DRN-2439034

The complaint

Mrs K is complaining about Neovision Wealth Management Limited ('Neovision'), she says that one of its appointed representatives ('ARs'), Providence Wealth Limited ('Providence Wealth') is responsible for advice she received to make a high-risk, unregulated investment that was unsuitable for her circumstances and needs.

What happened

Mrs K had previously invested £40,000 in a separate product, Providence Bonds II Plc, in 2015, through Independent Portfolio Managers Ltd ('IPM'). That investment didn't perform well, so Mrs K made a complaint about IPM that's since been referred to the Financial Services Compensation Scheme ('FSCS'). The issues raised in that complaint form no part of this case.

Regarding the investment involved in this complaint; Mrs K says she was invited by IPM to the launch of a mini-bond it was promoting in January 2016. She says it was here that she met Ms L, who she believed worked for Providence Financial. Providence Financial was a trading name of Providence Wealth. For ease of reference, rather than changing between Providence Financial and Providence Wealth, I'll simply be referring to Providence Wealth throughout the rest of this decision.

Mrs K says Ms L then contacted her by telephone a number of times in the following weeks to talk about various investment products offered by the Providence Group. The parties have both referred to the 'Providence Group' in their submissions and, as I understand it, this is a reference to a number of companies of which Providence Global Limited was the parent company. For ease of reference, I've adopted the terminology used by the parties in this decision and, when referring to the broader organisation, I'll simply refer to the Providence Group hereafter.

In April 2016, Ms L and one of her colleagues, Mr B, visited Mrs K at her home. Mrs K says she believed that Mr B worked for Providence Wealth and she was told at the meeting that a Providence Investment Funds PCC Limited ('PIF') investment was better than the previous Providence Bonds II Plc investment she'd made. That's because it was secure and protected by the Guernsey financial regulator.

Mrs K says she told Mr B and Ms L that she and her husband were pensioners, that the money being invested represented a large portion of their life savings and that they needed the quarterly interest payments to supplement their pensions. Mrs K says it wasn't explained that the PIF investment wasn't for retail clients and that it was high-risk.

Mrs K says that she gave Mr B and Ms L a £50,000 cheque for the investment, and that she completed forms at the meeting but wasn't given copies of these.

Providence Investment Management International Limited ('PIMIL') wrote to Mrs K on 25 April 2016 to acknowledge her investment and to provide a contract note. Mrs K's £50,000 purchased 500 Providence December 2016 36 Month Quarterly GBP A Preference shares in PIF.

Mrs K was told the investment would produce a return of 12.25% a year with dividends payable quarterly. Mrs K says she didn't receive any of the expected income payments, and it appears she's lost her money.

Additional background information

I've mentioned some of the additional documentation we've been provided below, before then going on to summarise what's happened in Mrs K's complaint to date.

- An AR Agreement between The TJM Partnership PLC ('TJM') and Providence Wealth dated 17 December 2014. As I explain in more detail below, a novation agreement was entered into on 6 April 2016. To summarise, the effect of this agreement was that, subject to any exceptions provided for in the agreement, all of TJM's rights and obligations under the 17 December 2014 AR Agreement with Providence Wealth were transferred to Neovision Wealth Management Limited ('Neovision').

- Promotional literature and a *"Key Terms"* document for the investment.

- A series of internal emails that cover several issues, including the sale and promotion of Providence products.

- Mr B's meeting notes from 6 April 2016 on PIMIL headed paper. The notes were signed and dated by Mr B on 13 April 2016. There are two sub-sections to the main body of the meeting note, both are typed.

  It's noted in the *'Background'* section that:

  - Mr B had met with Mrs K to discuss investing in the Providence Fund.
  - Mrs K had (previously) invested in a Providence mini-bond.
  - Mrs K had already been told about the proposed investment in detail, including that investors had the comfort of a parent guarantee from Providence Global.
  - Mrs K had a five-year investment with Santander that had matured, and she was looking for an income generating product.
  - Mrs K had been sent relevant documents to read through before meeting Mr B.

  And, amongst other things, it was noted in the *'Points Clarified'* section that:

  - *"I identified myself and explained that I am an employee of The Providence Group which includes Providence Investment Management International Limited, the Guernsey-licensed promoter and investment manager of the Fund.*
  - *I informed the investor/s at the beginning of the meeting that we do not provide any financial or legal advice nor recommendations nor can we confirm the suitability of 'the fund' for their personal circumstances. I explained that I was meeting them as a promotional representative of Providence Investment Management International Limited.*
  - *The investors were made aware that any decision to invest was theirs entirely and should they feel the need to seek any financial, legal or tax advice prior to making any decision then they should contact their IFA, lawyer or other advisers.*
  - *The investor/s confirmed their full understanding of the scheme particulars, supplemental particulars and application form in respect of the fund by*

signing the application form.

- *I have fully explained that 'the fund' and its returns are not guaranteed or capital protected and that their money is at risk of capital loss. The risks of the fund were explained in full and investor/s confirmed their understanding of these risks.*

  …

- *I have obtained a fully completed & signed application form together with valid due diligence documentation. In addition to this we have confirmed via the application form the source of funds and the investor's source of wealth. The investors were given the opportunity to complete the application form however they asked that I complete it and they confirmed the accuracy of the information contained in the application form prior to signing it."*

- Mrs K's PIF investment application form. This was signed by Mrs K on 6 April 2016 and it records the financial adviser/introducer as Mr B of Providence Wealth. Mr B signed the form on 7 April 2016. The form records the source of the investment monies as *"retirement savings (5 year Santander investment matured)"* and the source of Mrs K's wealth as *"family savings and investment over 40 years"*.

- Mrs K's verification documents. A council tax bill and a passport, both of which were verified by Mr B on 6 April 2016. Mr B signed a stamp on the documents to record that they were a true copy of the original documentation and included his title *'Private Client Team'* and Providence Wealth email address.

- An *"Individual Application Checklist"* dated 7 April 2016 on Providence Wealth paper. This records the client as Mrs K and the consultant as Mr B.

- An email dated 14 April 2016 from Ms M of Providence Wealth to Lumiere Fund Services ('Lumiere') regarding Mrs K's investment. Lumiere appear to have carried out the administration involved in setting up the investment. Mr B was copied into this email and it says that:

  > *"Please find attached documents for a new investment of £50,000.*
  >
  > *Please let me know when ok to send originals to you."*

  The email footer explains that Providence Financial is a trading name of Providence Wealth (FCA number 713886) and is an AR of TJM who are authorised and regulated by the Financial Conduct Authority (FCA number 498199).

- An email from Mr B (using a Providence Wealth email address and with a similar footer to that mentioned immediately above) to Lumiere dated 14 April 2016. This was in response to a request for further information about the source of Mrs K's investment monies and Mr B explained that:

  > *"The funds have been generated from her husband's long career…over the years* [Mrs K] *has made investments with the family savings."*

- A letter from Mr B to Mrs K dated 17 May 2016 on Providence Wealth paper. The footer of the letter explains that Providence Financial is a trading name of Providence Wealth and is an AR of TJM. The letter says that new Providence literature was being enclosed and asks Mrs K to call to discuss insurance and other fund options. The documents stated to be enclosed included information about Providence, Key Terms, Brazil Outlook, factoring with Providence and an application form. Mr B

confirmed that he'd be in contact in a few days to discuss any questions.

As Mrs K believes Mr B and Ms L were representatives of Providence Wealth, she complained about what had happened to TJM.

TJM didn't accept Mrs K's complaint and said, amongst other things, that:

- Direct sales had been conducted for some time before the AR Agreement and were outside of the Agreement.
- Mrs K was at all times a client of the Guernsey-based Providence Europe, which had several subsidiaries, including PIMIL and PIF.
- Email correspondence shows that it was understood that all sales would be conducted with permissions from the Guernsey Financial Services Commission ('GFSC'), according to its rules and under passporting rights enjoyed at the time that allowed the PIF investment to be marketed in the UK.
- It wasn't responsible for the Providence Group's advertising or marketing; its role was to review the proposed UK marketing to be undertaken by Providence Wealth.

One of our investigators reviewed Mrs K's complaint. The investigator said we could look into the complaint and that it should be upheld as the investment was unsuitable for Mrs K. The investigator also said that Mr B gave Mrs K advice on the investment while representing Providence Wealth and, as Providence Wealth was authorised to advise on investments under the AR Agreement, TJM was responsible for this advice.

TJM didn't agree with the investigator, it said that:

- As an existing investor in the mini-bonds, Mrs K was familiar with the Providence Group and IPM. If it wasn't for IPM, the investment wouldn't have been made.
- With Mrs K's investment, Providence Wealth was engaged in activities for which TJM hadn't accepted responsibility in writing. And TJM shouldn't be held liable for anything resulting from those activities under section 39 of the Financial Services and Markets Act ('FSMA').
- The business carried on by Providence Wealth wasn't assigned to it as part of TJM's business, nor was it carried on for TJM's benefit.
- It hadn't received any commission for the sale of Mrs K's investment.

An ombudsman reviewed the TJM complaint and issued a provisional decision in March 2020. This said we could look into the complaint and that it should be upheld. Further, that:

- Mr B was at all times acting for Providence Wealth as an AR of TJM.
- Providence Wealth was involved in arranging Mrs K's investment and Mr B advised Mrs K on the investment. And by advising on the PIF investment and/or helping to arrange that investment, Providence Wealth was carrying out a regulated activity.
- The acts complained about included business for which TJM had accepted responsibility. TJM had authorised Providence Wealth to carry out the activities of arranging and advising on investments.
- From December 2014 the AR Agreement terms applied in full.
- The advice Mrs K received to make the investment wasn't suitable for her.
- If advice hadn't been given, the case would still have been upheld as the investment shouldn't have been promoted to Mrs K in the first place.
- TJM should redress Mrs K so as to put her back into the position she'd have been in if the investment hadn't been made.

Following the ombudsman's provisional decision, we were provided with a *'Transfer of Agreement'* document (hereafter the 'novation agreement') dated 6 April 2016 this stated, amongst other things, that:

> *"In consideration of Providence Wealth Limited ("the Company") agreeing to enter into the appointed representative agreement ("the Agreement") with The TJM Partnership PLC ("the Outgoing Principal") on 17th December 2014, a copy of which is attached to this letter, we the Outgoing Principal now wish to transfer all our rights, obligations and liabilities under the Agreement to TJM Wealth Management Ltd ("the Incoming Principal") on the terms set out below:*
> *…*
> *With effect from the date of this agreement ("the Effective Date"):*
>
> *We transfer all our rights and obligations under the Agreement to the Incoming Principal except as provided below.*
>
> *The Incoming Principal will perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of us.*
>
> *The Company will perform the Agreement and be bound by its terms in every way as if the Incoming Principal were the original party to it in place of us.*
> *…*
> *The Agreement will in all other respects continue on its existing terms."*

This document was signed by representatives from all of Providence Wealth, TJM and TJM Wealth Management Ltd ('TJM Wealth'). TJM Wealth is a separate legal entity to TJM. TJM Wealth later became known as Attanta Limited ('Attanta') and it's now known as Neovision. For ease of reference, rather than changing between TJM Wealth, Attanta and Neovision, I'll simply be referring to Neovision throughout the rest of this decision.

We were also sent an email dated 8 June 2016 from Neovision to Providence Wealth. This explains that, with immediate effect, Neovision was suspending all of Providence Wealth's permissions to work within the scope of Neovision's UK regulatory license for a period of 28 days. This was due to Neovision becoming aware of a material change in Providence Wealth's group company circumstances.

Alongside the novation agreement, solicitors for TJM made further submissions. Neovision's asked for TJM's solicitors' submissions to be taken into account in this complaint. And, amongst other things, TJM's solicitors said that:

- With effect from 6 April 2016, TJM novated the AR Agreement to Neovision.
- The correspondence shows that the terms of the promotions were still under discussion in June 2016. So, promotion wasn't an activity for which TJM had accepted responsibility by April 2016.
- The AR agreement was suspended on 8 June 2016 and was later terminated.
- The ombudsman sought to characterise the actions of Mr B that were beyond the scope of the AR Agreement as going not to *"what'"* was authorised but to *"how"* such matters were carried out within that authorisation. The distinction was referred to in the Court of Appeal decision in *Anderson v Sense Network Limited*, but it doesn't apply in the manner the ombudsman suggested in his provisional decision.
- None of the activities complained of were authorised by TJM at the material time. Alternatively, the only activity which might've been authorised was promotion.

- It would be a misapplication of the *"what"/"how"* distinction to say that as the regulated activity of promotion is authorised, that separate regulated activities undertaken are part of the *"how"* of the promotion.
- The "what"/"how" distinction can't apply to bring advice and arrangement within the scope of what was authorised by TJM. Advising and arranging go beyond the methodology of promotion. They're separate, substantive activities to be assessed in light of *"what"* was authorised.
- Mr B's 6 April 2016 meeting note says that no advice was given. The absence of a Fact Find and other advice related documentation is consistent with this.
- Nothing Providence Wealth did constituted arranging. And the act of arranging also wasn't causative of the alleged loss as it had no impact on Mrs K's decision to invest.
- Mr B's alleged activities of advising or arranging can't be linked to any promotion by Providence Wealth.
- The AR Agreement limits the arrangement to being a statutory AR relationship and makes it clear that vicarious liability doesn't apply.
- In the absence of evidence that Mrs K wasn't a high net worth investor, it's not open to us to conclude that the promotion of the investment was inappropriate. But even if it was inappropriate, this doesn't mean that the promotion was causative of the loss.

After the novation agreement was reviewed, Neovision was identified as the correct respondent. So, the complaint against TJM was closed and a new complaint was set up against Neovision. In response to Mrs K's complaint, Neovision's said that:

- It has no records of Mrs K's investment and wasn't required to hold such records. Mrs K wasn't a client of it, TJM or Providence Wealth.
- Mrs K was a client of PIMIL, and she recollects the representatives as being from the Guernsey firm.
- Mrs L worked for Providence Group in a Corporate Social Responsibility role and Mr B worked for PIMIL as a sales executive.
- It agreed to become Providence Wealth's principal on 6 April 2016.
- The FCA register records Providence Wealth as an AR of TJM until 17 May 2016.
- The purpose of the AR Agreement was to facilitate marketing and not client sales.
- It hadn't authorised any sales activity; sales activity was outside of the AR Agreement and was conducted in Guernsey under passporting rights with the GFSC. This was fully disclosed and understood between the parties.
- By April 2016, Neovision hadn't signed off any financial promotions, email signatures or business stationery for Providence Wealth.
- Mrs K's said special underwriting was required. Neovision wasn't a part of this and all sales were conducted directly with Guernsey under GFSC permissions.
- By 6 April 2016, Mr B wasn't yet appointed to a control function with Neovision.
- Mr B wasn't an authorised representative of Neovision until 5 May 2016 and there's no evidence that he was purporting to represent Neovision at the relevant time.
- Even if the sale was conducted by Mr B under a FCA AR Agreement, it couldn't have been done through Neovision's Agreement as he wasn't registered with it.
- Neovision isn't responsible for someone who didn't represent it and who wasn't authorised by it.
- Mrs K was at the January 2016 event at the invitation of IPM. IPM facilitated Providence's range of mini-bonds and was retained to promote Providence Investment Management's funds and find new investors.
- Mrs K could've made a claim to the FSCS about IPM.

Neovision was sent a copy of the ombudsman's March 2020 provisional decision against TJM. An investigator then issued a view on Mrs K's complaint against Neovision. He

concluded that Neovision was the correct respondent to the complaint, that the complaint was one we could consider and that the complaint should be upheld as Neovision was responsible for the unsuitable advice Mrs K had received.

Neovision didn't agree with the investigator and, amongst other things, said that:

- TJM's (and subsequently Neovision's) role was that of advising on Providence Wealth's marketing activities and compliance training for London staff.
- There's no requirement that the authorisation of an AR be held exclusively within a formal AR Agreement.
- Correspondence shows that the scope of Providence Wealth's authority was far more limited than the areas set out in the AR Agreement for which TJM expected to provide authority.
- The AR Agreement sets out the regulated activities that TJM *"currently expects"*, as at the date of the agreement, to make available to Providence Wealth. But this wasn't an acceptance by TJM of responsibility for Providence Wealth undertaking those regulated activities, it was a statement of expectation. And the actual authorisation was a matter for subsequent discussion.
- Providence Wealth wasn't authorised under the AR Agreement to advise or to deal in investments. This can be seen from an email TJM sent to Lumiere on 15 June 2016 which says:

  > *"As has been confirmed previously by Providence Guernsey, they are responsible for all sales under their licence with the GFSC. TJM's role is limited to Financial promotions and marketing within the UK, which as you are aware from our previous correspondence on the matter is currently suspended."*

- Any alleged advice or arrangement didn't take place through Providence Wealth under the AR Agreement, but was through the auspices of Providence in Guernsey.
- That this was the parties' intention can be seen from email correspondence between TJM and Lumiere. Correspondence between those parties also shows that, as at January 2016, promotion by Providence Wealth wasn't yet authorised.
- Promotion was authorised under the AR Agreement but, by 6 April 2016, promotion wasn't an activity for which TJM or Neovision had accepted responsibility within the meaning of section 39(1) of the FSMA 2000.
- Mr B's 6 April 2016 meeting note was on PIMIL paper and was from PIMIL's records. The meeting note says that Mr B had explained he was meeting Mrs K as a promotional representative of PIMIL. And that Mrs K had been informed that Mr B wouldn't be giving advice on the suitability of the investment. So, even if Providence Wealth was authorised to promote in April 2016, any advising or arranging in this complaint can't be linked to a promotion by Providence Wealth.
- PIMIL was authorised to operate in the UK. The authorisation was as a third country Alternative Investment Fund Manager ('AIFM') pursuant to article 58 of the Alternative Investment Fund Managers Regulations 2013. Registration as a third country AIFM isn't something shown in the FCA register. The third country AIFM registration was to market in the UK. PIMIL operated under the Guernsey licence save for certain marketing that took place in London.
- It was PIMIL's responsibility to ensure its regulated activities in the UK were properly authorised.
- Promotion wasn't an activity TJM had accepted responsibility for by 6 April 2016 and the FCA register says Mr B wasn't authorised until 5 May 2016. So, the only basis on which Mr B could've met with Mrs K was as a representative of PIMIL.

- Mrs K had invested in a Providence Bond previously, so it's fair to assume that no advice was needed as she knew more about the investment than a first-time investor.
- Under DISP 2.3.3 of the FCA Handbook, and section 39(1) of the FSMA, TJM may only be held liable for the activities of Providence Wealth for which it had accepted responsibility. This point has been upheld in Court cases including *Anderson v Sense Network Limited*. TJM hadn't accepted responsibility for promotion, advice, arranging or other actions of Providence Wealth at the time of the 6 April 2016 meeting.
- The documents from Deloitte that we'd provided to Neovision included no reference to Providence Wealth. The company administering the investment was PIMIL.

What I've decided – and why

jurisdiction

I've considered all the available evidence and arguments in order to decide whether we can consider this complaint.

The rules I must follow in determining whether we can consider this complaint are set out in the Dispute Resolution ('DISP') rules, published as part of the FCA's Handbook.

The key issue I must address is whether Neovision can be held responsible for the alleged actions of Providence Wealth.

The investment complained about was made in April 2016. This followed on from Mrs K's meeting with Mr B on 6 April 2016. On that date Mrs K signed an application form, had identity documents verified by Mr B and provided a £50,000 cheque for the investment.

According to the FCA register, Providence Wealth was an AR of TJM from 14 August 2015 to 17 May 2016 and an AR of Neovision from 5 April 2016 to 4 July 2016. As mentioned previously, a novation agreement was entered into on 6 April 2016. The effect of this agreement was that, subject to any exceptions provided for in the agreement, all of TJM's rights and obligations under the 17 December 2014 AR Agreement with Providence Wealth were transferred to Neovision.

The FSMA 2000 Section 22 (Regulated Activities) provides that:

> *(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and –*
>
> *(a) relates to an investment of a specified kind; or*
>
> *(b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.*

DISP 2.3.1R says we can:

> "…*consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them*."

The guidance at DISP 2.3.3G says

> *"Complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility)."*

Exemption of ARs

The FSMA says under Article 19, '*The general prohibition'*, that:

(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is –

(a) an authorised person; or

(b) an exempt person.

(2) The prohibition is referred to in this Act as the general prohibition.

Section 39 of the FSMA sets out the exemption of ARs to the above, in so far as relevant, it says:

(1) If a person (other than an authorised person) –

(a) is a party to a contract with an authorised person ("his principal") which –

(i) permits or requires him to carry on business of a prescribed description, and

(ii) complies with such requirements as may be prescribed, and

(b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

Further that:

(3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.

The business for which an AR can be exempt is set out in the FSMA 2000 (Appointed Representatives) Regulations 2001 (2001 No. 1217) this includes advising on investments and arranging deals in investments.

I think that the issue of whether the principal, Neovision, is responsible for the alleged actions of its AR, Providence Wealth, can be resolved by considering the following three-stages:

- Step 1 - identify the specific acts complained of.
- Step 2 - consider whether those acts are regulated activities or ancillary thereto.
- Step 3 - consider whether the principal firm was responsible for those activities by reason of section 39 of the FSMA 2000, agency or vicarious liability.

step 1 – identify the specific acts being complained about?

Mrs K's complaint is that she purchased 500 preference shares in PIF for £50,000 and that the investment hasn't performed as expected. Mrs K's complaint encompasses Providence

Wealth promoting, arranging and advising her on the investment. Mrs K says this resulted in an investment being made that was unsuitable for her.

step 2 - consider whether those acts are regulated activities or ancillary thereto;

Regulated activities are specified in Part II of the FSMA 2000 (Regulated Activities) Order 2001 ('the RAO'). The units in a collective investment scheme ('CIS') are specified as investments (article 81). Advising on the merits of buying or selling these investments is a specified activity (article 53). So is arranging deals in investments (article 25).

Advising on the merits of investing in UCISs is a regulated activity our service has jurisdiction to look at. Arranging such investments is also a regulated activity.

The investment being complained about appears to have many of the qualities of an UCIS and that's how it was described in the promotional material. So, I'm satisfied that by either advising Mrs K on this investment and/or helping her arrange it, Providence Wealth would've been carrying out a regulated activity.

I think it's clear from the evidence referred to above that Providence Wealth was involved in arranging Mrs K's investment. I say that because its representative, Mr B, appears to have been integrally involved in arranging the investment; Mr B met with Mrs K to discuss the investment, assisted with the completion of the application form, verified documents and was given a £50,000 cheque by Mrs K for the investment.

I've also considered whether Mr B advised Mrs K on her investment. I'm conscious that as Mrs K attended a launch event for a different unregulated investment, it may well be that she was attracted to investments offering a potentially high return. The investment Mrs K made was an esoteric, high-risk and unregulated investment. I've seen nothing to suggest she was a particularly knowledgeable or sophisticated investor and, on balance, I think it's unlikely she would've committed to make the investment without advice from Mr B during their meeting.

I've not seen evidence of Mr B having followed a formal advice process. So, for example, I've not seen a copy of a Fact Find or suitability letter, but the absence of these documents doesn't mean advice wasn't given. The '*Background'* section of Mr B's 6 April 2016 meeting notes indicate that he discussed investing in the fund with Mrs K and it appears that this included a discussion about her financial circumstances and investment objectives.

From what Mrs K says, it appears she was actively pursued about making the investment after attending an event in January 2016 and this culminated with the meeting with Mr B in April 2016. During which, on Mrs K's own evidence, she received advice about the investment that resulted in her proceeding to make the investment.

The regulated activity of *"advising on investments"* is defined in article 53 of the RAO. I'm satisfied Mrs K was an investor or potential investor. And, after having carefully considered all of the evidence including Mr B's meeting notes and Mrs K's testimony about the sale of the investment, I think it's *most likely* that discussions went beyond what would've been needed to complete a truly non-advised sale and that Mr B advised Mrs K on the investment.

So, taking everything into account, on balance, I'm satisfied Mr B carried out the regulated activities of arranging and advising on investments on behalf of Providence Wealth. These activities fall within our jurisdiction as set out at DISP 2.3.1.

I'm also satisfied from the evidence I've referenced above that Providence Wealth was involved in promoting the investment to Mrs K. While promoting investments isn't specifically listed in the RAO as a regulated activity, I'm satisfied it was essentially part of and/or ancillary to the activities of advising and/or arranging the investments that Providence Wealth engaged in.

At the relevant time the FCA Handbook definition of a financial promotion noted that:

> *"(1) an invitation or inducement to engage in investment activity that is communicated in the course of business..."*

Further, in the Perimeter Guidance Manual (PERG) section 8.23.2G, the regulator says that:

> *"Anyone who is carrying on a regulated activity is likely to make financial promotions in the course of or for the purposes of carrying on that activity…"*

And, as an ancillary activity to that of advising and/or arranging Mrs K's investment, I'm satisfied a complaint about promoting the investment by Providence Wealth would also be within our jurisdiction to consider as set out in DISP 2.3.1R. As such, I'm satisfied that it's also appropriate for me to consider later in this decision whether the promotion was conducted in line with the rules and regulations at the relevant time.

step 3 - consider whether the principal firm was responsible for those activities by reason of section 39 of FSMA, agency or vicarious liability.

As set out above, DISP 2.3.3G says that:

> *"Complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility)."*

And section 39 (3) of FSMA says that:

> *The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.*

So, I need to consider whether the activities conducted by Providence Wealth for Mrs K were activities for which Neovision is responsible. And, in assessing responsibility by way of section 39 of the FSMA 2000, I also have to consider were the activities done in the carrying on of business for which Neovision has accepted responsibility in writing.

Neovision says that it isn't responsible for the sale of the investment, or for any advice given in respect of this. Amongst other things, it's been submitted that:

- From 6 April 2016 Neovision didn't authorise any sales activity at all. And any sales activity conducted was outside of the AR Agreement and was conducted by Providence in Guernsey under its regulatory passporting rights with the GFSC.
- Mr B wasn't an authorised representative of Neovision until 5 May 2016 and there's no evidence that he was representing Neovision in April 2016.
- The AR agreement was to assist Providence Wealth in marketing, not in direct client sales.

- By 6 April 2016 promotion wasn't an activity for which TJM or Neovision had accepted responsibility. But, in any eventuality, Mr B's alleged activities of advising or arranging can't be linked to any promotion by Providence Wealth.

Neovision says that PIMIL was authorised to operate in the UK as an AIFM pursuant to article 58 of the Alternative Investment Fund Managers Regulations 2013. And that the third country AIFM registration was to market in the UK. Neovision's explained that PIMIL operated under the Guernsey licence save for certain marketing that took place in London.

But to be clear, even if PIMIL did have authorisation as a third country AIFM, that doesn't mean that Neovision wasn't responsible for the specific activities this complaint concerns as Providence Wealth's principal. And the question I'm considering in this section isn't whether PIMIL was responsible, or even whether PIML was *also* responsible, for the activities in question but rather, whether Neovision is.

Further, even if business through until January 2016 had been effected solely by Providence in Guernsey, and under its regulatory passporting rights with the GFSC, that's not determinative of this also having happened in Mrs K's case some months later. So, I've got to carefully consider all of the evidence that's been provided in relation to Mrs K's case before deciding which firm, and in what capacity, I think effected the activities complained about. And what I'm considering here is whether Neovision is responsible for those activities by reason of section 39 of the FSMA 2000, agency or vicarious liability.

By 6 April 2016 Providence Wealth was an AR of Neovision. This is confirmed by the FCA register record and it's also shown from the contents of the 6 April 2016 novation agreement.

Mr B wasn't approved for CF30 status with Providence Wealth until after Mrs K's investment was made. Neovision has also highlighted that Mr B wasn't one of its authorised representatives until 5 May 2016 and that there's no evidence that he was purporting to represent it at the relevant date. The contents of the FCA register are one indicator of who was acting for which company, but this has to be viewed in the context of the wider evidence available. So, the FCA register entry for Mr B doesn't necessarily mean that he wasn't, in practice, operating for Providence Wealth at an earlier date than the register records suggest and, as I've explained below, I think the evidence clearly shows he was.

Mrs K's said that Mr B was part of Providence Wealth's Private Client team, and that she understood she was dealing with employees of Providence Wealth. Neovision doesn't agree with Mrs K's recollections about this. It's highlighted that Mr B's meeting note for the 6 April 2016 meeting records that he'd explained he was meeting Mrs K as a promotional representative of PIMIL.

There are two sub-sections to the main body of the meeting note. The first section, titled *'Background'*, is the shorter of the two and it's personalised to Mrs K. The second section, titled *'Points Clarified'*, isn't personalised; so, Mrs K isn't named in that section and reference is simply made in general terms to what *'investors'* or *'investor/s* had been told or had said. Asterisks have been added to two bullet-points in the second section, this appears to be because information relating to these bullet-points is mentioned in the *'Background section'.* The meeting note wasn't signed by Mr B until 13 April 2016.

On balance, I think it's *most likely* from the format and content of the *'Points Clarified'* section that this part of the note contains standard 'templated' wording. This doesn't mean that some, or all, of the bullet-points in that section weren't discussed with Mrs K. But I do think it makes the contents of this section less credible when viewed alongside some of the other evidence from the point of sale. And this includes some of the documents I refer to below that were completed either during, or in very close proximity to, the 6 April 2016 meeting.

I think that the contents of Mrs K's application form and the documents Mr B verified support Mrs K's testimony that she understood she was dealing with a Providence Wealth employee. The application form Mrs K signed on 6 April 2016 records the financial adviser/introducer as Mr B of Providence Wealth. And on documents that Mr B signed and dated for verification purposes on that same date, he's recorded his title *'Private Client Team'* and his Providence Wealth email address.

Mrs K's said that, as she wasn't a high net worth individual, Mr B had to get special authorisation before her application could proceed and Neovision's highlighted it wasn't part of this process. It's not clear to me whether Mr B did, in fact, end up seeking special authorisation from anyone else but, if he did, I think it's *most likely* this would've been from someone at the firm he was representing – Providence Wealth. And I don't think it's surprising that Neovision wasn't involved in this process.

So, while the *'Points Clarified'* section of Mr B's 6 April 2016 meeting note states that *"I informed the investor/s…that I was meeting them as a promotional representative of Providence Investment Management International limited",* for the reasons I've explained above I don't think it's *most likely* that Mrs K was told this. I'm satisfied that it's *most likely* she was told, and understood, that she was meeting with Mr B in his capacity as an employee of Providence Wealth.

This also appears to be consistent with a letter Mr B sent to Mrs K on 17 May 2016, shortly after the investment complained about was made. In the letter Mr B's recorded as being in the Private Client Team and his Providence Wealth email address is given. The footer of the letter also explains that Providence Financial is a trading name of Providence Wealth and is an AR of TJM.

Other documentation we've received also, in my opinion, further supports the finding that Mr B was acting for Providence Wealth and not PIMIL in his dealings with Mrs K. This includes an *"Individual Application Checklist"* dated 7 April 2016 on Providence Wealth paper, showing Mrs K as the client and Mr B as the consultant. And the email correspondence Providence Wealth sent to Lumiere on 14 April 2016 alongside the documents for Mrs K's investment, including an email from Mr B, with it being explained in the footer of the emails that Providence Financial was a trading name of Providence Wealth and an AR of TJM.

From the evidence I've mentioned above, I'm satisfied that Providence Wealth was involved in making arrangements for Mrs K's investment to take place. I'm also satisfied that Mr B was acting for Providence Wealth, and with its full knowledge, in his dealings with Mrs K. And that Mrs K understood she was dealing with a representative of Providence Wealth in her dealings with Mr B.

Further, and as I've mentioned previously, having carefully considered all of the evidence I think it's *most likely* that discussions went beyond what would've been needed to complete a truly non-advised sale and that Mr B advised Mrs K on the investment.

As the FCA register and the novation agreement show, Providence Wealth was an AR of Neovision when Mr B met with Mrs K on 6 April 2016. I appreciate that with the novation agreement only taking effect from 6 April 2016 not all records, such as Providence Wealth's stationery and email footers, would've been updated on that same date to reflect that its principal had changed from TJM to Neovision. But this doesn't alter the fact that Providence Wealth was, from 6 April 2016, Neovision's AR.

I've not seen any evidence that would lead me to conclude that Providence Wealth was acting in any capacity other than as AR of Neovision in its dealings with Mrs K. And, having

reviewed all of the evidence, I'm satisfied that the weight of evidence supports the conclusion that Providence Wealth, and in its capacity as an AR of Neovision, carried out the regulated activities of arranging and advising on the PIF investment Mrs K's complained about and that it also promoted that investment to her.

Under section 39 of the FSMA, the principal is required to accept responsibly for *"that business"*, which is a reference back to *"business of a prescribed description"*. However, the case of *Anderson* makes it clear the words *"part of"* in section 39 allow a principal firm to accept responsibility for only part of the generic *"business of a prescribed description"*. In other words, TJM (and later Neovision) was able to appoint Providence Wealth as an AR and limit the scope of the regulated activities it could carry out and that it would be responsible for.

Further clarification on this point was provided by the appeal judgement in the *Anderson* case, which set out that only restrictions on *"what"* generic business could be conducted would limit the principal's responsibility. In contrast, restrictions on *"how"* that business is to be conducted don't limit a principal's responsibility. In other words, a principal can't avoid responsibility for activities it authorised an appointed representative to carry out just because those activities weren't carried out in the way it wanted them to be.

This means that I can consider this complaint against Neovision if the acts complained about include business for which it accepted responsibility in writing. As part of my consideration of this, I've carefully reviewed the scope of the authority provided to Providence Wealth by means of the AR Agreement.

We've been provided with a contract, the AR Agreement, between TJM and Providence Wealth dated 17 December 2014. The agreement incorporated the contract deed and schedules. As referenced previously, a novation agreement was signed by representatives of all of TJM, Neovision and Providence Wealth on 6 April 2016. And the effect of this was that, subject to any exceptions provided for in the agreement, all of TJM's rights and obligations under the AR Agreement with Providence Wealth were transferred to Neovision from 6 April 2016 onwards.

Clause 2.1 of the Agreement says that:

> *"The Company shall provide FCA authorisation to the Appointed Representative so that it may conduct certain regulated business…"*

Clause 2.2. adds that:

> *"The Engagement is envisaged to commence on the Commencement Date which shall be date approval and authorization is granted by the FCA to the Appointed Representative so that it may conduct certain regulated business and shall continue, (subject to the provisions of clauses 7 & 8 and the remaining terms of this Agreement) until such time it is terminated by either party giving the other not less than 2 months' prior written notice."*

Clause 2.3 says:

"*Pursuant to the terms of this Agreement, the company offers the Appointed Representative permission to work within the scope of the Company's UK regulatory licence. The regulated activities that the Company currently expects to make available to the Appointed Representative are:*

- *Advising on investments (except on Pension Transfers and Pension Opt Outs);*

- *Arranging (bringing about) deals in investments;*
- *Dealing in investments as agent; and*
- *Making arrangements with a view to transactions in investments.*

The Company agrees that the Appointed Representative can perform those regulated activities that are relevant to the Appointed Representative's engagement, subject to the terms of this Agreement."

And clause 12.1 says that:

> *"This Agreement constitutes the entire Agreement and understanding of the parties in relation to this engagement and appointment of the Appointed Representative as an Appointed Representative of the company…"*

Neovision says, amongst other things, that it can't be responsible for the advising or arranging activities complained about because the wording of the AR Agreement was framed to give the future expectation of what would be authorised (*"currently expects"*) as opposed to the current position of what was authorised.

The AR Agreement appears to be the only agreement in place at the time. TJM's solicitors submitted, in response to the ombudsman's provisional decision on the TJM case, that *"The actual activities that were authorised were the subject of separate discussions and were more limited. The substantive terms of the AR Agreement then applied to those activities that were actually authorised".* But having carefully considered all of the evidence, including the email evidence that's been referred to, I don't think that the evidence supports TJM's solicitors' and/or Neovision's submissions on this point.

The agreement has been formally drafted into a contract, with an offer of permission to work within the scope of the principal's UK regulatory licence, and this offer then appears to have been accepted with the agreement being signed by both TJM and Providence Wealth.

I've noted what Neovision's said about the use of the phrase *"currently expects".* But, in my view, that language could just as easily mean that what's stated in the agreement may change in the future, or that certain permissions might subsequently be curtailed. So, I don't agree with Neovision that this wording alone shows that these weren't permissions already in place.

Further, there are indications in the wording of clause 2.3 of the Agreement that, in my opinion, supports the conclusion that the Agreement was a current agreement:

> *"The Company agrees that the Appointed Representative* ***can perform*** *those regulated activities that are relevant to the Appointed Representative's engagement, subject to the terms of this Agreement.*
> *…*
> *As an Appointed Representative of the Company, the Appointed Representative* ***has*** *regulatory coverage to provide the above-regulated activities only from the UK."* (My emphasis)

The language used doesn't indicate to me that there's a future intention for these permissions. Were that the case then, for example, I'd expect the parts of clause 2.3 I've quoted above to say something like *"will be able to perform"* rather than *"can perform"* and *"will have"* instead of *"has"*.

There's nothing further within clause 2.3, or shortly thereafter, that qualifies what *"currently expects"* means or when, if it *was* a future authorisation, it would come into effect. And I also

think it's notable that in the email correspondence in which Providence Wealth had its authorisation suspended, there's no reference or suggestion that it didn't have the authorisation that the agreement detailed, or else that there was any pending authorisation to come.

Further, if Providence Wealth hadn't been authorised, there'd have been no need to suspend its authorisation. I've noted that TJM's solicitors, in response to the provisional decision on the TJM complaint, contended that the suspension was done for completeness. But I've seen no correspondence that supports that position and I'm not currently persuaded by that submission.

Having considered everything carefully, it doesn't seem *most likely* to me that the AR Agreement was signed by all parties based on what TJM expected to authorise at some unnamed date in the future. So, on balance, I'm satisfied that the 17 December 2014 AR Agreement was the Agreement in effect when Providence Wealth's representative advised and arranged the investment Mrs K's complained about. And I don't think it's *most likely* that *"currently expects"* refers to any future authorisation.

So, for all the reasons I've given above, I'm not satisfied that "*currently expects" did* refer to a *future* authorisation. However, even if I'm wrong about this and even if there was a future authorisation to come, this doesn't mean that the current AR Agreement (by which I mean the 17 December 2014 AR Agreement) wasn't still valid and indicative of what was (then) currently authorised in the meantime.

To be clear, in my view the AR Agreement shows that there was a contract which permitted Providence Wealth to carry on business of a prescribed description. And I'm satisfied that in the AR Agreement TJM (and from 6 April 2016 Neovision) authorised Providence Wealth to carry out (and accepted responsibility for) activities which included arranging and advising on investments. And I'm also satisfied that Providence Wealth was someone for whom, by 6 April 2016, Neovision had accepted responsibility in writing.

Neovision says that not all of the permissions provided for in the AR Agreement applied immediately, but I don't think anything in the Agreement or other evidence I've seen supports that view. The Agreement appears to me to be a valid contract and, based on the information currently available to me, I think the terms of the Agreement applied in full before 6 April 2016.

I've noted the contents of the email discussions between TJM and Lumiere from January 2016 that Neovision's referred to. TJM doesn't state in these discussions that there are activities that it hadn't authorised Providence Wealth to perform and/or accepted responsibility for. Rather, the purpose of the email correspondence appears to be to document the key points from an earlier telephone discussion between TJM and Lumiere.

In my view, the January 2016 email correspondence shows TJM seeking to ensure that it understands what, if any, activities being undertaken at that specific point in time were being effected under its existing AR Agreement with Providence Wealth and which activities were being undertaken in Guernsey. Further, it's also clear that TJM understood that there would, at a later date *"be a natural crossover of some of the regulatory formalities/responsibilities"* to Providence Wealth and there's no suggestion in these discussions that this would've necessitated any further authorisation or acceptance of responsibility by TJM that wasn't already provided for in the AR Agreement.

Neovision also says that correspondence relating to disclaimers shows that agreement hadn't been reached on what Providence Wealth was authorised to do by 6 April 2016. And I've carefully considered the contents of all the correspondence we've received relating to

the disclaimers, but nothing contained therein alters my opinion that the terms of the AR Agreement applied in full before 6 April 2016.

It may be that Mr B and other members of Providence Wealth's staff went further than TJM and/or Neovision envisaged they would in their activities involving Mrs K's investment. But I'm satisfied that this isn't sufficient for Neovision to avoid responsibility for the actions of its AR in this case.

Conclusions on jurisdiction

I'm satisfied Mr B was involved in the regulated activities of advising on and arranging Mrs K's investment and that he was acting for Providence Wealth when he did so. And I'm satisfied these were activities Providence Wealth was authorised by Neovision to carry out. On balance, and taking everything into account, I think Mrs K's complaint falls within our jurisdiction and is one I can consider.

merits

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

The parties to this complaint have provided detailed submissions to support their position and I'm grateful to them for doing so. I've considered these submissions in their entirety. However, I trust that they won't take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision isn't to address every point raised in detail, but to set out my findings and reasons for reaching them.

In considering what's fair and reasonable in all the circumstances of this complaint, I've taken into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is *most likely* to have happened in the light of the available evidence and the wider circumstances.

As I've mentioned previously, having carefully considered all of the evidence, I think that Mr B carried out the regulated activities of arranging and advising on the PIF investment on behalf of Providence Wealth. So, I've gone on to consider whether that investment was suitable for Mrs K.

Mrs K's said she's "*a saver, and a small, retail investor"* and that she was attracted to the PIF investment as if offered a fixed rate of interest and was guaranteed to be stable. Mrs K's also explained that, prior to investing £40,000 in Providence Bonds II Plc in 2015, her and her husband savings, totalling around £190,000, were held:

> *". . . with 'name brand' retail financial services companies. Before Providence Bonds. I had only ever invested in fixed-term and fixed-rate deposits (often called 'Fixed Rate Bonds')…I was attracted to these products because they offered a guaranteed, fixed rate of interest, as opposed to the risk associated with unit trusts or stock market-related products."*

From the evidence I've seen, there's nothing that would give me cause to doubt what Mrs K's said about this. And both the PIF investment application form and the *'Background'* section of Mr B's 6 April 2016 meeting notes record the source of funds for the PIF

investment as being a matured Santander investment, which seems consistent with what Mrs K's said.

In my view the PIF investment was an unusual holding, operating in a very specific way. And it might reasonably be described as a sophisticated and/or complex investment; and could suffer significant losses, the nature of which would be difficult to predict or estimate at the outset. I consider the holding exposed investors to significant risks such as illiquidity and risks inherent in unregulated investments. The investment wasn't subject to regulation in the same way as regulated funds. And investors potentially didn't have recourse to the FSCS or this service.

I think the investment would generally be considered esoteric and higher risk. I'm satisfied that such an investment was unsuitable for Mrs K because it involved a much higher level of risk than Mrs K was willing or able to accept. And I think this ought to have been readily apparent to Providence Wealth.

That's because, in my view, Mrs K wasn't a particularly experienced or sophisticated investor and she wasn't someone who was willing to expose the monies this complaint concerns to any significant degree of risk. And I think that it's unlikely she'd have wanted to change the relatively cautious approach she'd previously followed and with money she says was needed to generate an income to supplement her and her husband's pension income.

In reaching this conclusion I'm mindful that Mrs K had previously invested money in Providence Bonds II Plc in 2015. But Mrs K's complained elsewhere that these were also mis-sold and I don't think it would be fair or reasonable to use the Providence Bonds II Plc investment to draw the conclusion that Mrs K was somehow a high-risk or speculative investor.

Further, following the 2015 investment around 20% of Mrs K's savings were held in unregulated investments. And I'm satisfied that investing a further £50,000 of Mrs K's savings into unregulated investments in 2016 wouldn't have been suitable for Mrs K.

So, to summarise, based on the evidence available to me, I think it's *most likely* Mrs K received advice to invest in the PIF investment from Mr B on 6 April 2016 and I'm satisfied that investment wasn't suitable for her.

But even if I thought no advice was given and that Providence Wealth only promoted and arranged the investment, my conclusion would still be that this complaint should be upheld. That's because I'm satisfied, for the reasons I've set out below, that the investment shouldn't have been promoted to Mrs K by Providence Wealth in any eventuality. And, but for Providence Wealth inappropriately promoting the investment to and arranging the investment for Mrs K, I think it's *most likely* that Mrs K wouldn't then have effected the investment. So, either way, if Neovision's AR had acted as it should've done, I don't think Mrs K would've made the PIF investment.

The PIF investment appears to have been an UCIS. And, as such, was subject to the scheme promotion restriction (s.238 FSMA). Adviser firms had a choice of different sets of exemptions from the s.238 restrictions. Relevant exemptions included:

- Certified high net worth individuals.
- Certified sophisticated investors.
- Self-certified sophisticated investors

I've seen no evidence that Mrs K was ever certified as a high net worth individual or a sophisticated investor. We've also been provided with no evidence that would suggest

Providence Wealth ever had any reason to believe that Mrs K was a high net worth individual or a sophisticated investor.

Further, having considered all of the other exemptions that were available at the relevant time, alongside all of the evidence we've been provided to date, I don't think that Providence Wealth would've been able to rely on any of the other exemptions so as to promote the investment to Mrs K. In other words, I don't think the investment should've been promoted to Mrs K in the first place.

There had, previously, been a category 2 exemption whereby a UCIS could be promoted under COBS 4.12 if a firm had taken reasonable steps to ensure that the UCIS investment was suitable for the person to whom it was being promoted. But that exemption was no longer available when the PIF investment was promoted to Mrs K.

For completeness, even if Neovision had taken reasonable steps to conclude that Mrs K was a person to whom it could promote the investment (and I've seen no evidence that it did this), by way of an exemption listed under COBS 4.12 that incorporated some element of suitability assessment, I still don't think that the proposed investment should've proceeded. As I think it ought to have been readily apparent to Providence Wealth that the investment wasn't suitable for Mrs K.

In addition to the financial loss that Mrs K has suffered as a result of the PIF investment being made, I think that the loss of these monies has also caused Mrs K some distress, and I think that it's fair for Neovision to compensate her for this as well.

The involvement of other parties

In this decision I'm considering Mrs K's complaint about Neovision. I appreciate it's been contended that there were other parties involved, for example IPM.

The DISP rules set out that when an ombudsman's determination includes a money award, then that money award may be such amount as the ombudsman considers to be fair compensation for financial loss, whether or not a court would award compensation (DISP 3.7.2R).

And, for the reasons I've set out at length above, in my opinion Neovision is responsible for the investment Mrs K made in the PIF holding and I'm satisfied that investment shouldn't have occurred.

As such, the starting point is that it would be fair to require Neovision to pay Mrs K compensation for the loss she's suffered as a result of its failings.

I've carefully considered if there's any reason why it wouldn't be fair to ask Neovision to compensate Mrs K for her loss, including whether it would be fair to hold another party liable in full or in part. And I consider it appropriate and fair in the circumstances for Neovision to compensate Mrs K to the full extent of the financial losses she's suffered due to its failings.

I accept that it may be the case that other parties might've some responsibility for initiating the course of action that led to Mrs K's loss. However, I'm satisfied that it was the actions of Providence Wealth in its capacity as an AR of Neovision, that were ultimately responsible for the investment being effected and for the situation in which Mrs K now finds herself. And I think that, without the involvement of Providence Wealth in its capacity as an AR of Neovision, the investment wouldn't have been made and the loss Mrs K's suffered could've been avoided.

As such, it's my view that it's appropriate and fair in the circumstances for Neovision to compensate Mrs K to the full extent of the financial losses she's suffered. And, taking into account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that Neovision's liable to pay to Mrs K.

However, in order to be fair to Neovision, it should have the option of payment of the full calculated redress being made contingent upon Mrs K agreeing to assign any claim she may have against any other third party involved in the transaction this complaint concerns to Neovision. Neovision would need to meet any costs in drawing up such an assignment.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mrs K as close to the position she would probably now be in if the PIF investment hadn't been made.

I think Mrs K would've invested her monies differently. It's not possible to say *precisely* what she would've done, but I am satisfied that what I've set out below is fair and reasonable given Mrs K's circumstances and objectives when she invested.

What should Neovision do?

To compensate Mrs K fairly, Neovision must:

- Compare the performance of Mrs K's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Neovision should also pay interest as set out below.
- Pay Mrs K £500 for the trouble and upset she's suffered. In addition to the financial loss that Mrs K has suffered as a result of the problems with her investment, I think that the loss of a significant portion of her savings has caused Mrs K distress. And I think that it's fair for Neovision to compensate her for this as well.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
PIF investment	It appears to no longer exist	Average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date and this might

be zero.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mrs K agrees to Neovision taking ownership of the investment, if it wishes to. If it is not possible for Neovision to take ownership, then it may request an undertaking from Mrs K that she repays to Neovision any amount she may receive from the investment in the future.

If Neovision does request such an undertaking from Mrs K then any expenses incurred for the drafting of the undertaking should be met by Neovision.

Fair value

This is what the investment would've been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Neovision should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there's a large number of regular payments, to keep calculations simpler, I'll accept if Neovision totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs K wanted to achieve a reasonable return without risking any of her capital.
- The average rate for the fixed rate bonds would be a fair measure given Mrs K's circumstances and objectives. It doesn't mean that Mrs K would've invested only in a fixed rate bond. It's the sort of investment return a consumer could've obtained with little risk to their capital.

As mentioned above, Neovision has the option of payment of the full calculated redress being made contingent upon Mrs K agreeing to assign any claim she may have against any other third party involved in the transaction this complaint concerns to Neovision. Neovision would need to meet any costs in drawing up such an assignment.

My final decision

For the reasons set out above it is my decision that we can consider Mrs K's complaint against Neovision Wealth Management Limited.

It is also my decision that the complaint is upheld and that Neovision Wealth Management Limited must pay fair compensation to Mrs K as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 28 April 2022.

Alex Mann
Ombudsman