DRN-5554327

The complaint

Mr A transferred some of his existing pension funds into a self-invested personal pension ('SIPP') with Mattioli Woods Limited ('Mattioli Woods'). Mr A went on to make an investment which he says was unsuitable for him and lost all of its value. Mr A's complaint is that Mattioli Woods did not carry out adequate checks before accepting the investment into his SIPP.

What happened

In 2013, Mr A said he was contacted by a 'Mr M'. Mr A said Mr M had encouraged one of his colleagues who had invested in a property fund, which I'll refer to as 'Fund V', to pass on the details of anyone else who might also be interested in investing in Fund V.

The aim of Fund V was to purchase properties around Hyde Park in London and complete them as 'turn-key' finish properties to be sold at a premium to foreign investors. The Fund V team consisted of retired financial advisers who had gone into property development.

Although Mr A says he wasn't previously interested in making changes to his pension arrangements, his colleague suggested he speak with Mr M as they had been convinced it was a good investment and led to believe it would provide a very good return.

Mr A says he met with Mr M, who gave him a presentation explaining the investment in Fund V, including how he could invest, how the fund was managed and the types of properties the fund was interested in buying. Mr A says he understood Mr M was representing a business I'll call 'Business V' and was an investor in the scheme himself.

Mr A says it was a rather polished presentation and he left feeling that the investment may provide a better return than his current pension. This was because the investments were focused on high-end property in London aimed at high net-worth individuals. So, he thought it would be a sound investment and was convinced by Mr M that was the case. Mr A says he was given advice by Mr M in respect of the process involved but he didn't consult an independent financial adviser ('IFA'), nor was he encouraged to.

According to Companies House, Mr M worked for Business V, which Mattioli Woods says acted as introducer to the Mattioli Woods SIPP in respect of this investment.

Mr A says he was told he would receive a return after six years but he didn't fully understand or appreciate the risks involved. He thought because he was investing in high-end property it would retain its value regardless of the market conditions.

Mr A applied for a SIPP with Mattioli Woods on 30 September 2013. No financial adviser or investment details were recorded, although the application form didn't ask for them.

The SIPP was established with effect from 30 September 2013. And on 1 October 2013, Mr A signed a typed letter addressed to Mattioli Woods asking it to accept the letter as his authority to transfer monies from an existing SIPP he held with another provider to Mattioli Woods on an execution-only basis. Mr A confirmed he hadn't sought advice from Mattioli Woods regarding the transfer.

Mr A met with a representative of Mattioli Woods ('Mr P') to talk about the investment he intended to make. Mr A informed Mattioli Woods that he wished to make a partial transfer of his existing pension. Mattioli Woods sent Mr A transfer forms to complete in October 2013.

Mr P wrote to Mr A on 4 October 2013 following the meeting to confirm Mr A's intention to establish a registered pension scheme in order to purchase unquoted shares in Fund V. Mattioli Woods explained that it reviewed all non-standard investments on a case-by-case basis and as a general rule, only permitted a maximum of 50% of the scheme value to be used for such investments. However, it said in this case it agreed to increase the investment to 90% of the total value of the pension fund. It added:

"As you are aware, we would not recommend placing more than 50% of your fund value in unquoted shares as, whilst there is potential for growth, there is also a risk that all your money can be lost if [Fund V] *fails. The loss of pension monies has implications on both your own retirement planning and any benefits for dependants. Therefore, I would strongly urge you to seek independent advice as to whether this type of investment is suitable advice, as we are only providing you with the scheme structure itself, and have not been appointed as your financial adviser."*

On 8 November 2013, Mr A received an email from Mr M, but from an email address associated with a 'Firm W'. Firm W was a wealth management firm authorised and regulated by the Financial Conduct Authority ('FCA'). The email said that Mr M had seen Mr A this morning and he'd *"got the paperwork signed"*. Mr M also confirmed that Mr A would be transferring £85,000 to the SIPP, leaving around £40,000 in his existing SIPP.

Mattioli Woods received around £85,000 into the SIPP on 30 December 2013.

Mr A completed a subscription agreement for shares in Fund V worth £76,500 on 14 January 2014. The agreement set out that the fund had been established in Jersey as an 'expert fund'. Mr A confirmed he'd read and accepted the terms of the Private Placement Memorandum ('PPM'). And that he acknowledged the fund was only suitable for those who fall within the definition of 'Expert Investors' published by the Jersey Financial Services Commission and that he fell within that definition.

Part 3 of the agreement required Mr A to sign that he belonged to a particular category of investor, making him eligible to invest. Mr A signed to confirm he was a certified high net-worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

Part 4 of the agreement required Mr A to confirm his 'Expert Investor' status. Mr A ticked the box next to the following statement:

"an investor who makes a minimum initial investment or Subscription of US$100,000 (or currency equivalent) in the Fund"

Mr A signed this on 14 January 2014.

Mr A also signed a non-standard investment declaration for Mattioli Woods on 14 January 2014. By signing, he confirmed that:

- He was fully aware he could seek professional advice by a qualified adviser before making any proposed investment;
- He understood Mattioli Woods would not be responsible for the investment and any future impact on his pension fund;

- He understood high-risk investments can yield higher returns, but there are no guarantees and his investment may fall in value;
- He was comfortable with the level of risk he was taking and that the investment may be difficult to sell or value, which may have an impact on his ability to take benefits from the scheme.

Mr A also signed a typed letter addressed to Mattioli Woods on 14 January 2014 in which he confirmed Mattioli Woods hadn't recommended or proposed the investment to him, that he fully understood the risks involved and took full responsibility for the suitability of the investment. He also confirmed he agreed to indemnify Mattioli Woods against all actions, proceedings, costs, claims, demands and losses in connection with the investment.

Mr A signed an unquoted shares questionnaire on 14 January 2014. This again required Mr A to confirm he hadn't received advice on the investment from Mattioli Woods and that he understood the risks involved, including the potential for tax charges.

Mattioli Woods completed a non-standard investment checklist, which was signed off by its technical team on 15 January 2014. This noted that a 'Mr O' of Business V had introduced Mr A's business to Mattioli Woods.

Mattioli Woods also completed an over 50% non-standard investment authorisation form.

Mr A invested £76,500 in unquoted shares in Fund V in March 2014.

In 2015 Mr A says that he was introduced to a new IFA at Firm W. He says Mr M approached him with an offer to increase his investment in Fund V, but after consulting with his IFA he was advised against making a further investment as it didn't match his risk profile.

Mr A complained to Mattioli Woods via a claims management company ('CMC') on 5 May 2021. The CMC said Mattioli Woods had failed to carry out due diligence checks on Fund V, which was a non-standard, high risk and illiquid investment. It said the investment was not appropriate for a SIPP and Mr A was not a sophisticated investor. The CMC said Mattioli Woods should not have permitted the investment so Mattioli Woods should be held liable for Mr A's loss.

Mattioli Woods provided a response to Mr A on 21 June 2021 saying his complaint had been made too late under the FCA's Dispute Resolution ('DISP') rules. It said Mr A had made the investments more than six years ago and he'd complained more than three years after he ought reasonably to have become aware of the issues with the investment. But despite believing the complaint had been made too late, Mattioli Woods also explained why Mr A's complaint shouldn't succeed on its merits.

Mattioli Woods said Mr A understood what he was investing in before he approached Mattioli Woods. And before Mr A could be considered for the fund, he had to complete a placement memorandum for fund managers and self-certify as either a high net-worth or sophisticated investor. It said this was a requirement of the fund managers and had nothing to do with Mattioli Woods. Mr A signed an agreement confirming he met all these requirements. Mr A also completed a non-standard investment declaration confirming he understood the risks.

Mattioli Woods said it cannot be held responsible for Mr A completing a document with false details or deliberately lying so the investment would be placed. It added that Mr P, who Mr A met with, was a qualified and regulated financial adviser and could have provided Mr A with investment advice if requested. However, Mattioli Woods were not appointed as financial advisers and Mr A understood this. Mattioli Woods was only appointed to provide administration for the pension scheme holding the investment. This was to ensure the

investment met the relevant criteria in terms of applicable legislation and HMRC requirements at the time the investment was placed. Ultimately, Mattioli Woods said it accepted Mr A's instructions in good faith and the investment was placed as per his request.

Mr A referred his complaint to the Financial Ombudsman Service in October 2021.

Fund V started the process of being wound up in December 2021.

Mattioli Woods maintained the complaint had not been referred in time. Although it provided some evidence it did not provide any information in respect of the due diligence checks it completed on Mr A's applications and the underlying investment. It said it would provide further information if the Investigator concluded the complaint had been made in time.

An Investigator considered Mr A's complaint. He thought Mr A had complained in time but didn't uphold it. The Investigator said Mr A had submitted his SIPP application directly so there was no reason for Mattioli Woods to decline it. He also said Mattioli Woods had arranged for Mr A to speak with a representative of Mattioli Woods to ensure Mr A understood the risks involved. While the Investigator noted he hadn't seen evidence of the due diligence checks Mattioli Woods completed on the investment in Fund V, there was no evidence to suggest it was fraudulent or that the investment was inappropriate for a SIPP.

Mattioli Woods didn't respond to the Investigator's view.

Mr A didn't accept the Investigator's view and asked for an Ombudsman's decision. He said Mr M completed all of the paperwork and marked Mr A as an expert investor so as to bypass the need for a financial adviser. Mr A said he was nervous about making the investment but Mr M persuaded him that he should go ahead, and the fact that a regulated pension provider approved the investment gave him the confidence to proceed. Mr A also questioned why Mattioli Woods allowed him to invest 90% of his funds in Fund V against its recommendation of no more than 50%.

As no agreement could be reached, the complaint was passed to me to make a decision.

As Mattioli Woods disputed that the complaint had been made in time and hadn't provided evidence of the due diligence checks it had carried out on the investment, I issued a decision on 5 February 2025 solely addressing our jurisdiction to consider the complaint. I explained I was satisfied Mr A had made his complaint in time and asked Mattioli Woods to provide its full file so I could go on to consider the merits of the complaint.

Mattioli Woods accepted this and provided further information.

I issued a provisional decision on 16 April 2025 and explained I wasn't minded to uphold Mr A's complaint. I recognised Mattioli Woods could've carried out further checks in accordance with the Regulator's rules, Principles and good industry practice before accepting the SIPP application and the investment in the SIPP. But even if Mattioli Woods had carried out further independent checks, I explained I hadn't found anything that would've been discoverable to Mattioli Woods at the time that ought to have led it to refuse Mr A's investment to be made within its SIPP.

Mattioli Woods accepted this but Mr A disagreed with my provisional decision and made the following points:

- The decision doesn't account for Mattioli Woods significant breaches of its regulatory obligations, which led to Mr A's losses.

- Mattioli Woods had an obligation under COBS 2.1.1R to act honestly, fairly, and professionally in accordance with the best interests of its clients. And to comply with Principles 2, 3, and 6 of the Principles for Businesses.
- These obligations are not weakened or excused by the provision of an "execution-only" service, especially where non-standard investments and third-party introducers are involved.
- There is no evidence that Mattioli Woods undertook any meaningful due diligence on Fund V or Business V prior to accepting the investment into his SIPP. The nature of Fund V, as a non-standard, illiquid investment lacking valuation transparency and regulatory oversight, was apparent and should have prompted scrutiny.
- Mattioli Woods seeks to rely heavily on disclaimers and declarations Mr A signed, which categorised him as a high-net-worth or sophisticated investor. However, such disclaimers do not absolve a regulated firm of its duties, particularly where there are reasons to question the validity or reliability of those declarations.
- It is concerning that Mattioli Woods allowed the investment to proceed despite being aware of the involvement of Mr M, an unregulated introducer who was instrumental in arranging the transaction. There is no indication that the firm carried out any assessment of his motivations, his independence, or whether he was acting in Mr C's best interests. The role of introducers was specifically flagged in FCA guidance as a key area of concern, and Mattioli Woods failed to respond accordingly.
- Signing a pre-drafted declaration letter does not demonstrate that Mr A fully understood the implications of the investment, particularly in light of the imbalance of information and expertise. A responsible firm, faced with warning signs, would have concluded that the investment was unsuitable for a retail client and refused to accept it. Instead, Mattioli Woods appeared to treat the declaration letters as a legal shield, an approach that has now been rejected by both the Financial Ombudsman Service and the courts.
- Mr A's investment into Fund V, would not have occurred but for Mattioli Woods' failure to conduct proper due diligence, to manage risk appropriately, and to adhere to the regulatory standards required of a SIPP provider.

As both parties have responded, I'm now providing my final decision on the matter.

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.

I've carefully considered Mr A's response to my provisional decision, as well as all the other comments provided in this case, but I'm still not upholding this complaint. I appreciate this will be disappointing for Mr A.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, Regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

Relevant considerations

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").

- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it, including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ("*Adams"*)
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 (*"BBSAL"*)
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The FCA (previously Financial Services Authority) ("FSA") rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams,* the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the contractual relationship between Mattioli Woods and Mr A is a non-advisory relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. Mattioli Woods was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on Mattioli Woods within the context of the non-advisory relationship agreed between the parties.

The case law

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *BBSAL* and the *Options* cases. In both cases the approach taken by the Ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved. As such, I don't think it is necessary for me to quote extensively from the various court decisions.

The Principles for Businesses

The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They provide:

"*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

I am satisfied that I am required to take the Principles into account (see *BBSAL*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice

The Regulator issued a number of publications which reminded SIPP operators of their obligations, and which set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 Thematic Review Reports.
- The October 2013 Finalised SIPP Operator Guidance.
- The July 2014 *"Dear CEO"* letter.

The 2009 Report included:

"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…

We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."

I have considered all of the above publications in their entirety but it isn't necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 Finalised Guidance is). However, all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the Regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's

appropriate to take them into account (as did the Ombudsman whose decision was upheld by the court in *BBSAL*).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint. So, even though some of the publications post-date the events that took place in relation to Mr A's complaint, that doesn't mean that the examples of good practice they provide weren't good practice at the time of the relevant events.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* cases considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

Overall, in determining this complaint I need to consider whether Mattioli Woods complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mr A), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Mattioli Woods could have done to comply with its regulatory obligations and duties.

Mr A's relationship with Mattioli Woods and other connected parties

Mattioli Woods provided the SIPP to Mr A on an execution-only basis. Although Mattioli Woods is authorised to provide advice, I'm satisfied it did not provide Mr A with advice here. And I think Mr A understood this as he signed several documents to this effect and he does not allege that Mattioli Woods advised him in respect of this transaction.

As Mattioli Woods didn't provide any advice, it didn't have an obligation to consider the suitability of the investment for Mr A. Nevertheless, I think Mattioli Woods was required (in its role as an execution only SIPP provider) to consider whether it was appropriate to accept Mr A's SIPP application and to consider whether the investment he went on to make was acceptable to make within its SIPP. And overall, I think Mattioli Woods's duty as a SIPP operator was to treat Mr A fairly and to act in his best interests.

What did Mattioli Woods's obligations mean in practice?

In this case, the business Mattioli Woods was conducting was its operation of SIPPs. And I'm satisfied that in order to meet its regulatory obligations, when conducting its operation of SIPPs business, Mattioli Woods still had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind.

The Regulators' reports and guidance provided some examples of good practice observed by the Regulator during its work with SIPP operators. This included being satisfied that a particular introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

Mattioli Woods says Mr A approached it directly having already decided to invest in Fund V, so there wasn't an introducer in that respect. However, it acknowledged that Business V approached Mattioli Woods in July 2012 with a view to administering the pension scheme for a certain number of individuals (friends and acquaintances of those running Business V) who were interested in investing their pensions in Fund V. So, I think it is appropriate to treat Business V as the introducer in. This is also consistent with what Mr A has told us about how he was introduced to Mattioli Woods.

While Mattioli Woods was not responsible for considering the suitability of the investment for its clients, it was still responsible for the quality of the SIPP business it administered. And for the reasons set out above in the "relevant considerations" section, it is my view that in order for Mattioli Woods to meet its regulatory obligations (under the Principles and COBS 2.1.1R), it should have undertaken sufficient due diligence checks to consider whether to accept/reject introductions from a particular business and accept/reject applications for particular investments, with its regulatory obligations in mind.

To be clear, for Mattioli Woods to accept introductions from Business V and investments in Fund V without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if Mattioli Woods didn't look at an investment in detail, and if such a detailed look would have revealed that the investment might not be secure, might be fraudulent, or that the investment couldn't be independently valued, or that it was impaired, it wouldn't in my view be fair or reasonable to say Mattioli Woods had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

Mr A says that Mattioli Woods failed to carry out any meaningful due diligence checks on Business V or Fund V and this a significant breach of Mattioli Woods' regulatory obligations to him. While that may be the case, I have to also consider what Mattioli Woods ought reasonably to have discovered had it carried out sufficient checks on the introducer and the investment. And whether the information it ought to have discovered should have led it to reject the introduction from Business V and/or refuse to accept the investment in Fund V in its SIPPs.

Due diligence checks on the introducer

Mattioli Woods says that Business V was established by two retired financial advisors, Mr M and Mr O. It was understood that their business model was to invest in central London residential property, with a view to expanding, redeveloping and generating a capital gain. The fund owned real estate assets and was a property-backed fund. The fund was aimed at ultra-high net worth investors. Additionally, Mattioli Woods understood all investors were close friends and acquaintances of Mr M and Mr O, and no third party was approached to invest in the fund.

Mattioli Woods says Business V approached it in July 2012 to see if it could administer pensions for this specific group of investors only and no further introductions were made to anyone outside of this group of investors. It understood many of the investors had already invested personally by the time they were introduced to Mattioli Woods.

Mattioli Woods says in the initial stages Business V held meetings for investors in London on several occasions, and Mattioli Woods attended these gatherings on 25 July 2012, 26 July 2012 and a couple in mid-2013. So, it had first-hand knowledge of how the investment was being promoted to investors.

Mattioli Woods says that Business V introduced a total of 43 customers to it and Mr A's application was the 35th received. It also confirmed that no customers' application involved the transfer of a defined-benefit ('DB') occupational pension scheme.

Having considered this carefully, I haven't seen enough evidence to persuade me that Mattioli Woods ought to have been concerned about accepting Mr A's SIPP application. Mr A was looking to transfer an existing personal pension and I don't think his application contained any concerning or anomalous features that ought to have led Mattioli Woods to conduct further checks at that stage.

Mr A says that Business V was an unregulated introducer and that this ought to have been a 'red flag'. But Mattioli Woods was not restricted to only accept introductions from regulated advisers.

Although Business V was not regulated, and was led by two former financial advisers, I don't think Mattioli Woods ought reasonably to have been concerned that Business V was holding itself out as an adviser or an otherwise regulated entity. I think it took some steps to understand what investors were being told about the investment before agreeing to administer the SIPP investments; for example, Mattioli Woods attended investor meetings, which I think would've given it an insight as to how the investment was being marketed. Ultimately it had no concerns about this. It also understood that the investment was only being made available to a closed group of friends or acquaintances – which, based on what I know about the investors, appears to have been accurate. Mattioli Woods also understood the investors were either sophisticated and/or high net-worth investors and ensured that the customer confirmed this was the case before permitting them to invest in Fund V.

Mr A says that he was persuaded to invest by Mr M of Business V, who he'd been introduced to by a work colleague. Although I understand that Mr M likely assisted Mr A with his paperwork, I think this was most likely carried out in his capacity as Director of Business V. Mr A hasn't said that Mr M advised him to make the investment – rather he said Mr M advised him on the process of making the investment. So, overall, I haven't seen sufficient evidence to persuade me that Mattioli Woods ought to have had concerns about accepting Mr A's introduction from Business V.

Mr A has been clear throughout his communications that he did not take advice from an independent financial adviser; he's also said that he wasn't encouraged to take advice. But I don't think that's consistent with the paperwork Mr A received (and in some cases, signed) before making the investment. For example, before making the investment, Mr A met with Mr P of Mattioli Woods to discuss his proposed investment. Mr P followed this up with a letter dated 4 October 2013 in which he said:

"Whilst a SIPP is one of the few pension vehicles that can facilitate the purchase of unquoted shares in [Fund V]*, it should be noted that a SIPP, and indeed a Mattioli Woods SIPP, may not be the most suitable vehicle for your pension planning. I would therefore advise you to seek independent advice as we are only providing you with the scheme structure itself, and have not been appointed as your financial adviser.*

As you are aware we would not recommend placing more than 50% of your fund value in unquoted shares as, whilst there is potential for growth, there is also a risk that all your money can be lost if [Fund V] *fails. The loss of pension fund monies has implications on both your own retirement planning and any benefits for dependants. Therefore I would strongly urge you to seek independent advice as to whether this type of investment is suitable advice, as we are only providing you with the scheme structure itself and have not been appointed as your financial adviser.*

You have informed me that you would like to transfer in your existing arrangements on an execution-only basis and no pension transfer advice has been given. Under normal circumstances, we would review policies to advise you of any bonus or penalties attached to your existing policies. You have opted not to take this up in this instance. Once again, I would strongly urge you to seek independent advice regarding transferring your existing arrangements"

Mr A says he doesn't recall receiving this letter, but I'm satisfied it was addressed to him correctly and was most likely sent. I think this letter made it clear that Mr A was not receiving advice from Mattioli Woods and that it was strongly suggested that he should take independent financial advice to establish whether transferring his pensions and investing in Fund V was suitable for him.

Furthermore, even if I was persuaded Mr A didn't receive this letter, in order to proceed with the investment Mattioli Woods required him to complete its 'Non-Standard Investment Declaration'. Mr A signed this on 14 January 2014 and ticked a box to confirm he'd read and understood the points in the declaration, the first of which said:

"…I am fully aware that I can seek professional advice by a qualified adviser before making any proposed investment."

On the same day Mr A signed a subscription agreement for the investment in Fund V, which required him to confirm his eligibility to make the investment. Mr A also signed the certified high net-worth individual statement and directly above where he signed, it said:

"I am aware that it is open to me to seek advice from someone who specialises in advising on investments."

So, I think that Mr A was told early on in the process by Mattioli Woods that he should seek independent financial advice. And when he made the investment, he confirmed he understood that he had the option to take financial advice. However, it seems to me that Mr A decided to proceed with his investment without taking advice.

But as I've said above, Mattioli Woods also needed to carry out appropriate due diligence checks on the investments to be held in its SIPPs. So, I've thought about the due diligence checks that Mattioli Woods ought to have carried out on the investment before it should've accepted it. And whether the information it ought to have gathered should have led it, if acting in line with the Principles and guidance, to decline to accept the investment into the SIPP.

Due Diligence checks on the investment

As the Regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. So, SIPP operators should undertake appropriate independent enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP.

The FCA has made it clear that the due diligence checks required on SIPP investments will vary depending on the nature of the intended investments. But I think that's particularly important where a customer intends to invest in unquoted shares – such as the investment made by Mr A here – given that they are unregulated, illiquid and generally pose a high risk to investors. So, I think Mattioli Woods ought to have carried out checks, in line with good industry practice for a SIPP operator at that time. And I think that would've included being satisfied in respect of the following points:

- the nature and legal structure of the investment;
- that the investment was a genuine asset and was not part of a fraud or a scam or pensions liberation;
- that the investment was safe/secure;
- that the investment could be independently valued and that it wasn't impaired.

Based on the evidence I've seen, I think Mattioli Woods carried out some checks to ensure that it understood the nature and structure of the investment such that it was acceptable for inclusion in a SIPP. That was particularly important given that the aim of the investment was to generate returns by investing in residential property, and it is not possible for SIPPs to invest directly in residential property because HMRC treats this as taxable property.

I can see that Mattioli Woods explained to Business V the HMRC rules and allowable exemptions which permitted indirect holdings in residential property. Business V then employed tax advisers and lawyers to ensure the structure of Fund V met HMRC guidelines. Mattioli Woods was party to these discussions and was ultimately satisfied that the investment met the trading company genuinely diverse commercial vehicle criteria and as such, was permitted to be held in a SIPP.

I don't think there is any suggestion from Mr A, or the evidence provided, that the investment in Fund V was in any way fraudulent or part of a scam. The investment in Fund V appears to have been a legitimate investment in a fund which aimed to generate returns by redeveloping and selling residential property. The investment ultimately didn't perform as expected due to several external factors, including a change in Stamp Duty Land Tax rules, the Brexit vote and then the global Coronavirus pandemic. This all affected the prime London property market as investors were staying away due to the ongoing uncertainty. As I understand it, the properties were ready to be sold but failure to sell them meant their prices fell and the borrowings from the bank became due. As a result, the bank called in the asset and the properties became in a negative equity situation.

I haven't seen evidence that Mattioli Woods undertook an independent valuation of the shares at the time and I think this would've been a reasonable step to take here. But I haven't seen enough to conclude that an independent valuation of the shares couldn't be obtained, particularly because they were tied to the value of the properties which were held by the fund, or that this would have revealed concerns under the particular circumstances. Lastly, I don't think there was any information available in the public domain at the time Mr A invested to suggest that the investment was impaired or that Mattioli Woods should have any concerns about the individuals running it.

Overall, I haven't seen enough evidence to persuade me that sufficient due diligence would have revealed issues that should've led Mattioli Woods to refuse to accept the investment in Mr A's SIPP.

Mr A's representative says that Mattioli Woods shouldn't have allowed him to invest his pension funds in a high-risk investment, which wasn't suitable for a retail client. But as I've said above, Mattioli Woods did not provide Mr A with any advice – it made this clear within its communications with him. Mattioli Woods also told Mr A that he should take independent financial advice to ensure the suitability of the arrangements.

Mr A's representative seems to suggest that because the investment was high-risk, it should not have been permitted in a SIPP at all. But the fact that the investment was speculative and carried a high degree of risk does not mean that Mattioli Woods or any other SIPP operator acting in line with the Principles and guidance should not have permitted the investment to be held in the SIPP at all.

Lastly, I note that in order to be eligible for investment in Fund V to be promoted to him, Mr A had to meet certain criteria. And in the investment subscription document, Mr A confirmed he was eligible because he was a high net-worth individual. It seems that Mr A now says that he didn't meet these criteria and as such, he shouldn't have been permitted to invest by Mattioli Woods. But I don't think Mattioli Woods had any grounds to believe that Mr A had provided false information or was otherwise not eligible to invest in Fund V.

Summary

I'm satisfied that Mattioli Woods carried out some due diligence checks before accepting Mr A's applications. I think it could've carried out further checks in accordance with the Regulator's rules, Principles and good industry practice before accepting the SIPP application and the investment in the SIPP. But even if Mattioli Woods had carried out further independent checks, I haven't found anything that would've been discoverable to Mattioli Woods at the time that ought to have led it to refuse Mr A's investment to be made within its SIPP. So, I'm not upholding Mr A's complaint.

My final decision

For the reasons set out above, I'm not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 June 2025.

Hannah Wise
Ombudsman