

Mr L has held a SIPP for a number of years. Mattioli Woods took over the management of this SIPP in 2012. This SIPP currently holds his share of a commercial rental property owned on a collective basis, with Mr L owning a share of the property representing c0.4% of its total value. The rest of the property is owned in varying proportions by other investors. Mattioli Woods manages the SIPP and administer a voting process by which the owners can make collective decisions about material issues relating to the fund. All members of the collective investment are bound by a majority decision on these occasions.

On 3 March 2020, Mattioli Woods informed all the members of the investment that the existing tenant of the property wished to remain in it after the expiry of its current lease. The tenant was open to either entering into a new long term lease on the property or acquiring the freehold of the property, with the capital value of the property to be returned to the investors.

Mattioli Woods gave the pertinent information about both options, including advice it had been given about the potential capital valuation of the property and the terms of the lease it was seeking from the existing tenant. It also gave information it had received about the likely level of income that could be achieved if a new tenant had to be found for the property, which was significantly below that which the existing tenant was paying.

It gave a deadline for members to indicate their preferred option (to sell the property or extend the lease). On 27 April 2020, investors were informed that a majority of investors had been in favour of retaining the property.

Mr L queried the result of the ballot, and as a result, Mattioli Woods reviewed the results once more. It's review found that Mr L was correct and that there was a majority in favour of selling the property and returning the capital raised to the investors. On 30 April 2020 it stated:

After reviewing the weighted average of the votes the outcome changes. The A investors own 52.22% of the syndicate while the B investors own 47.78%. The A investors sell votes of 70.51% transposes to 36.83% and the B investors sell votes of 33.57% transposes to 13.74% which equates to 50.57% vote in favour to sell which is a majority, albeit marginal.

It also stated that it intended to continue negotiating a new lease with the tenant, as this was prudent in case a sale could not be achieved.

Mattioli Woods provided a further update on 2 June 2021. Investors were updated with the latest position on both the prospective sale price and progress on the negotiations of a new

long term lease. A further vote was taken on whether to proceed with the sale and a weighted majority of investors were again in favour of proceeding with this option.

On 15 September 2021 Mattioli Woods wrote again to the investors to advise them that the existing tenants no longer wished to proceed with the acquisition of the building but would instead like to enter into another long term lease agreement. Mattioli Woods informed the investors that it would continue to negotiate the lease terms as any future sale price could best be supported by retaining the existing tenants on a long term lease. These negotiations were concluded in November 2021, with the tenants agreeing a 25 year lease.

On 9 September 2022, Mattioli Woods again wrote to the investors with updated financial estimates for selling the property and asked for a further vote on whether to sell the freehold of the property or keep it so as to benefit from the new long term lease. On this occasion, the investors voted in favour of retaining the property. This result was communicated to the investors on 12 October 2022.

Mr L had been in favour of selling the property. He queried the result of the ballot and the manner in which the votes had been weighted to reflect the proportion of the property that each investor owned. He felt that the weighting was unfair, and that the vote should have been unweighted i.e. each investor received one vote regardless of the size of their investment and a simple majority be required for an option to be adopted. If this approach had been taken, the decision would have been taken to sell, rather than retain the property.

Mattioli Woods issued a response to Mr L's complaint on 30 November 2022. In it, it rejected his complaint. Mattioli Woods issued a final response letter and didn't uphold the complaint. It explained that the weighted voted system it used in conducting all the ballots had been established before it took over the administration of the scheme in 2012.

It explained that the weighting used in voting was the same as used in allocating income to individual investors, so the higher the share of the asset any individual investor owned, the higher their vote would be weighted in any ballot.

It also explained that this method was used consistently across all the syndicates and Limited Liability Partnerships that Mattioli Woods manage on behalf of clients and had done so since 2012.

Mr L was unhappy with this response and brought his complaint to this service.

Our investigator reviewed all the evidence provided by both parties and reached a view that he would not be upholding Mr L's complaint. They felt that Mattioli Woods had not acted unfairly in the way it conducted the ballot or weighted the votes, given that this was its established practice.

Mr L disagreed and so the complaint has been passed to me to make 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 done so, I do not uphold his complaint.

I can appreciate that Mr L will be disappointed by this, so I'll explain my reasons.

Mr L has, in this complaint, put forward the view that weighting the votes of individual

members according to the value of their investment is unfair to him. This is because in this instance, although a simple majority of investors indicated they were in favour of selling the property, once the weighting was applied, the view of a minority of investors to retain the property was held to take precedence.

Essentially, I have to make a decision on whether or not Mattioli Woods has treated Mr L unfairly, according to the Financial Conduct Authority's principles for businesses, most pertinently

- Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly)

To test whether I think he has been treated fairly, I have to consider this in the context of whether the application of the voting system has been appropriately approved, and consistently applied. As our investigator noted, it is not the place for this service to decide whether the characteristics of the voting system are fair, as that is an argument that would need to be made in a court of law. I can, however, take a view on whether I believe the application of the voting system is unfair to Mr L.

Mattioli Woods took over management of Mr L's investment, along with other collective investments in the summer of 2012. At that time, a decision was taken to continue with an already established voting system which applied weighting according to investment values. It has also provided copies of the relevant sections of the Operator Agreement for the investment that allows it to act in a way that:

in the operator's opinion be reasonably required in connection with or ancillary to the establishment, operation or winding up of the Scheme.

Although Mr L may wish to test this in a court of law, I find it reasonable to find that it has done nothing wrong in continuing the voting system that had already been established for the investment before it took over the management of the investment.

Mattioli Woods has also provided evidence to show that this voting mechanism applies to all the collective investments it manages. Given this, I find that the voting system has been consistently applied, and that Mattioli Woods has done nothing wrong in this regard either.

Consequently, it follows that I do not find that Mr L has been treated unfairly and do not uphold his complaint.

My final decision

For the reasons explained above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 December 2023.

Bill Catchpole
Ombudsman