DRN-4524915

The complaint

The complaint is made by Mr and Mrs N as member trustees of their small self administered scheme (SSAS). Mr and Mrs N complain that Mattioli Woods plc incorrectly assessed their attitude to risk (ATR) and promoted and recommended funds which weren't in line with their ATR.

What happened

I issued a provisional decision on 22 November 2023. I've repeated here what I said about what happened and my provisional findings.

'*The complaint has been investigated by one of our investigators. He issued a detailed view on 30 June 2023. He set out the background to the complaint. I'm not going to repeat all he said. But, in summary, the SSAS was established in 2008. Mattioli Woods was the adviser from then until early 2022. The SSAS focused on syndicated property investment and, in particular, Mattioli Woods and Helmsley Group property syndicates. Most, if not all, of the syndicates were unregulated collective investment schemes (UCIS). In 2014 all of the Mattioli Woods syndicate holdings were converted into a Real Estate Investment Trust (REIT).*

In 2015 Mr and Mrs N were introduced to Mattioli Woods Private Investors Club (PIC) 102 Partnership, explained as: 'An English limited partnership with investors becoming limited partners in an unregulated collective investment scheme (UCIS)'. Over the next couple of years details of other PIC investments were sent to Mr and Mrs N.

By April 2017 the SSAS investments included 8% in Helmsley property syndicates; 35% in the REIT; 35% in Mattioli Woods property syndicates; and 8% in other syndicates.
By November 2018 at least 39 similar type investments had been made.

There was some discussion about Mr and Mrs N's ATR in 2020 following the appointment of a new adviser at Mattioli Woods who said that, prior to the pandemic, Mr and Mrs N were higher risk investors. They responded on 7 May 2020, saying they'd always been prudent and conservative, and avoided high risk investments. The adviser suggested the risk profile had been on file from the previous adviser and that 'the exposure to PICs and syndicates would be classed as a high risk investment as they are unregulated by the FCA'. Mr N replied saying he'd 'always thought of bricks and mortar property syndicates as being safe, same as the REIT. I have always understood PIC's to be low to medium risk given the due diligence that your people would have done'. The adviser replied that, even where due diligence is conducted, 'the risk is still there. Furthermore, they do not benefit from the FSCS [Financial Services Compensation Scheme] due to the investments being unregulated'.
In November 2020, Mr N raised a complaint with Mattioli Woods about the sale of a structured product. The complaint outlined concerns to do with the annual fund return, investment return and the risks of the investment. On 7 December 2020 Mattioli Woods issued a final response, not upholding the complaint. The letter confirmed the complaint could be referred to us within six months. No referral was made.

In January 2021 Mr N emailed Mattioli Woods enquiring if any new PICs had been released.

In an email in April 2021 the adviser said that, having recently assessed their ATR, Mr and Mrs N were both balanced/average investors but able to take a higher risk in terms of investment like the PICs. Later that month, Mr N emailed the adviser the names of 14 equities that he was considering buying to ask if they could be held in the SSAS, adding that they would be fairly small sums. In June 2021 Mr N asked if there'd be any issues in buying £25,000 shares in the BMO Commercial Property Trust; another REIT.

On 27 October 2021 Mr N emailed Mattioli Woods for advice on two further syndicated property investments of around £50,000 and £25,000. The brochures for each investment were attached to the email. Both referred to the investments being UCIS.

On 29 October 2021 Mr and Mrs N made a further complaint to Mattioli Woods, citing various concerns about their service. On 21 November 2021 further points were added, including that Mattioli Woods had incorrectly assessed their ATR as high.

Mattioli Woods issued a final response letter on 21 December 2021. The complaint about their ATR wasn't upheld. Mattioli Woods offered £250 in respect of other aspects of the complaint and those issues are now being considered by The Pensions Ombudsman. Mattioli Woods also said that some of the complaint had been made outside the relevant time limits.

Mr and Mrs N changed advisers in early 2022 and moved the administration of their SSAS to the new firm. Their adviser at the new firm had been their appointed adviser at Mattioli Woods from 2008 to 2020. Since leaving Mattioli Woods, Mr and Mrs N made a further property syndicate investment of just under £30,000.

Mr and Mrs N referred their complaint to us. Mattioli Woods said that part of it had been made outside the permitted timescales and Mattioli Woods didn't consent to us investigating those aspects of the matter which Mattioli Woods said had been raised too late.

In his view issued on 30 June 2023 the investigator considered first whether all parts of the complaint had been made in time. He set out the relevant DISP (Dispute Resolution) rule: DISP 2.8.2R which says:

'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

> *(1) more than six months after the date on which the respondent sent the complainant its*
> *final response, redress determination or summary resolution communication; or*
> *(2) more than:*
> *(a) six years after the event complained of; or (if later)*
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*
> *unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
> *unless:*
> *(c) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R210 was as a result of exceptional circumstances;'*

Mr and Mrs N had referred their complaint to Mattioli Woods on 21 November 2021. Under DISP 2.8.2R (2) (a) the key date was 21 November 2015 – six years before the complaint was made. Events that occurred more than six years before then were potentially out of time. Under DISP 2.8.2R (2) (b), if Mr and Mrs N had become aware (or ought reasonably to

have become aware) before 21 November 2018 – three years before they complained – that Mattioli Woods was recommending investments that weren't in line with their ATR, the complaint would be out of time. The investigator's view was that Mr and Mrs N were aware (or reasonably ought to have become aware) of that by November 2018. They'd described their ATR as low and conservative. They'd said, if they'd have known about the unregulated status of the syndicates, they would've 'red flagged it' and not gone ahead.

The investigator noted that, by 21 November 2018, Mr and Mrs N had made at least 39 investments in property syndicates or similar, mostly operated by Mattioli Woods or Helmsley. The investments were UCIS. The prospectuses referred to the syndicates' lack of regulation. In May and June 2015 the adviser had set out that the syndicated investments were UCIS. Mr and Mrs N had signed Helmsley's risk questionnaire which confirmed their understanding that the investments were high risk. They'd signed declarations to confirm they'd read and understood the risk factors set out in the prospectuses which specifically referred to the unregulated status. As trustees of the SSAS there was an obligation to have an understanding of the investments in the SSAS. Of the 39 investments, 27 had been sold by 21 November 2018, with ten making a capital loss, from around 1% up to 26%. The losses exceeded those which would typically be expected on a lower risk investment.

In summary the investigator said we couldn't consider a complaint about the risk profile of the SSAS before 21 November 2015. But we could consider a complaint about the risk profile after then and since when Mr and Mrs N had made about eight further investments in PIC syndicates.

But the investigator didn't uphold that complaint. His main points were:

- *There's nothing to indicate how Mr and Mrs N's ATR was established. Although they were not explicitly recorded as high risk investors from the start of their relationship with Mattioli Woods in 2009, equally there's nothing to show that Mattioli Woods understood them to be low risk investors.*
- *Mattioli Woods' letter of October 2009 cited the opportunity to invest in alternative assets as a reason for the transfer to Mattioli Woods. From the start, Mr and Mrs N had shown an interest in and an appetite for property based investments, specifically syndicates. The syndicates were unregulated. That was clear from the prospectuses and there were letters from Mattioli Woods explaining that. Mr and Mrs N had actively sought out those investments and they'd emailed Mattioli Woods from time to time to enquire about new syndicates or opportunities to purchase second-hand syndicate holdings.*
- *Helmsley were clear in pointing out that their investments should be considered high risk. Mr and Mrs N may have considered the investments to be relatively safe, as they were secured against a property with blue-chip tenants. But the investment provider categorised them as high risk, and knowing this, Mr and Mrs N had referred these investments to their Mattioli Woods adviser for inclusion in their SSAS.*
- *In June 2019 the adviser wrote to Mr and Mrs N confirming they had an adventurous ATR, based on the investments held and that they were comfortable with this. Mr and Mrs N didn't challenge that. It wasn't unreasonable to assume that was because that was an accurate reflection of their ATR at the time.*
- *Mr and Mrs N had said they didn't consider 'adventurous' to be the same as 'high risk'. They'd understood it to mean they were open to different types of investments, albeit with the goal of investing cautiously. The investigator thought 'adventurous' commonly represented high risk.*
- *Mr and Mrs N had raised an objection when their new Mattioli Woods adviser referred to them as having a 'high risk' ATR in May 2020. In the email exchange that followed, the adviser explicitly said that exposure to PICs and syndicates was high*

risk and that the investments weren't regulated and weren't eligible for FSCS.

- *In January 2021, after the status of the PIC syndicates and their risk profile had been made clear, Mr and Mrs N made a further enquiry about whether any new investment opportunities were being released. And, in October 2021, they'd forwarded prospectuses for two more UCIS for possible inclusion in their SSAS. They didn't invest but their enquiry demonstrated a propensity to invest in these types of assets, even knowing that Mattioli Woods considered them high risk, that they were unregulated, and that Mattioli Woods considered them higher risk investors.*
- *Some of the syndicate holdings had been retained and transferred to the new SSAS provider. Had Mr and Mrs N been concerned about the risks of those investments, they might reasonably have been expected to seek to dispose of them. They'd said that Mattioli Woods didn't discuss an exit strategy with them but they'd purchased second-hand syndicate holdings so they knew an exit was possible. It would help to mitigate any potential losses if they felt the asset(s) was too high risk.*
- *Mr and Mrs N's new adviser is their previous Mattioli Woods adviser who'd recommended many of the investments they're now complaining about. A recent transaction history confirmed a further investment of some £30,000 into another property syndicate. The literature clearly states it's high risk and a UCIS, evidencing an appetite for these types of assets, regardless of their risk or lack of regulation.*
- *In summary, throughout their relationship with Mattioli Woods, Mr and Mrs N had displayed a keen desire to hold property backed investments within their SSAS. They'd actively sought opportunities to make such investments and had done so after receiving countless notices of their regulatory status and risks, from both Mattioli Woods and third parties. Mattioli Woods hadn't categorised Mr and Mrs N's ATR incorrectly or recommended investments that weren't in keeping with that ATR.*
- *The investigator didn't comment about the complaint in respect of the structured product apart from saying that, ultimately, the complaint was about the risks of the investment and the investigator's views about that were as he'd set out.*

Mr and Mrs N didn't accept the investigator's view and made detailed comments. They didn't agree we couldn't look at events before 21 November 2015. And they maintained their complaint should be upheld. I've summarised the main points they made in their annotations on the investigator's view and in their covering letter.

- *In setting up the SSAS they were seeking a greater range of choice. They'd never asked for very high risk products and had always sought advice from Mattioli Woods about any investment opportunities. They'd expressed interest in second hand syndicates because they could offer better value. And the 2008 banking crisis may have meant there were some good opportunities.*
- *To meet their own obligations as trustees they'd appointed Mattioli Woods as a professional trustee and their advisers. They'd relied on Mattioli Woods to provide them with investment opportunities that were consistent with their ATR and appropriate for the SSAS.*
- *Mattioli Woods failed to document their ATR and formally agree it with them, either at the outset or at regular intervals. It was only when the new adviser became involved that she said she couldn't advise until they'd completed a risk assessment review. They became aware that the previous adviser had considered their ATR to be medium but Mattioli Woods has promoted and recommended very high risk products.*
- *When the PIC was introduced by Mattioli Woods, the adviser's letter and accompanying prospectus highlighted that it was a UCIS. But regulatory status isn't the same as risk profile. The UCIS wrapper doesn't dictate or alter the product risk. Some UCIS are low risk. Initially they were offered investments with good security – first legal charges on UK land and buildings. Later investments were poorly secured and so much higher risk. Mattioli Woods failed to identify the lack of security.*

- *They'd seen commercial property based investments as a means to provide a low risk, reliable retirement income stream. Mattioli Woods had never contradicted that view. Syndicates offered a lower level of risk than just holding one commercial property, with the opportunity to spread the risk through a number of smaller holdings with blue chip tenants and no borrowings. Mr and Mrs N pointed to two of the Helmsley syndicates as being good yielding, low risk investments, where the value of the property had increased. Overall the Helmsley syndicates have gone up in value – from £194,000 to £209,000, as well as providing good revenue streams.*
- *About the risk questionnaire they'd completed for Helmsley in October 2014, they said Helmsley offered three different types of property investment – syndicated ownership; secured loans to property builders; and direct involvement in property development. There was one standard form but the investments carried different levels of risk. They'd only ever invested in the low risk category of syndicated property, confirmed by Helmsley's Managing Director.*
- *The adviser failed to refer to refer to guidance about UCIS investments not exceeding 3 - 5% of the portfolio value. Their investments were about ten times that.*
- *The adviser had written to them in June 2019 confirming they had an adventurous ATR. Mattioli Woods should've told them that their ATR meant they were willing to take very high risks with their pension fund. And asked them to confirm that in writing. The onus was on Mattioli Woods to explain, use clear and unambiguous language, seek their written agreement and explain the implications. When the new adviser told them in May 2020 they were considered to be high risk investors, they'd responded within three days to confirm their understanding. Up until then, for some 11 years, there'd been a total failure to confirm and document Mattioli Woods' understanding of their risk profile.*
- *They'd emailed Mattioli Woods in January 2021 about new investments as some seemed reasonable due to having good security and they may have been interested in a well secured investment. It was the unsecured and hence extremely high risk investments (such as Barwood and Walrus) that had been wrong for them.*
- *Disappointed with Mattioli's reply to their complaints, they'd decided to switch advisers. In January 2022 they'd spoken to other potential advisers who'd said there was an issue with the Mattioli Woods PICs and either declined to act or would charge a large fee to review those investments. The original adviser agreed to take them as clients without any additional charges and he was familiar with the PICs. They'd confirmed with him that his new firm didn't promote or sell any products which were in any way similar to the Mattioli Woods PICs. When the last PIC is concluded, they planned to switch from the SSAS to individual SIPPs and save costs. They added that they considered the failings which had led to their complaint were as a result of how Mattioli Woods operated, rather than the individual adviser.*
- *By the time they changed advisers, the Barwood investment had already concluded. With Walrus, the expectation was that very little, if any proceeds would be received, so no one would've wanted to buy the investment. And Mattioli Woods had never suggested there was a second hand market for PIC investments and the (original) adviser confirmed he was unaware of any PICs being sold prior to maturity.*
- *As to the losses that the investigator had referred to, the first six (in March 2014) were the Mattioli Woods properties that were transferred into the Custodian REIT. Mattioli Woods had reassured them that there was no overall loss as there were gains on other properties. Property values can suffer temporary short term declines, particularly as the leases approach renewal. Subsequent increases in value should've been reflected in the REIT share price. That was totally different to the Walrus PIC where there was a total loss of capital.*

The investigator considered Mr and Mrs N's comments but he didn't change his view. In summary, he said it was clear that he and Mr and Mrs N didn't agree as to the risk posed by

the various UCIS investments in the SSAS portfolio. They'd said Helmsley shared their view that their UCIS investments were lower risk but the industry generally widely regards UCIS to be higher risk. And Helmsley's own guide said that syndicated property should be seen as a high risk component of any investment portfolio.

Although Mr and Mrs N had maintained that, during their relationship with Mattioli Woods, they'd sought a lower risk investment strategy, the investigator didn't consider that was supported by the investments they'd held over the years. He said they'd continuously sought out investments in property syndicates, they were clearly informed these were unregulated, and had expressed no surprise when the adviser had referred to them as adventurous investors. Although they'd explained what they'd understood by that, the investigator's view was that, in the context of investing, adventurous couldn't mean anything other than higher risk. That was supported by what the regulator said. And a substantial portion (just over half according to the new Mattioli Woods' adviser's email in May 2020) of the SSAS was invested in a stock broking account. Individual shareholdings are generally considered to be at the higher end of the risk spectrum. The investigator said that wasn't the investment approach he'd expect to see from an investor who wanted to adopt a conservative or low risk strategy.

I've seen there were further exchanges. Amongst other things, Mr and Mrs N raised some queries about Mattioli Woods' internal systems and procedures. They also produced an email sent to the adviser on 4 December 2012, evidencing their instruction was to take a low risk, financially prudent strategy. Mattioli Woods had advised them to make investments which were contradictory to what they wanted and had clearly instructed. They also made some comments about the (updated) information issued by Helmsley and why it indicated a low risk investment.

What I've provisionally 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.

But I've first considered jurisdiction. We're required to keep jurisdiction under review throughout our consideration of a complaint up to when a final decision is issued.

We're governed by the DISP (Dispute Resolution) rules set out in the regulator's Handbook. DISP 2.2 sets out that which complaints can be dealt with by this service depends on the type of activity to which the complaint relates (and which under DISP 2.3.1R includes regulated activities); the place where the activity to which the complaint relates was carried on; whether the complainant is eligible; and if the complaint was referred in time.

I don't think there's any issue about the first two matters. Mr and Mrs N's complaint relates to a SSAS. That's a type of occupational pension scheme (OPS). A complaint about an OPS may fall outside our jurisdiction. But here the activities which Mr and Mrs N are seeking to complain about are regulated activities undertaken by Mattioli Woods, who are based in the UK. Regulated activities are set out in the Regulated Activities Order (RAO) and include arranging (bringing about) deals in investments (article 25(1) RAO); making arrangements with a view to transactions in investments (article 25(2)) and advising on investments (article 53(1)).
I've seen that we initially thought Mr and Mrs N may not have been eligible complainants as trustees of the SSAS and taking into account the NAV (net asset value) of the SSAS. But we then clarified that this wasn't an issue. Mr and Mrs N have said that Mattioli Woods also advised them as individuals or consumers. But, as we can consider the complaint – about the suitability of the SSAS investments – made by Mr and Mrs N as trustees, I don't need to consider eligibility further.

The main issue as to jurisdiction is whether the complaint has been made in time. The investigator set out in his view the relevant DISP provision which is DISP 2.8.2R and I've repeated it above. To be in time, Mr and Mrs N's complaint must've been made within six years of the event complained of or within three years of when they became aware (or ought reasonably to have become aware) they had cause for complaint. Mr and Mrs N's complaint was made on 21 November 2021. Under the primary six year period in DISP 2.8.2R (2) (b) we can consider the complaint in so far as it relates to events in the preceding six years which takes us back to 21 November 2015.

Mr and Mrs N's complaint is that Mattioli Woods incorrectly assessed their ATR and promoted and recommended investments which didn't match that. That complaint encompasses issues such as whether Mattioli Woods should've advised them against making certain investments and failed to keep the SSAS under review and suggest it should be rebalanced in order to ensure the SSAS matched Mr and Mrs N's ATR. I agree with the investigator that we can consider a complaint about the risk profile of the SSAS from 21 November 2015 onwards under the six year part of DISP 2.8.2R (2) (b).

I think it's clear that we can consider investments made after that date and Mattioli Woods accepts that. The investigator noted in his view that around eight further investments had been made since then (including the Walrus investment of £100,000 and the £24,375 top up made in July 2017 and December 2018 respectively). But Mattioli Woods' position is that we can only consider investments made after 21 November 2015. I don't agree. As I've said, we can look at the risk profile of the SSAS from that date onwards. As at that date the SSAS would be made up of investments that had been recommended and made before 21 November 2015. So all of those underlying investments making up the SSAS would reflect the risk profile of the SSAS and which we'd be considering from 21 November 2015 onwards.

On that basis and taking into account what I've said about what Mr and Mrs N's complaint encompasses, I think we can consider everything that was in the SSAS as at that date and not just the new investments which were made after then. I recognise that there might be complications arising from that approach. For example, if an investment made before 21 November 2015 was illiquid as at that date and subsequently, there may have been little that could've been done about it, even if it had been identified as unsuitable or too high risk. So deciding if any redress would be due might be difficult. But I mention that largely in passing as, given my views on the merits, those difficulties don't arise.

I think Mr and Mrs N's position is that all the SSAS investments should be considered, from inception of the SSAS in 2008. But investments which were made before 21 November 2015 and which matured before that date won't form part of the underlying SSAS assets as at that date. So, in my view, those investments would fall outside the scope of a complaint about the risk profile of the SSAS from 21 November 2015 onwards.

I think we'd only be able to consider a complaint about any of the investments bought and sold before 21 November 2015 if Mr and Mrs N could bring themselves within the second limb of DISP 2.8.2R (2) (b) and show that they only became aware (or ought reasonably to have become aware) they had cause to complain about the particular investment(s) after 21 November 2018 (three years before they complained on 21 November 2021).
Mr and Mrs N might say they didn't actually know they had cause for complaint about any of the investments until they actually complained on 21 November 2021, having only by then become aware of issues relating to the SSAS generally, for example, that the proportion of UCIS investment wasn't in line with regulatory guidance. But we also have to consider when Mr and Mrs N ought reasonably to have become aware they had cause for complaint. That's an objective assessment, based on constructive knowledge.

In considering that we'd look at all the information available to them. That would include any losses realised on any investments. If such losses were more than Mr and Mrs N would reasonably expect to incur, if they thought they were investing on a low risk basis, we might say that such losses ought reasonably to have made them think about if the investment had been right for them and if the recommendation to invest was suitable. Or, if they'd suggested the investment themselves, whether Mattioli Woods should've advised them against investing because the investment was too high risk and so didn't match their low risk ATR or because the SSAS held too many higher risk investments or wasn't sufficiently diversified.

The investigator pointed to capital losses which were incurred on 26 March 2014 on six of the Mattioli Woods syndicated properties. The losses ranged from 10% and 13% on two syndicates and between 21% and 26% on the other four. I agree with what the investigator said about those losses – that they exceeded the losses that would typically be expected on a lower risk investment. Some of the losses were around a quarter of the amount invested. If Mr and Mrs had understood the investments were low risk then losses of that magnitude should've made them aware that the investment carried more risk than they thought and so prompted them to think about if the investments had been suitable for them.

Mr and Mrs N have said that the losses were incurred on the transfers, with other Mattioli Woods property syndicates, to the Custodian REIT and that there was no overall loss, other syndicates having made a profit. I'm not persuaded by that. I think Mr and Mrs N would've been aware of the pre existing individual syndicates and how well or otherwise they'd performed. So I agree with the investigator that a complaint about those investments has been made too late. The same would apply to any other investment which matured before 21 November 2015 and incurred a significant loss. I assume Mr and Mrs N wouldn't want to complain about investments which had matured prior to that date and hadn't made any loss.

In summary, I think we can consider, under the six year part of DISP 2.8.2R (2) (b), all the investments in the SSAS as at 21 November 2015 and any investments made after that date. But we can't consider any investments made before then and which had been sold by then.

There's also a jurisdiction issue about whether Mr and Mrs N can complain about the structured product and given that they'd made an earlier complaint and in respect of which Mattioli Woods issued a final response letter. DISP 2.8.2R (1) says we can't consider a complaint if the complainant refers it to this service more than six months after the date on which the respondent sent the complainant its final response letter.

Mr and Mrs N complained to Mattioli Woods on 16 November 2020. In summary they said the structured product had been sold to them on the basis it would provide annual income whereas the fund actually targeted capital growth and that hadn't been achieved either. They said that the risks hadn't been managed as the recommendation had promised and there'd been a fall in value whereas the benchmarks had shown gains. Mattioli Woods issued a final response to that complaint on 7 December 2020. As Mr and Mrs N didn't refer the complaint to us within six months of then, Mattioli Woods says a complaint about the structured product has been made too late.

Mr and Mrs N's position is that they later raised separate and different complaints to Mattioli Woods' Head of Structured Products which weren't passed on to the Customer Service Team. Mr and Mrs N say they shouldn't be denied the opportunity to refer their complaints to us just because they'd made a previous and separate complaint.

I've considered the email chain Mr and Mrs N have provided from early January 2021. They were clearly disappointed with the returns to date and which didn't meet their expectations. I don't think that's much different to what they'd said in their November 2020 complaint –

essentially that the performance of the structured product had been disappointing and not what they'd been given to expect. But in any event I don't think what Mr and Mrs N said in January 2021 amounted to a complaint – or rather a further complaint – about the structured product. It seems to be more a query about current and possible outcome valuations and a debate about whether they should retain the structured products until maturity or encash them.

From what I've seen, Mattioli Woods dealt with the queries raised. Mr and Mrs N took the view that a 17.05% gross return over five years or 2.05% pa (and which wasn't guaranteed) wasn't favourable. Mattioli Woods didn't think the figure of 17.05% was a reasonable assessment and explained why. Mr and Mrs N responded, saying they'd asked to encash but the process would take a week to ten days and they could withdraw their request if the potential outcome was better than they'd concluded. Mattioli Woods replied, saying they couldn't really provide a more informed view but they considered it realistic to target a higher average annual return (3% to 6%). There was also a query as to charges which Mattioli Woods dealt with.

The upshot, from what I've seen, is that further complaint was made. And, to the extent that any complaint is materially the same as the complaint(s) Mr and Mrs N made in November 2020, we wouldn't be able to consider it as it wasn't referred to us within six months of Mattioli Woods' final response letter.

Under DISP 2.8.2R (3) I can consider a complaint that's been made too late if I'm satisfied the failure to comply with the time limits in DISP 2.8.2R (2) was as a result of exceptional circumstances. The example given in DISP 2.8.4G is where the complainant is or has been incapacitated. I haven't seen anything to suggest Mr and Mrs N's circumstances were exceptional and such as prevented them from referring their complaint about the structured product in time. So, as things stand, I haven't considered any complaint about the structured product.

Moving on to the merits of the complaint about the risk profile of the SSAS from 21 November 2015 onwards, I've read and considered everything, but I'm only going to comment on what I see as key. My views are much the same as the investigator's and which I've summarised above.

Mr and Mrs N's relationship with Mattioli Woods spans some eleven years. In my view, Mattioli Woods' documentation and records are somewhat lacking. There seems to be little in the way of risk questionnaires or other evidence (such as file or meeting notes) which record what was discussed and agreed with Mr and Mrs N as to their ATR and what they understood what Mattioli Woods had recorded as to their ATR. But I don't think it would be fair to uphold the complaint just based on a lack of records. Instead, like the investigator, I've examined what other evidence there is to show what Mr and Mrs N's ATR was, what they'd have understood about the investments they were making and whether Mattioli Woods was wrong to proceed on the basis Mr and Mrs N were higher risk investors.

Mr and Mrs N have emphasised they wanted to adopt a low risk, conservative approach and that they understood syndicated property investment was consistent with that. Mr and Mrs N were clearly comfortable with investing in property. They say they wanted a greater range of investment choice in setting up the SSAS but they clearly favoured property as an asset class. Property offers a real or tangible asset and returns aren't necessarily correlated with those from other asset classes. Property may continue to offer good returns during periods of stock market volatility and regardless of whether interest rates are rising or falling. And syndication allows investors to pool their money and invest in properties which would otherwise be unaffordable. But there are risks in investing in property generally and particularly here given the unregulated nature of the property syndicates and the PIC

investments.

The investigator pointed to various documents which indicated the investments Mr and Mrs N were making were unregulated and higher risk. Mr and Mrs N say unregulated isn't the same as risk. In theory that's true but, in my view, the two are closely correlated. The unregulated nature of an investment is part of the reason why it's usually higher risk. As is the structure. A UCIS must have an authorised operator but it may have higher levels of borrowing or gearing and/or have greater propensity to illiquidity. A UCIS isn't subject to the same restrictions as a CIS in terms of investment and borrowing or how it's run.

Mr and Mrs N say some UCIS are low risk. They've pointed to some of the syndicates as good yielding, with well established, reliable long term tenants and where the value of the underlying property has increased. In contrast they say that other investments, such as Walrus and Barwood, stand out as being different with no security offered. I accept that the exact level of risk will depend on the particular investment and that some investments may present as representing less risk, whether because of the underlying investment itself, the security that is offered or the controls or guarantees that appear to be in place. But I don't think the fact that some of the risks have been mitigated or that an investment has not encountered problems means that it can properly be described as low risk. As the new Mattioli Woods' adviser said, the risks are still present.

And I agree with the investigator that it would've or should've been apparent to Mr and Mrs N from the documentation they saw, including the prospectuses for the very large number of syndicated property and similar investments, that they were making higher risk investments. There's other documentation too. For example, the High Net Worth (HNW) client declarations they signed say that 'the types of opportunities on offer are likely to be classified as high risk and that the investment structures may mean you do not benefit from the same level of regulatory and compensatory protection.' The declaration includes, in bold, 'I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested.' So an investor would've understood that there was a real risk that the money invested would be lost. Once that sort of territory has been established I think it's difficult to try to distinguish between some investments on the basis that they represented an even higher and so unacceptable level of risk. Or say that some investments were in fact low risk.

The investigator also referred to the Helmsley risk questionnaire that Mr and Mrs N completed in 2014. I'm not persuaded by what they say about understanding that to mean that syndicated property investment was low risk. It may have been lower risk than the other types of property investment opportunities offered. But that's relative and doesn't mean that syndicated property investment was actually low risk.

I've also considered the email from Helmsley's Managing Director dated 29 June 2023. He did express the view that the investment offerings were 'relatively low risk' and lower risk than some other UCIS. I've certainly seen other UCIS investments of the type he refers to and which might appear to be riskier than a well managed UK based commercial or residential property investment which offers tangible security and investor protections. But I think the key word is 'relatively'. Even if the Helmsley syndicates were less risky than other UCIS I still think that type of investment would be regarded as higher risk compared with other types of regulated investments and funds.

Mr and Mrs N have also referred to Helmsley's updated information about property purchase. It says that prudent property purchases shouldn't be of a speculative nature and refers to the value of the underlying property in terms of quality and position and the standing of the tenants to ensure a dependable income source. But the guide is essentially a sales document which presents the investment proposition in a favourable way. I maintain

that investing in property isn't in itself low risk – I think it's generally regarded as at least a medium risk investment – and unregulated syndicated property investment is higher risk.

The investigator referred to the adviser's email of 19 June 2019 referring to Mr and Mrs N having an 'adventurous' appetite for risk based on the investments held in the SSAS. I've noted all Mr and Mrs N say about their understanding of what that term meant. Essentially that they were prepared to consider a wide range of investment opportunities. And why their understanding may have been different from that of the adviser's or indeed anyone familiar with financial services terminology. But the dictionary definition includes 'daring', 'bold', 'exciting' and indeed 'risky'. In contrast, the definition of 'unadventurous' includes 'careful', 'cautious' and 'safe'. So the ordinary meaning of 'adventurous' does encompass or denote risk. In my view, an investor, even one with no particular degree of financial expertise, would typically understand that the investments were higher risk.

Mr and Mrs N have referred to the email they sent on 4 December 2012 to the adviser. Numbered paragraph 3 is referring to 'the investment strategy for the Co Funds' and whether a high or low risk strategy should prevail. I don't think that sheds much light on the risk level they were prepared to adopt for the balance of the SSAS. I note that the syndicated property investments are referred to separately in paragraph 2 of the email. Further, even if that email does evidence that Mr and Mrs N wanted to take a low risk approach, they'd have known from all the information they later received and which I've referred to above that the investments they were making were higher risk and so not consistent with a cautious or low risk strategy. So I don't think the email adds much.

The losses that the investigator pointed to are relevant. I note what Mr and Mrs N say about having been told by Mattioli Woods that there was no overall loss on the transfers to the Custodian REIT. But it seems that some of the investments did suffer losses which, in some cases, were quite significant – between 20% and 30% of the amounts invested. That sort of level of loss would be more than an investor who thought they were investing on a low risk, relatively cautious basis would've expected. And I think that should've called into question whether the investments were actually low risk. Mr and Mrs N's reaction – that there was no loss overall – is more in line with that of a higher risk investor.

Mr and Mrs N have pointed out that they did challenge the new Mattioli Woods' adviser's email of 4 May 2020. I think that was a bit late in the day. In any event, even if, going forwards, Mattioli Woods was on notice that Mr and Mrs N didn't agree they were high risk investors, they then enquired (in January 2021) about further similar investment opportunities and (in October 2021) forwarded prospectuses for two more property based UCIS. That in my view tends to undermine somewhat the suggestion that Mr and Mrs N wouldn't be prepared to invest on a high risk basis and when by then they knew that Mattioli Woods regarded that type of unregulated investment as higher risk.

Mr and Mrs N have referred to the then regulator's July 2010 'Good and poor practice' UCIS report and to information on our website about UCIS complaints. We explain that UCIS should only be promoted to HNW or sophisticated investors. I don't think there's any dispute that Mr and Mrs N were HNW individuals – I've referred above to them having signed declarations to that effect. So any promotions they received from Mattioli Woods (and they may also have received promotions direct from the investment providers) were lawful on the basis they qualified as HNW clients to receive such promotions.

The July 2010 report gives, as an example of good practice, setting up a maximum portfolio proportion for UCIS investments within customers' portfolios and monitoring it regularly. The level in the example given was between 3% and 5%. Mr and Mrs N say Mattioli Woods recommended investments which meant the SSAS held significantly more (ten times) that. I'd point out that isn't a regulatory limit and whether we'd uphold a complaint about the

proportion of UCIS investment will depend on all the circumstances of the particular case. That said, I can understand why Mr and Mrs N might consider that level of UCIS too high and such that meant some of the investments in the SSAS were unsuitable for them.

I note what Mr and Mrs N have said about why they transferred to a new firm but have ended up with the same adviser. I can see that the makeup of the SSAS may have caused some issues for some advisers. And it may not have been possible to sell certain investments to rebalance the SSAS. Mr and Mrs N refer here to the Walrus investment and the expectation that very little, if any, proceeds would be received and so it wouldn't have been possible to find a buyer for the investment. Other investments may also have been illiquid (meaning that they couldn't readily be sold). So I don't think much turns on the fact that they may not have tried (possibly because they couldn't) to mitigate their position.

But what I think is significant is that Mr and Mrs N have made a further syndicated property investment of £30,000 since moving to the new firm.

As I've indicated I think Mr and Mrs N should've been aware that the investments they were making were higher risk. Awareness of risk isn't the same as suitability. Simply pointing out the risks won't make an unsuitable investment suitable. But, even if I upheld the complaint on the basis that the proportion of UCIS investment was too high, even for adventurous investors, I'd also need to be satisfied that Mr and Mrs N wouldn't have proceeded with the investments (or certain of them) if they'd been advised against. If they'd have gone ahead anyway, then any losses wouldn't flow from any unsuitable advice from Mattioli Woods and/or any failure to point out that the risk profile of the SSAS didn't match their ATR. The losses would flow from Mr and Mrs N's own decision to invest, despite advice to the contrary.

It's difficult to be satisfied that Mr and Mrs N would've acted differently, given that, after they'd made their complaint, they made a further syndicated property UCIS investment. And that was after they'd expressed interest in two other UCIS. Their willingness to invest in a way similar to previously runs counter to their complaint that such investments were inappropriate for them and out with their risk profile and that they wouldn't have gone ahead if they'd understood the investments were higher risk and had been advised against. I anticipate Mr and Mrs N will say it all depends on the particular investment. I know they seek to differentiate between certain property syndicates and others but, as I've explained above, I think generally such investments are higher risk and so it's difficult to draw and justify that sort of distinction.

From what I've seen, from the outset Mr and Mrs N favoured and were comfortable with syndicated property investment. I think they had a settled investment preference and strategy and they were confident in their own approach and decisions. After they'd complained and were aware that the risk profile of the SSAS was high, they remained willing (and I'd probably say keen) to invest in the same way as previously. In the circumstances I think it's difficult to say that, even if Mattioli Woods should've done more to make them aware of the high risk profile of the SSAS or suggested what should be done to rebalance and derisk the SSAS and/or diversify, they'd have accepted such advice and adopted a different investment strategy. I think that applies to the PIC investments too.

Mattioli Woods could've done more in terms of assessing on a regular basis and reviewing Mr and Mrs N's ATR and recording that they were aware of the higher risk nature of the investments and that the risk profile of SSAS – with the investments split between property and the share portfolio – was higher risk. And that they were willing to invest on that basis and had the capacity for loss that might result. But I think Mr and Mrs N were aware anyway that they were taking a high risk approach with their SSAS. And the fact that, after they'd complained that such investments were too high risk, they continued to express an interest

in similar products and they in fact invested again in a UCIS, supports a finding that, regardless of any shortcomings on Mattioli Woods' part, the same outcome would've prevailed. In the circumstances I'm not upholding the complaint.

In the circumstances I don't think it's fair and reasonable to say that any investment losses that Mr and Mrs N have sustained in consequence of any of the investments they made are Mattioli Woods' responsibility.'

Mr N responded to my provisional decision. I've summarised some of his main points, made on behalf of him and his wife.

- Mattioli Woods had only once told him and his wife that their ATR had been assessed as high. Mr N had responded immediately to the new adviser saying that was incorrect. She then assessed them as balanced/average risk with an ability to take higher returns (not risks) via PICs, adding '*although you'd prefer to minimise the risk where possible'*. If that assessment had been undertaken earlier Mattioli Woods wouldn't have been able to say they thought Mr and Mrs N had a high ATR.
- Had the letter dated 19 June 2019 clearly set out that Mattioli Woods had assessed their ATR as high, Mr N would've responded immediately and exactly as he'd done to Mattioli Woods' new adviser. The letter mentioned adventurous but what that meant was unclear. Mr and Mrs N hadn't understood it to mean high ATR. If that was what Mattioli Woods had meant then that should've been clearly stated. At the meeting referred to (on 13 June 2019) there was no mention of ATR, as Mr N's notes of the meeting confirmed.
- The Barwood and Walrus investments were made before 19 June 2019 and before there'd been any comment from Mattioli Woods as to their opinion of Mr and Mrs N's ATR.
- Mattioli Woods had promoted very high risk investments. And had failed to issue specific advice letters and had instead just sent emails saying they were good investments for Mr and Mrs N. Any risk warnings that would've been included in a formal advice letter weren't given.
- Mr and Mrs N had invested in syndicated property as recommended and promoted by Mattioli Woods on the assumption the investments met their low ATR. They saw the investments, in bricks and mortar, as low risk and that wasn't challenged by Mattioli Woods, who later claimed Mr and Mrs N wanted high risk investments because they'd followed the initial advice to invest in syndicated property.
- Throughout their time with Mattioli Woods, Mr and Mrs N were approaching retirement and didn't want to jeopardise their capital. Their income exceeded their expenditure and they'd built up considerable wealth by prudent saving and careful spending. They had no need to adopt a high risk investment strategy.
- A further syndicated property investment was made after they'd left Mattioli Woods. But it was a reallocation of funds which had been invested in a UCIS held by Mr and Mrs N personally, rather than via the SSAS. Holding it in the SSAS allowed them to extract some cash from the SSAS after Mr N had retired.
- They'd followed the new firm's advice not to purchase further syndicated property as the return was low in the current market conditions. The funds were later invested with NS&I. Had Mattioli Woods adopted a similar approach and said that an investment wasn't suitable, they'd have followed that advice. Where funds had come into the SSAS, for example the PICs that matured, they'd been invested in a discretionary managed balanced fund, which wasn't high risk.
- Their request to Mattioli Woods for details of any other PICs doesn't show they wanted high risk assets. Some of the PICs seemed well secured and much lower risk than Walrus and Barwood. Mattioli Woods was still their adviser at the time and they saw no harm in asking. There were no low risk investments available and so they

didn't invest. It wasn't them asking for information that was indicative of their ATR, it was their decision not to invest which illustrated their ATR.

- If Mattioli Woods had assessed and reviewed their ATR and told Mr and Mrs N they were considered as high risk taking clients, they'd have been able to respond, which would've led to them and Mattioli Woods better appreciating the other's position and as happened after the new adviser noted their high ATR. Assessing, documenting and, in particular, agreeing a client's ATR is a requirement for a financial adviser. The onus was on Mattioli Woods to instigate that process and the failure to do so had led directly to the losses complained about.
- Mr and Mrs N didn't know that 'adventurous' meant other than they'd understood – that they'd be prepared to look at a range of opportunities – which was the original brief. Mattioli Woods should've explained their understanding and obtained Mr and Mrs N's agreement. And undertaken properly documented ATR assessments, both initially and at regular intervals. The failure to understand their ATR is fundamental and not just poor administration. Mr and Mrs N have also referred to COBS 2.1 (the client's best interests rule) and to the Principles for Businesses (PRIN) and, in particular, Principles 6 and 7.
- Mattioli Woods had never expressed the view that syndicated property investments, whether their own or those offered by others, were considered high risk. Looking back, the REIT (which was instigated by Mattioli Woods and about which Mr and Mrs N had no choice) carried a higher level of risk as it did borrow money and used gearing to buy further properties. Those risks were never explained.
- Mr N referred again to what Helmsley's Managing Director had said. Mr N didn't agree that all UCIS are by their nature high risk. He said it was the underlying investment which determined the risk, rather than the wrapper. But, if it was the wrapper, it was up to Mattioli Woods to notify them, discuss it and advise, which Mattioli Woods hadn't done.
- I'd referred to UCIS having higher levels of borrowing or gearing (which would increase the risks). But the syndicated properties didn't have any borrowing or gearing. And Helmsley stated no loans would be made. That was one of the reasons why Mr N considered them to be low risk and Mattioli Woods didn't advise otherwise. Nor had Mattioli Woods raised with them that individual shareholdings are generally considered to be higher risk.
- Mr N considered that the Barwood and Walrus investments carried a substantially higher level of risk for the reasons he set out. The risk warnings in the brochures were the same as for other secured PICs and didn't highlight the significant additional risks of these particular investments. Mr N pointed out that he and his wife hadn't invested in all the PICs offered to them. Some were high yield and high risk and so they'd avoided those. They'd have done likewise with the Barwood and Walrus investments if the full facts had been put to them and if they'd known Mattioli Woods had assessed them as having a high ATR.

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.

But first, and as I said in my provisional decision, we're required to keep jurisdiction under review throughout our consideration of a complaint up to when a final decision is issued. Neither Mr and Mrs N nor Mattioli Woods has commented on my provisional jurisdiction findings. In the absence of any further comments or information my views haven't changed. The upshot is that I'm only considering a complaint about the risk profile of the SSAS from 21 November 2015 onwards.

I've considered Mr N's comments in response to my provisional decision very carefully. But, in the main, I don't think there's much that's really new and which I haven't already covered in my provisional decision even though I appreciate that Mr and Mrs N don't agree with my findings. So, although I've considered everything, I'm not going to comment extensively.

Mr N says that it wasn't until 2020, after a new adviser had been appointed, that Mattioli Woods told him and his wife that their ATR had been assessed as high, which Mr N immediately challenged. But there was the earlier letter of 19 June 2019 (from the original adviser) which included the following: '*You maintain to hold an adventurous appetite for risk based on the investments you hold inside the pension fund …*'. Although Mr and Mrs N say that wasn't clear and refer here to their understanding of 'adventurous' in an investment context, I maintain what I said in my provisional decision about why I considered an investor, even one with no particular expertise, would understand that adventurous indicated higher risk. And here the letter specifically referred to adventurous in the context of risk.

Further, the letter went on to say, with reference to the assets held in the SSAS, '… *whilst the pension fund sits outside of a classic house model when we look at how other clients of Mattioli Woods have their funds invested, you have chosen to be quite specific in your strategies which has led to the aforementioned non-classical approach which you are quite comfortable with.*' Adopting a specific (which I'd suggest would indicate narrower) approach doesn't fit with what Mr and Mrs N have said about their understanding of adventurous as meaning they'd be prepared to consider a broad range of investments, rather than relating to the degree of risk they'd be prepared to take.

The letter followed a meeting on 13 June 2019. Mr N's notes of the meeting don't record any discussion of ATR. But I wouldn't expect that to be discussed at every meeting, unless there was something to indicate that it might have changed or there were other considerations such as changes in market conditions or if a review was due. It appears that the adviser's letter confirmed what he already understood was Mr and Mrs N's ATR and their investment strategy. All in all I think the letter was clear and that Mr and Mrs N would've understood that their investment approach, and reflected by the assets the SSAS held, was higher risk – certainly not low risk or cautious.

Mr N did challenge the new adviser's email of 4 May 2020. But I don't think it would be fair to view that in isolation and as on its own supporting a finding that up until then Mr and Mrs N didn't know that Mattioli Woods regarded them as higher risk investors or that the investments they'd made would be regarded as higher risk. Even if there were shortcomings in Mattioli Woods' processes and procedures (and I've mentioned that further below), I think it would've or should've been apparent to Mr and Mrs N from the documentation they saw, including the prospectuses for the various investments, that the investments they were making were higher risk. I also referred to the HNW client declarations Mr and Mrs N had signed, acknowledging the high risk nature of the investments on offer and the significant risk of losing all of the money invested.

And, although I note what's been said about how Mattioli Woods presented losses on the conversion to the REIT – including that there was no overall loss and a discount on the REIT share price was given – but nevertheless I think Mr and Mrs N would've looked at how each syndicate had performed. I still think the level of losses were higher than a cautious investor would've expected.

I take Mr N's point about recommendation letters not always being provided. I agree that a properly drafted suitability letter should include risk warnings. But to some extent that might repeat or refer to the warnings set out in the literature relating to the particular investment. As I've said, I think it would've been apparent from the information Mr and Mrs N got that syndicated property, PICs and UCIS generally were higher risk investments.

I note the risk assessment that Mr and Mrs N completed for the new adviser and which showed them to be balanced/average risk with an ability to take higher returns via PICs. Mr N has pointed to the reference to '*higher returns*', not higher risks, but I'm not really sure what the adviser meant here. She may in fact have meant higher risks. Mr N has also highlighted what she added about preferring to minimise the risk where possible. That might be a reference to what Mr N has said about the risks being mitigated if security or guarantees are offered. I don't regard the comment as particularly significant.

Mr and Mrs N's ATR in 2020 wouldn't necessarily be the same as some ten years or so earlier when their relationship with Mattioli Woods began. And their views may have been coloured by their experiences with the investments they'd made over that time. It's not unusual for an investor's ATR to reduce as retirement approaches and when there may be insufficient time to make up any losses incurred before there's a need to access retirement benefits.

Mr and Mrs N have said, during all the time they were with Mattioli Woods, they were approaching retirement and wouldn't have wanted to jeopardise their capital. When they first engaged Mattioli Woods, Mr and Mrs N would've been in their early fifties. Depending on when they planned to retire, they may have been in the run up to retirement. But, as I've already noted, the HNW declarations they signed made it clear their capital was at risk. Mr and Mrs N may not have had any need to adopt a high risk strategy. But I think they'd have known the investments they were making were higher risk and so not in line with the approach they say they wanted.

I understand Mr N's point about the fact that he and his wife invested in syndicated property on advice as not indicating they wanted higher risk investments, if they'd understood the investments were low risk. But, as I've said, I don't think Mr and Mrs N's view is consistent with the information they were given. Mr N has also reiterated Helmsley's Managing Director's comments. But those have to be taken in context and against the background that some UCIS will invest in highly unusual, esoteric or exotic investments whereas commercial UK property is an altogether more familiar asset. But that doesn't mean that it can properly be regarded as a low risk investment.

I also take Mr N's point about any failure to understand his and his wife's ATR being fundamental and not just a matter of poor administration. And I note all Mr N has said about it being incumbent on the adviser to ensure there are no misunderstandings. And his references to COBS 2.1 and PRIN. But I don't share Mr N's understanding of what 'adventurous' meant. I think it would ordinarily be understood to denote risk. I said in my provisional decision that Mattioli Woods could've done more in terms of assessing, reviewing and recording Mr and Mrs N's ATR and confirming with them that they understood they were taking a high risk strategy and were comfortable with that. I'd also expect to see any discussions in meetings about ATR confirmed in writing. But, although I regard the documentation as deficient, in reaching my conclusions, I take into account all the available evidence and information and the wider circumstances.

Here I'm not saying the investments Mr and Mrs N made under Mattioli Woods guidance or direction were unsuitable for them because they didn't match the cautious investment approach Mr and Mrs N say they wanted to take. I'm not persuaded Mr and Mrs N were cautious or low risk investors. I can't see, in view of the information they had about the investments they were making, that they could've thought the investments were other than high risk. It's also clear Mr and Mrs N did have the capacity for loss that might result so I don't think the investments should've been ruled out on that basis.

Mr and Mrs N say they were selective about the investments offered to them. And they aren't complaining about all the PICs, only those which they consider represented too much risk. That includes the Barwood and Walrus investments which they say they'd have avoided if they'd have had more information and known that Mattioli Woods regarded them as having a high ATR. On that last point, I think Mr and Mrs N would've known that's how they were viewed. And, on the other issue, they may have had their own views about whether any security or guarantees or other factors (such as the absence of gearing) might mean a particular investment was acceptable. But an unregulated investment would generally be regarded as higher risk.

I don't agree it's just the underlying investment which determines the degree of risk rather than the wrapper. I'd say it was both and the fact that an investment is unregulated is a risk factor in itself. I can see that an investment with an underlying UK income generating 'bricks and mortar' asset may appear safe, certainly in comparison to other investments in, for example, overseas forestry or agriculture. But the legal structure of the investment may be complex and the value of any security or guarantees may be limited if the operation of the investment runs into difficulties or if costs increase.

Although I'm not going to analyse each and every investment and what information was provided about it, the prospectuses for a number of the investments set out the high risk nature of the product. That includes the Helmsley syndicates – the October 2014 risk questionnaire refers to the investment being seen as a high risk component of any investment portfolio.

To sum up, I think there were serious shortcomings on Mattioli Woods' part. There seems to have been an assumption on the (original) adviser's part that Mr and Mrs N's preferred investment strategy was understood, hadn't changed, they knew the investments were higher risk and they were comfortable with that. The adviser appears to have adopted a somewhat relaxed approach to Mr and Mrs N as long standing clients and certain formalities seem to have been overlooked. And, although the central issue is Mr and Mrs N's ATR, there are other concerns, such as whether the proportion of UCIS investment was too high anyway, even for adventurous investors, and out with the regulator's guidance.

But the position remains as I set out in my provisional decision that, to uphold the complaint, I'd need to be satisfied Mr and Mrs N wouldn't have proceeded with the investments (or certain of them at least) if they'd been advised against. If they'd have gone ahead anyway, any losses wouldn't flow from any unsuitable advice from Mattioli Woods but from their own decisions to invest.

On balance, I think Mr and Mrs N would've gone ahead anyway. From the outset they favoured and were comfortable with syndicated property investment. They had a settled investment preference and strategy and they were confident in their own approach and decisions. I think that's reflected in what they've said about how they continue to regard such investments and their willingness to take a view themselves on the degree of risk represented by a particular proposition, dependent on the underlying investment or asset and any security or guarantees offered or other factors which might mitigate the risks.

Mr and Mrs N have very considerable experience in property investments over many years, which seems to extend not just to their SSAS but to investments held by them personally and their company. So they were well placed to judge such investments themselves. As they've said, they didn't invest in every opportunity that was referred to them.

They might say that the fact that they engaged Mattioli Woods as their advisers demonstrates they wouldn't have gone ahead if advised against. I note here what they've said about their role as trustees and not having investment qualifications.

But, as I've said, they had considerable property investment experience and so Mattioli Woods' role might have been more focused on sourcing possible investments with Mr and Mrs N then taking largely their own view as to whether to invest.

And, since they made their complaint and moved to a new advisory firm (albeit with the same adviser they had for almost all of their time with Mattioli Woods), Mr and Mrs N made, in July 2022, a further investment via their SSAS of £29,490.90 in a new property syndicate.

I note what they say about how that investment came about. I understand it was made using the proceeds of another property syndicate investment (previously held by Mr and Mrs N personally) which had matured. But, and regardless of the source of the funds, I think the decision to invest again in another property syndicate demonstrates a continued interest in investing as they'd done previously and despite the issues Mr and Mrs N have raised. Although they've referred to other investments they've made which wouldn't be regarded as high risk, it appears they continue to view syndicated property investment favourably.

And, before that, they'd asked Mattioli Woods for details of any other PICs. They say they saw 'no harm' in asking. But it's difficult to see why and if, as they've maintained, that sort of investment wasn't consistent with the low risk strategy they'd wanted to pursue, they'd be interested in further similar investments.

And despite by then knowing that such investments would generally be regarded as higher risk and so only suitable for investors with a corresponding ATR. What they've said about no low risk investments being available tends to underline what I've said about them making their own decisions whether to invest, based on their own view as to what degree of risk the particular investment presented.

I note what Mr N says about having followed the new firm's advice not to invest further in syndicated property. But that seems to have been driven by market conditions rather than any recognition that such investments weren't suitable because they represented too much risk. And suggests that type of investment wouldn't be ruled out generally and if market conditions improved.

In the circumstances I maintain it's difficult to be satisfied that, even if Mattioli Woods should've done more to make them aware of the high risk profile of the SSAS or suggested what should be done to rebalance and derisk the SSAS and/or diversify, Mr and Mrs N would've accepted such advice and adopted a different investment strategy.

I've set out in full above what I said in my provisional decision and it forms part of this decision. I'm sorry to disappoint Mr and Mrs N but, for the reasons I've given (in my provisional decision and my additional comments above) I don't think it would be fair and reasonable to uphold their complaint.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 5 February 2024.

Lesley Stead
Ombudsman