DRN-4494882

The complaint

Mr K complains that In2 Planning Limited (In2) set up a Small Self Administered Scheme (SSAS) which was then invested in RRAM Bonds, a high risk and unregulated investment. Mr K has lost the money he invested and holds In2 responsible.

Mr K is represented in bringing his complaint. For ease, I've just referred to Mr K below and to what's been said on his behalf as if Mr K had said it himself.

What happened

I issued a provisional decision on 8 November 2023. I set out what had happened and my provisional findings. I've recapped here what I said.

'*Mr K had his own company, set up in 2014. Mr K says his company accountants, who I'll refer to as Firm D, suggested he set up a SSAS to hold RRAM Bonds and introduced him to In2.*

Mr K signed various documents on 9 December 2016, including In2's terms of business. He also signed an application form to establish a SSAS with Whitehall Group (UK) Limited (Whitehall). On page 6 of the form there were questions to determine if the Scheme Members (here that's just Mr K) qualified as Sophisticated Investors and/or High Net Worth Individuals and/or Professional Investors. Mr K answered 'no' to all four questions relating to Sophisticated Investors and the same to the question about Professional Investors, so indicating that he didn't qualify as such. But he answered 'yes' to the two questions about High Net Worth Individuals.

Mr K's signature on the application form was witnessed by someone I'll call Mr S. He gave his occupation as introducer. He didn't say the name of the company he worked for but the address he gave was for a business I've mentioned later on.

There was a Sophisticated Investor Statement. Amongst other things it said:

'I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of non-mainstream pooled investments. The exemption relates to certified sophisticated investors and I declare that I qualify as such.
I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested.
I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-mainstream pooled investments.'

And, underneath Mr S's signature, date and name the form said:

'You are a sophisticated investor because you have declared that at least one of the following applies:

1. I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;

2. I have made more than one investment in an unlisted company in the two years prior to the date below;
3. I am working, or have worked in the last two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
4. I am currently, or have been in the last two years prior to the date below, a director of a company with an annual turnover of at least £1 million.'

Mr K also completed the RRAM Bonds application form for 14,435 RRAM Bonds at a cost of £14,435. A further 1,090 bonus bonds would be issued so Mr K would get 15,525 bonds in all. In signing the form Mr K warranted, amongst other things, that he was experienced in business matters; recognised that the investment was a speculative venture with no history of operations or earnings; he had the financial ability to bear the economic risk of the investment; had adequate means for providing for his current need and possible contingencies and had no need for liquidity of his investment; and he was a person to whom an information memorandum may lawfully be distributed without contravention of FSMA (Financial Services and Markets Act 2000).

The second page of the application form was a Certificate for Execution by Self Certified Sophisticated Investors. It said provided Mr K met the criteria set out he should sign and date the certificate and return it with the application form and the remittance. Mr K signed the certificate and by doing so declared that he was a self certified sophisticated investor for the purposes of the FSMA (Financial Promotion) Order 2005, that he might lose significant rights and that at least one of the criteria set out applied – they were the same as on the Sophisticated Investor Statement.

I've seen that Mr K emailed Firm D on 18 January 2017 confirming, as discussed, he'd like to set up a SSAS and authorised the investment in RRAM Bonds on an execution only basis. Firm D forwarded the email to Mr S. The print out I've seen doesn't show Mr S's email address.

In2 sent a letter of engagement to Mr K on 20 January 2017. It said he'd been introduced by Firm D and was interested in setting up a SSAS and had requested limited advice about the matter. In2 said:

'We are prepared to provide you with the following services (limited advice only):
Initial meeting or telephone/email conversation to determine and confirm your objectives and needs for retirement planning.
Recommend the most suitable solution to achieve your stated objectives.
Once you engage our services we will:
Confirm the suitability and appropriateness of setting up a SSAS.
Research the most appropriate SSAS provider.
Provide written confirmation of our advice.
Complete administration and document processing for specific advice.'

The fee for SSAS advice and set up was £1,000. Details of other services offered, including advisory and execution only services for existing pensions, which included investment transactions were set out. If In2 transacted any investment instruction on Mr K's behalf on an execution only basis (where no advice was sought or provided by In2) a one off fee of £75 plus VAT would be charged.

In2 sent the SSAS application form and other documentation, including the Sophisticated Investor Statement, to Whitehall on 20 January 2017.

Whitehall confirmed to In2 by letter dated 2 February 2017 that the SSAS had been

established and registration with HMRC applied for. Copies of the Trust Deed and Rules were enclosed, with a member trustee information booklet and details of the SSAS bank account. The Trust Deed and Rules, dated 27 January 2017, show Whitehall Trustees Limited and Mr K as the trustees. Mr K's signatures on the Trust Deed (as employer and member trustee) had been witnessed by Mr S who again gave his occupation as introducer and the same address as previously.

I've seen an email from Firm D to In2 and copied to Mr S on 24 February 2017. Firm D said it was providing information requested for the clients listed (with names redacted) which included Mr K. Firm D said Mr K was a self employed contractor with a gross annual income of above £200,000 pa. He'd been with Firm D for accountancy services for three years. Mr K's gross asset value was more than £350,000. He wanted higher returns and understood the risks for the investment. Similar details in respect of four other clients were given.

The SSAS received a contribution of £16,700 from Mr K on 13 March 2017.

On 31 March 2017 In2 sent Whitehall the RRAM Bonds application form which, as I've said above, Mr K had signed on 9 December 2016 and included the Certificate for Execution by Self Certified Sophisticated Investors. In2 said in its covering letter that it had agreed to charge a £75 plus VAT one off transaction fee for the execution of each investment only and no advice or recommendation as to suitability had been provided by In2.

I've seen that on 31 March 2017 Mr K signed Whitehall's Esoteric Investment Instruction form. It said an esoteric investment was defined by Whitehall and was one which wasn't regulated by the FCA (Financial Conduct Authority) and didn't have protection from the Financial Services Compensation Scheme (FSCS). And it was an investment which wasn't classed as direct commercial property or a loan or unquoted share which is not being promoted generally as a collective investment. The investment details were shown as lending to UK and Indian SMEs (small and medium sized enterprises).

Whitehall sent the application form to Red Ribbon Asset Management plc (RRAM plc) (of which RRAM Bonds plc was a subsidiary) on 13 April 2017. RRAM Bonds plc sent a certificate on 20 April 2017 showing the SSAS trustees held 15,525 8% RRAM Bonds of £1 each. In2 sent the bond certificate to Mr K under cover of a letter dated 2 May 2017 in which In2 confirmed the investment was processed on an execution only basis, where no advice was sought or provided by In2.

Mr K complained to In2 on 25 November 2022. Amongst other things, he said In2 had provided regulated financial services to him in setting up his SSAS and arranging the investments.

In2 acknowledged the complaint and responded substantially (through a solicitor instructed to reply to the complaint) on 24 May 2023. The complaint wasn't upheld and detailed submissions were made. But, in summary, In2 had been engaged to set up the SSAS and advise on the best way to do that and the most appropriate service provider. In2 hadn't offered independent financial advice. Mr K had been able to subscribe to the RRAM Bonds investment because he'd self certified as a high net worth and/or sophisticated investor. If those statements had been made falsely or recklessly and provided to third parties to induce investment that was a criminal offence. Mr K had every opportunity to seek independent financial advice (from In2 or another adviser). But he failed to do so and he was now seeking compensation from In2 for an investment he'd freely chosen and which had failed to perform. And when at no time, between In2 having been introduced to Mr K and him subscribing for the RRAM Bonds, had In2 put Mr K under any pressure to sign self certification statements.

Mr K referred his complaint to us. One of our investigators considered it and issued a

detailed view on 27 June 2023.

He considered first if we had jurisdiction to consider the complaint. A SSAS was an occupational pension scheme and establishing the SSAS and administering it wasn't a regulated activity (as set out in the Regulated Activities Order (RAO)). And it seemed the advice to invest in RRAM Bonds didn't come from In2. But In2 had sent the investment instruction to Whitehall for the purchase of the RRAM Bonds. That fell within the regulated activity set out in article 25 (1) of the RAO which says (as far as is relevant here):

'Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is
(a) a security'

A 'security' is defined as meaning any investment of the kind specified by any of articles 76 to 82 of RAO. Article 77 details instruments 'creating or acknowledging indebtedness' and at subsection (1) (d) bonds are included. So we could consider a complaint about In2's part in arranging the RRAM Bonds investment for Mr K.

The investigator relied on COBS (Conduct of Business Sourcebook) 10.2.1R and said In2 had been required to assess the appropriateness of the investment for Mr K and if he had the necessary experience or knowledge to understand the risks involved in purchasing RRAM Bonds. The investigator was also concerned about the charges. Mr K had paid some £1,530 in initial charges – just over 9% of the £16,700 he'd transferred to the SSAS. Whitehall had charged £600 pa (4% pa) which included an extra fee because the RRAM Bonds were classed as an esoteric investment. The charges were too high and undermined the 8% proposed return – the initial charges effectively wiped out any return for the first year and halved the returns going forwards. The investigator didn't think In2 had acted as required by COBS 2.1.1R in accordance with Mr K's best interests. The investigator set out what In2 should do to put things right for Mr K.

Mr K accepted the investigator's view. In2 didn't. In2's main points were:

- *The investigator had accepted that Mr K's income was about £60,000 pa and he was a low risk investor with limited sophistication, despite the content of the application form and the certificate, both of which Mr K had signed. In2 referred to information available on Companies House which showed a profit for Mr K's company of about £129,000 and cash in hand of £110,774 at the year ended March 2017.*
- *Mr S worked as an employee with CF 30 (customer function) with Stargate Corporate Finance Limited (SCF) alongside Firm D who remains Mr K's accountant and that was how the transaction had come about.*
- *According to the FCA register, Mr S was at the time of the transaction, an appointed representative of SCF. He wasn't an introducer but he held the CF 30 customer function permission which entitled him to recommend the RRAM Bonds investment – on behalf of SCF. Mr S and/or Firm D recommended the transaction. In2's role was limited to setting up the SSAS to hold the investment.*
- *Mr S and Firm D would know Mr K's finances better than In2 or this service. Mr S and/or Firm D may well have completed the forms for Mr K to sign. But Mr K was commercially sophisticated. In2 referred to information on Companies House and to what Mr K's LinkedIn profile said. Mr K could be expected to have read what he signed. In any event it was reasonable for In2 to take on trust information in a document generated by Mr K's accountant.*
- *COBS 10 didn't apply and no appropriateness test was required.*
- *In2 didn't accept what the investigator had said about the SSAS being too expensive and which was based on a single contribution.*

- *In2 said a small company typically needs a pension vehicle for its directors into which regular contributions are paid and then invested in a balanced range of investments. Mr K's company had profits of around £120,000 on which he was going to have to pay tax, either within the company or when he withdrew the money. As a higher rate tax payer a pension contribution made sense.*
- *In2 had been asked jointly by Mr K and Firm D to set up the SASS. Mr K confirmed he understood the advantages. He got annual statements from Whitehall which reminded him of his contribution allowance and the tax advantages.*

The investigator considered what In2 had said before issuing a revised view. The investigator accepted that COBS 10 (as in force at the time) wasn't relevant. But he maintained In2 should've queried the contradictory information sent to Whitehall to establish the SSAS. The application form for the SSAS sent under cover of In2's letter of 20 January 2017 to Whitehall had 'no' ticked in answer to the four questions to establish if Mr K was a sophisticated investor. But In2 also sent, with the same letter, a sophisticated investor statement signed by Mr K. The investigator referred to the regulator's Principles 2 and 6 of the Principles for Businesses (PRIN). The investigator said, if In2 had looked into the discrepancy, it would've transpired that Mr K wasn't a sophisticated investor. So he'd have been unable to invest in the RRAM Bonds. The investigator also remained concerned about the costs involved for Mr K, given the amount transferred.

In2 didn't accept the investigator's revised view. In2 said the investigator, having agreed that an appropriateness test wasn't required (which was the complaint made), was saying In2 should've blocked the transaction recommended by an authorised firm on the basis Mr K wasn't a sophisticated investor when he (and Firm D) had said he was. It was reasonable for In2 to rely on what a firm of accountants and an appointed representative or employee of an authorised firm as whether the client was sophisticated. When an authorised firm's representative who is not a representative of In2 produces the relevant document, it isn't for In2 to query it and provide a level of consumer protection that neither the customer nor his adviser wants or considers necessary.

By the time In2 became involved with Mr K, he'd already received the RRAM Bonds promotion from his adviser and nothing In2 did caused him to receive further promotions. The effect of the customer's declared level of sophistication was limited to any future promotions. There was no evidence that Mr K invested in subsequent high-risk investments because of the way in which In2 processed his application.

In maintaining that the SSAS was too expensive, the point In2 had made previously, about its costs leading to the establishment of the SSAS which could hold different types of investments and aimed at the receipt of regular (at least annual) contributions, not a one-off payment, in a tax efficient basis, had been ignored There was nothing to support an allegation that the choice of SSAS was wrong and that In2's charges were unreasonable.

The investigator commented that he didn't think In2 had addressed the point about whether In2 had failed to exercise due care and attention in submitting contrary documents to Whitehall and so hadn't looked after Mr K's best interests. In response In2 said it had reasonably believed the view of an authorised firm who'd worked with Mr K's accountants, Firm D. There was no duty on a firm, when asked to recommend a pension to go with a product that the consumer and his adviser both wanted, to block it on the basis of erratic form filling. The regulator had expressly concluded that no appropriateness test was required in this situation. What the investigator was suggesting was effectively putting that test back in and then imposing a stricter requirement than COBS 10 which only requires a risk warning not the blocking of the transaction.

In2 also said, about causation that, had In2 raised concerns about the contradiction the

investigator had identified, that Mr K's FCA authorised adviser would've just confirmed Mr K's status. I understand In2 is referring here to Mr S and his association with SCF. The investigator replied, setting out what he'd seen as to Mr S's position. He'd witnessed Mr K's SSAS application and given his occupation as introducer. Mr K had produced an email sent by Mr S on 2 September 2016 which indicated that at the time Mr S was working as a Business Development Officer for RRAM plc, which was an appointed representative of SCM although In2 had said that Mr S held a CF 30 function with SCF. The investigator also noted that, according to the FCA register, Mr S had a CF 30 function with In2 from 5 September 2016 to 20 July 2018. In2 didn't comment on the investigator's observations.

What I've provisionally decided – and why

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

But first, as we're required to keep jurisdiction under review throughout our consideration of a complaint, I've thought about if Mr K's complaint is one we can consider. I agree with the investigator that we can consider Mr K's complaint about In2 and its involvement in Mr K's investment in RRAM Bonds. My reasoning is the same as the investigator's.

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm in carrying on one or more listed activities. The relevant one here is regulated activities (see Dispute Resolution (DISP) 2.3.1R). Regulated activities are specified in Part III of RAO and include advising on investments (article 53) and arranging deals in investments (article 25). In2 was and remains a FCA authorised firm. Its permissions include advising on investments (except on pension transfers and pension opt outs), arranging (bringing about) deals in investment and making arrangements with a view to transactions in investments.

From the documentation, In2 didn't give Mr K any investment advice. There are question marks about that, given what I've gone on to say about Mr S below and the several positions he held. But leaving those issues aside for the time being, In2's letter of engagement dated 20 January 2017 set out that In2 would advise Mr K about a SSAS. That's not a regulated activity nor is establishing a SSAS so we can't consider that. But In2 also processed Mr K's execution only investment instruction for the RRAM Bonds. In doing so In2 was carrying on a regulated activity – arranging (bringing about) deals in investments. So we can consider if In2 did anything wrong in accepting Mr K's instruction and carrying it out (on an execution only basis).

In2 wasn't the only business involved. The situation is somewhat confusing and I think it's helpful to set out my understanding of the parties involved, some of which we don't have jurisdiction over, and their roles before I go on to consider the complaint against In2.

Firm D was (and remains) Mr K's company accountant. Mr K says it was Firm D who suggested he set up a SSAS and invest in RRAM Bonds. Firm D then referred him to In2.

It's possible that whatever Firm D said to Mr K about RRAM Bonds amounted to promoting the investment. If so, that would've been in breach of section 21 of the FSMA. It contains a restriction on financial promotion – an invitation or inducement to engage in investment activity – unless the promotion has been made or approved by an authorised person or is exempt.

Firm D may have gone further. What Firm D said may have amounted to investment advice. Advising on investments is a regulated activity. Section 19 of FSMA contains a general prohibition that no person may carry on a regulated activity in the UK unless they're an

authorised or an exempt person. So, and depending on exactly what was said, Firm D may have been in breach of section 19 or 21 of FSMA or both. But Firm D isn't a FCA authorised firm. We don't have any jurisdiction over Firm D and we can't consider any complaint about Firm D.

Whitehall provides professional trustee and administrator services. Whitehall was the SSAS provider, one of the SSAS trustees (Mr K was also a member trustee) and the SSAS administrator. Establishing, operating or winding up a stakeholder or a personal pension scheme are regulated activities. A SSAS is an occupational pension scheme and regulated by The Pensions Regulator. We can't deal with any complaint about Whitehall.

RRAM Bonds plc was the investment provider and a subsidiary of RRAM plc who was an appointed representative of SCM from 22 March 2016 to 9 July 2017. SCM has links with SCF. The same individual was the CEO of both firms and the only active director. Both firms' permissions included advising on investments (except on pension transfers and pension opt outs); arranging (bringing about) deals in investments; and making arrangements with a view to transactions in investments. SCM also held permission to manage investments.

On 27 June 2017 the FCA issued a First Supervisory Notice against SCM and SCF. Amongst other things, SCM was ordered to terminate or transfer to another principal the provision of services to its appointed representatives, including RRAM plc. The FCA had identified concerns over SCM's and SCF's governance of its appointed representatives and the activities that were being undertaken. A Second Supervisory Notice was issued on 15 November 2017.

Mr S's position is complicated. As noted above, he witnessed Mr K's signature on the SSAS application form and on the SSAS Trust Deed. On both documents Mr S gave his occupation as introducer. He didn't state the name of the business he worked for in that capacity. But the address he gave both times was Queen Street, Mayfair, London W1J 5PA. According to Companies House that was the registered office for RRAM Bonds plc and RRAM plc at the time those documents were signed. So it seems Mr S was working as an introducer for RRAM Bonds plc or RRAM plc – whose principal was SCM.

And the email we've seen that Mr S sent on 2 September 2016 indicates he was at the time employed by RRAM plc in its Business Development Department. The details Mr S gave when he witnessed Mr K's signature on the SSAS application form and Trust Deed some months later would suggest that Mr S continued to be employed by RRAM plc then. Mr S also appears to have been employed by SCF. The FCA Register shows he held a CF 30 function with SCF from 12 September 2014 to 10 February 2017. By the time Mr K applied to buy the RRAM Bonds, Mr S was, it seems, no longer working for SCF. But he was when the idea to set up the SSAS to invest in RRAM Bonds arose. And given his role with SCF he'd have been in a position to advise about the RRAM Bonds. Further it seems that Mr S was also involved with In2. As the investigator noted, according to the FCA Register, Mr S held a CF 30 function with In2 between September 2016 to July 2018.

In2 says that Mr S advised Mr K in connection with the investment in RRAM Bonds and that in doing so Mr S was acting on behalf of SCF. But no written advice has been produced. If oral advice was given by Mr S then it would be difficult to ascertain in what capacity he was acting, given that he held the same CF 30 function with both SCF and In2. So I think there's a problem for In2 in saying that Mr S did recommend the RRAM Bonds investment and when, at the time, Mr S was also working for In2 and in a role which meant he could give investment advice.

But Mr K says he's never met Mr S and doesn't recall the name. From what Mr K remembers his only dealings were with Firm D and In2 – Mr K says Firm D suggested he set up a SSAS

to hold RRAM Bonds and Firm D introduced him to In2. And Mr K's instruction (his email of 18 January 2017) to set up the SSAS and invest in RRAM Bonds was given via Firm D. It's unclear what advice, if any, Mr K got and from whom and in what capacity they may have been acting.

Against that somewhat confusing background, I've considered if In2 did anything wrong in processing Mr K's application to purchase RRAM Bonds to be held in his SSAS.

I'm required under DISP 3.6.1R to determine a complaint by reference to what is in my opinion fair and reasonable in all the circumstances of the case. In accordance with DISP 3.6.4R I've taken into account 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.

The regulator's rules, guidance and standards include the Principles for Businesses (PRIN) that a regulated firm must abide by as well as the more detailed provisions set out in, for example, Conduct of Business Sourcebook (COBS). I also bear in mind what the courts have said (see, for example, Ouseley J's comments in British Bankers Association v The Financial Services & Anor [2011] EWHC 999 (Admin)) about how PRIN operates.

Where, as here, the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities, that is, what I consider is most likely to have happened in the light of all the available evidence and the wider circumstances.

In looking at if In2 did anything wrong in accepting and carrying out Mr K's execution only instruction to purchase RRAM Bonds, I agree that, under COBS 10 as it was in force at the relevant time, In2 wasn't required to assess appropriateness when deciding whether to carry out Mr K's instruction. I note what In2 has said about the investigator having rejected the complaint actually made – that In2 had failed to carry out an appropriateness test – and which the investigator now accepts wasn't required. But we have an inquisitorial remit which means we don't just look at the complaint as it's been made. Instead we'll look at the overall situation and what lies at the heart of the complaint. Here Mr K is complaining that he's lost the money he invested in RRAM Bonds. So we'll look at the whole picture in considering what In2 did (or didn't do) and how that impacted on Mr K.

On the face of it, In2 didn't do anything wrong in complying with Mr K's request to purchase, on an execution only basis, the RRAM Bonds using funds from his SSAS. In2 had a duty to act on Mr K's instructions. Which In2 did by forwarding the application form for the RRAM Bonds to Whitehall and asking it to purchase the investment. But In2 has a duty, under COBS 2.1.1R to act honestly, fairly and professionally in accordance with the best interests of its client. That might sometimes mean not complying with the client's instruction or at least querying it first. I've considered if there was anything which meant that In2 should've paused before acting on Mr K's instruction.

The investigator pointed to a discrepancy in the paperwork – the SSAS application form indicated that Mr K wasn't a Sophisticated Investor but the Sophisticated Investor Statement said he was. That was in connection with the setting up of the SSAS and before Mr K's application to purchase the RRAM Bonds was made. Nonetheless I still think it's relevant, given that the whole purpose of the SSAS was to enable investment in RRAM Bonds. I don't agree with In2's argument that would've been blocking a product that both the consumer and his adviser wanted because of erratic form filling. Or that it effectively restored a stricter version of the appropriateness test.

In my view, it's simply basic good customer service. Where a customer submits documents which they've completed and signed, it's generally prudent – and a matter of good

administration – to check the forms have been filled in correctly. I think that's still the case even if the forms appear to have been completed with the assistance of an adviser – I'm referring here to the fact that In2 says Mr S was advising Mr K on behalf of SCF and Mr S had witnessed Mr K's signature. Notwithstanding, in my view, In2 should've still checked the forms before forwarding them to Whitehall.

But I don't think, if that was all, much would turn on the discrepancy. Whitehall didn't apparently notice there was a problem with the application. If In2 (or Whitehall) had spotted the discrepancy, I think In2 would've returned the application form with a query to Firm D or Mr K or Mr S. And Mr K would likely have resubmitted it with the Sophisticated Investor questions ticked 'yes'. But I think there were other factors which should've led In2 to take a closer look at Mr K's instructions.

It's clear that Mr K wasn't the only client referred by Firm D who wanted to establish a SSAS and invest in RRAM Bonds. I say that because there's the email Mr S sent on 2 September 2016. Mr S was emailing a colleague at RRAM plc and copied in In2 and another person at RRAM plc. The subject of the email was 'RRAM Bonds Investment Execution'. The name of the client (not Mr K as the email predates his transaction) has been redacted but it seems a SSAS was also involved. Mr S says in the email 'ok I will ask the client to return the certificate to you so as to issue a correct certificate to the client'. So, in September 2016, In2 was working with Mr S in setting up a SSAS for at least one other client to invest in RRAM Bonds.

More significantly there's Firm D's email to In2 dated 24 February 2017 (copied to Mr S). Firm D provided information about Mr K and four other clients. It looks like all were self employed (that's specifically stated about some) and so eligible to set up a SSAS. The particular investment in every case isn't stated. But RRAM Bonds are mentioned in connection with two of the other clients and we know that was the investment in Mr K's case. So it looks like all five clients (including Mr K) had been referred by Firm D to In2 to set up a SSAS to invest in RRAM Bonds.

We've also asked Whitehall about the number of clients referred by In2 who wanted to set up a SSAS to allow investment in RRAM Bonds during 2016 and 2017. Whitehall has told us that in total there were eight referrals. That breaks down into seven cases referred in 2016 (one in March and May, three in July, one in August and one in October) and one in January 2017.

Whitehall also agreed a reduced fee for In2's clients. Whitehall said that one of In2's advisers had asked if Whitehall would maintain its basic annual fee at £300 pa plus VAT and not implement an increase in 2016 to £500 pa on the grounds that the initial investments were likely to be fairly small and In2 wanted to offer better value for money. The fact that Whitehall was prepared to offer a reduced fee would tend to indicate that Whitehall anticipated receiving a number of referrals from In2.

In2 received a number of referrals from Firm D from clients, all of whom wanted to set up a SSAS to invest in RRAM Bonds. A SSAS isn't an uncommon pension vehicle for small business owners. But it isn't an automatic choice. Fees will vary but there are set up costs and ongoing administration charges. A SSAS can offer benefits to business owners, such as the ability to make loans to the sponsoring employer. But here the requests to establish a SSAS were all driven by the proposed investment in RRAM Bonds. That was an unusual (or, as Whitehall termed it, esoteric) high risk and illiquid investment. It had no track record and was generally only likely to be suitable for a very small proportion of ordinary retail clients. Despite that, a number of Firm D's clients had apparently decided they wanted to set up a SSAS to invest in RRAM Bonds.

I think that was unusual and the circumstances were such that In2 should've noticed there was a pattern and that something unusual might be going on. In my view, when In2 started to receive applications to set up a SSAS to invest in a specific high risk and niche product, In2 should've thought about why a number of clients had apparently decided on that sort of pension arrangement, coupled with that specific investment which as I've said was unusual and high risk. If In2 had thought about things properly, In2 would've realised there was a risk of consumer detriment. In2 would've known that type of investment would be unsuitable for the vast majority or ordinary retail clients (as Mr K was). And that it would unlikely be suitable for all those who apparently wanted to invest. So In2 ought to have realised that there was potential for Mr K (and any other clients in a similar position) to lose out.

In the circumstances I think In2 should've been cautious about accepting Mr K's instruction. Particularly as it seems that Mr K was one of the last cases. According to the details Whitehall provided, of the eight applications Whitehall received in 2016 and 2017, Mr K's application, made in January 2017, was the last. So by then In2 had received a significant number of referrals from Firm D from clients, all of whom had decided to set up a SSAS to allow them to invest in RRAM Bonds, an arrangement which I consider was highly unusual. To be clear, I accept there was no requirement for In2 to carry out an appropriateness test under COBS 10. But COBS 2.1.1R says a firm must act honestly, fairly and professionally in accordance with the best interests of its client. And In2 was bound by PRIN and had at all times to act accordingly. I think the following are particularly relevant:

Principle 1 – a firm must conduct its business with integrity;
Principle 2 – a firm must act with due skill, care and diligence;
Principle 3 – a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
Principle 6 – a firm must pay due regard to the interests of its customers and treat them fairly;

So, although In2 didn't have to consider the appropriateness of the product for Mr K, the circumstances were such that In2, acting properly and in accordance with PRIN, should've realised that the situation was unusual and such that merited further investigation. That isn't reimposing an appropriate test where COBS 10 doesn't require one. It's a different consideration. It's part of In2's overall responsibility, in line with other regulated firms, to act in its clients' best interests and in line with PRIN.

If Mr K's was an isolated case, I might take the view that no questions arose for In2 in processing Mr K's instruction. But, as I've said, Mr K's instructions were given after In2 had seen, and acted on, a significant number of very similar and unusual instructions.

It might be, given the email Firm D sent to In2 on 24 February 2017, that In2 was concerned and did ask Firm D to provide further information about Mr K and the other clients that Firm D had referred. And In2 has stressed that it was entitled to rely on what Firm D – a professional firm of accountants – told In2. While, to a certain extent, I can understand that, In2 has its own regulatory responsibilities towards its clients including, as I've said, a duty to act in accordance with PRIN. Here all the referrals had come from Firm D. I think there was a risk for In2 in relying on what Firm D had said and when In2 didn't know how the idea to invest, via a SSAS, in RRAM Bonds had come about and why Firm D apparently considered that a significant number of its clients would benefit from doing so and who had the required degree of investor sophistication to qualify for the investment and who understood the risks.

Firm D may have had some knowledge of investments Mr K held. I think Firm D would've completed Mr K's self assessment tax returns and which would've included any untaxed income from savings, investments or dividends. That said, as far as I'm aware, Mr K didn't have any other investments. But, even if he did, I don't immediately see that Firm D would

be in a position to provide reliable information about Mr K's overall investment experience and understanding and whether he'd qualify as a sophisticated investor. And when, as I've explained above, Firm D wasn't authorised to provide investment advice.

I note what In2 has said about Mr K holding several directorships – although, as In2 acknowledges, three postdate the transaction which is the subject of this complaint. In2 suggests Mr K's description of himself as low risk and unsophisticated was unlikely to be accurate if he was comfortable investing in and directing start up businesses. In2 also referred to information on Mr K's LinkedIn page. But I'm not sure that degree of business activity or the ventures in which Mr K was himself involved is the same as investor sophistication which is more about his actual investment experience and knowledge.

Against that background, I don't think In2 met its obligations to Mr K under PRIN and, in particular, Principles 2, 3 and 6. If In2 had conducted its business with skill, care and diligence and taken reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, it should've identified the significant number of referrals from Firm D for clients who wanted to invest, via a SSAS, in RRAM Bonds. In2 should've realised that something might be amiss and looked into things further, rather than simply processing Mr K's execution only investment instruction.

In2's position seems to be that it thought advice about the investment had been given by another regulated firm who was working with Firm D. I think In2's position is that advice was given by Mr S acting on behalf of SCF. But there's no written advice and it's unclear how In2 came to understand that regulated advice had been given. And, as I've said, Mr S was at the same time employed by In2. So that opens the door to a complaint against In2 that any advice Mr S gave was in his In2 capacity and was unsuitable for Mr K. It also undermines In2's arguments about having no reason to interfere in a transaction in respect of which another authorised firm had given advice. However, I haven't explored that further. Mr K's position is that Mr S didn't give him any advice. If that's the case then the question of in what capacity Mr S might have been acting in and on whose behalf doesn't arise.

But I think the fact that Mr S was also employed by In2 at the time is problematic for In2 anyway. Mr K had signed In2's Terms of Business on 9 December 2016. There was a section headed 'Conflicts of Interest'. It named a Discretionary Fund Manager and two linked parties before continuing:

'Otherwise, we undertake not to transact for the client, business in which we or one of our other customers or any director/partner/employee has a known interest, or we become aware that these interests conflict with yours, unless that interest is first disclosed in writing and your consent obtained.'

Mr S was an employee of In2. Given the other roles he held, that clause was engaged. I've not seen anything to indicate that In2 did anything to make Mr K aware of Mr S's other interests, much less obtain Mr K's consent before transacting his business. So, in executing Mr K's execution only instruction to purchase RRAM Bonds, In2 was acting contrary to its own terms of business.

PRIN is again relevant here. Principle 8 says a firm must manage conflicts of interests fairly, both between itself and its customers and between a customer and another client. There was in my view a clear conflict of interest for In2 arising from the other positions Mr S held at the same time and his involvement with the RRAM Bonds investment. In2 was advising Mr K and others about establishing a SSAS to facilitate investment in RRAM Bonds when Mr S had a vested interest in the SSAS being set up in order that the investment in RRAM Bonds could be made – he was also employed by SCF and/or RRAM plc who stood to profit from investment in RRAM Bonds. I don't know if Mr S also benefitted personally from Mr K's (and

others') investment. Mr S may have received commission or some other incentive payment or reward. But, even if he didn't benefit directly, he still benefited indirectly through his employment with SCF and/or RRAM plc in respect of which he was presumably remunerated.

I haven't seen anything to show that In2 was aware of that clear conflict of interest or that In2 took any steps towards managing it. In processing Mr K's application to invest in RRAM Bonds In2 was also acting in breach of Principle 8.

In2 might say that its obligation was to disclose the conflict of interest in writing and obtain Mr K's consent before proceeding. And, had In2 done that, Mr K would've confirmed he wanted to go ahead. But, as I've explained above, and leaving aside the conflict of interest issue, there were other reasons why In2, acting reasonably and in line with its regulatory obligations, should've looked closer before complying with Mr K's instruction. All in all, In2's position and its involvement in Mr K's execution only purchase of RRAM Bonds was unsatisfactory. I don't think In2 should've processed Mr K's instruction for the reasons I've explained.

I've thought about the likely outcome if In2 had intervened and if Mr K would've gone ahead anyway. He did sign documents saying he was a sophisticated investor when it seems that wasn't in fact the case. And those documents did refer to the investment being high risk. He'd been influenced by Firm D who'd suggested he set up a SSAS to allow investment in RRAM Bonds. It's possible that, had In2 queried things, Mr K would've been reassured by Firm D that he was doing the right thing and that he should go ahead, despite any reservations In2 had expressed or queries raised.

But I don't think that necessarily follows. As things stood, Mr K had no reason to think he shouldn't invest in RRAM Bonds. In2 didn't raise any issues and so Mr K had no opportunity to reflect on what he was doing and the documents he'd signed or to consider further the risks and how likely it was that he could lose the money he'd invested. If In2 had asked Mr K why he'd signed the forms and exactly how he qualified as a sophisticated investor I think he'd have found it difficult to satisfy In2 on the point.

I can't see, if In2 said it wasn't prepared to process Mr K's execution only instruction to purchase RRAM Bonds, that Mr K would've gone ahead. He'd have needed to have found another adviser who was prepared to act for him and I don't see he'd have been sufficiently motivated to do that. So I think it's fair and reasonable for In2 to be responsible for the losses Mr K has incurred by investing in RRAM Bonds.

I've also thought about if it's fair and reasonable for In2's liability to extend further and to include the costs Mr K incurred in setting up the SSAS. Although for the reasons I've explained I'm not looking at the SSAS itself and whether it was suitable, it's relevant, in considering the losses Mr K has suffered, to look at how the SSAS came about.

In2 has said a SSAS made financial sense, particularly from a tax perspective and presumably from the basic premise that Mr K wanted to make retirement provision, for Mr K to have a pension vehicle into which contributions from his company could be made. But from what I've seen the reason for the SSAS was to allow the investment in RRAM Bonds. As the investigator pointed out, it was relatively expensive. Although In2 has said it isn't fair to judge the costs on the basis of a single contribution, as far as I'm aware Mr K hasn't made any further contributions. So it would seem the only purpose the SSAS served was to allow the RRAM Bonds investment. In the circumstances I think it's fair and reasonable that redress includes the SSAS costs. Mr K should also be refunded the £1,000 fee he paid to In2. Plus the £75 plus VAT transaction charge.'

Responses to my provisional decision

Mr K accepted my provisional decision. In2 didn't. It said I'd rejected the complaint Mr K, who is legally represented, had made. I'd substituted a completely different complaint and introduced at this late stage a difficult to understand point about conflicts of interest. My conclusions contradicted the regulator's deliberate exclusion of this type of case from appropriateness testing. I'd referred to reaching a fair and reasonable result but I was retrospectively imposing a '*vague*' requirement on In2 which the regulator had deliberately excluded.

In2 made a number of other points:

- I'd concluded (on page 9 of my provisional decision), and correctly in In2's view, that if In2 had notified Mr K of the minor discrepancy in the forms, he'd have just corrected it and gone ahead regardless. But later (on page 12) I'd said, if In2 had queried the transaction, Mr K, armed with a recommendation from his accountant and Mr S, not only wouldn't have gone elsewhere but would've dropped the whole idea. That not only contradicted what I'd previously said but was unsupported by any objective evidence. In2 said I couldn't reach that contradictory conclusion without any factual basis and without holding a hearing with Mr K and Mr S present.
- And my conflict of interest analysis was flawed. I'd assumed Mr S had a known interest in the transaction in his capacity as an employee of In2. Mr S had no financial interest in the transaction of which In2 was aware, aside from receiving the usual remuneration for completing the transaction and which would be the case for any commission-based transaction, such as the sale of a life policy.
- In2 would also receive a small fee from Mr K for concluding the transaction, which was clearly disclosed. Receiving a lawful commission from a non-advised transaction is not a conflict of interest. Any suggestion that In2 had to decline to act because the introducer was going to be paid by another firm would rule out any introductions, something that the FCA has declined to do.
- My redress calculation didn't take into account that Mr K would've had to pay charges to invest in a pension in the way I'd suggested. Both adviser and product fees should be deducted from the redress to put Mr K in the position I consider he should've ended up in. My proposed solution gave Mr K a free pension which gave rise to some '*Garrison*' problems.
- There was no evidence to support a conclusion that the SSAS was only required for one contribution. In2 had recommended the Whitehall SSAS to eight customers because it was cheap for the usual purposes of making regular pension savings. I'd concluded, from the absence of any later investments into the SSAS, that Mr K wouldn't have made any. But there were no instructions limiting the need for the SSAS to one investment. In2 assumed that customers would do what was sensible and make regular pension contributions. I should do the same and not judge things with hindsight.

In2 maintained it hadn't acted inappropriately or negligently at any time and couldn't be held responsible for Mr K's alleged losses. In2 had complied with all regulations, acted in accordance with COBS and had discharged its duty of care to Mr K. He was a High Net Worth client. In2 referred to the email from Firm D on 24 February 2017 confirming Mr K had a gross annual income of over £200,000 and a gross asset value of over £350,000. He clearly had the capacity for loss and was able to take higher risks.

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 considered jurisdiction again but in the absence of any new arguments or additional information my views haven't changed and I'm satisfied we can consider the complaint.

I explained in my provisional decision that we have an inquisitorial remit which means we'll look at the whole picture. Here the crux of Mr K's complaint is that he's lost the money he invested in RRAM Bonds. The investment was made via the SSAS that In2 set up for Mr K. Even if Mr K's complaint about In2's involvement was on the basis that In2 failed to carry out an appropriateness test under COBS 10.2.1R which I've said wasn't required, we're not confined to just considering that point. Unlike the courts, we don't require formal pleadings and we'll consider, even where a complainant is legally represented, the complaint more broadly. And, where an ombudsman relies on a different argument to that put forward by the investigator, they will usually, and in the interests of fairness, issue a provisional decision to allow further comment. That's what I did in this case.

I don't think In2 fully appreciates how PRIN operates. And that the FSA's specific rules and guidance shouldn't be viewed as exhaustive. I referred in my provisional decision to Ouseley J's comments in *British Bankers Association v the Financial Services & Anor* [2011] EWHC 999 (Admin) about how PRIN operates and which include the following (see paragraphs 161 and 162 of the judgement):

'*The Principles are the overarching framework for regulation, for good reason. The [then regulator] has clearly not promulgated, and had chosen not to promulgate, a detailed all-embracing and comprehensive code of regulations to be interpreted as covering all possible circumstances. The industry had not wanted such a code either. Such a code could be circumvented unfairly, or contain provisions which were not apt for the many and varied sales circumstances which could arise. The overarching framework would always be in place to be the fundamental provision which would always govern the actions of firms, as well as to cover all those circumstances not provided for or adequately provided for by specific rules.*

The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules.'

Against that background I don't accept In2's argument that, if there was no breach of COBS 10 as that rule applied at the time, that's an end to the matter. I'd also mention, but only in passing, that I've researched further the position regarding COBS 10 and it may not be entirely clear cut. But I've not pursued that further and my decision here is on the basis that COBS 10 didn't apply

In2 has said my conclusions are contradictory and suggested a hearing might be required. I've already let In2 know why I don't think a hearing is necessary for me to fairly determine the complaint. I don't consider what I said was contradictory. Earlier on in my provisional decision I was dealing with what the investigator had said about a discrepancy in the paperwork which In2 had submitted to Whitehall, the SSAS provider. I explained why, even if Whitehall had spotted it and queried it, I thought it would simply have been corrected and resubmitted and so not made any difference to the outcome. I agree that Mr K, acting on the basis of what Firm D and Mr S had said (although Mr K doesn't recall his involvement) would simply have gone along with what was suggested and re-signed any necessary documentation.

Later on I was dealing with an entirely different situation and considering what would've happened if In2 had acted correctly. And where, instead of facilitating the processing of the application, In2 had intervened – having stood back and considered, in view of the factors I'd pointed to – that what was going on was unusual and there was potential for customer detriment. In that situation I didn't think Mr K would've gone ahead. Whereas, as things happened and without In2's intervention, Mr K had no reason to think he shouldn't set up a SSAS to invest in RRAM Bonds.

In2 has said my analysis of the conflict of interest position is unclear and/or flawed. To be clear, I'd uphold the complaint anyway and based on what I've said about In2 having failed to act in accordance with PRIN and seen, for the reasons I've explained, that there was a clear risk of consumer detriment.

I don't fully follow what In2 has said about commission and payment for introductions. I agree that introducing isn't ruled out and an adviser can receive commission in respect of certain products, including protection (life) insurance although not for investments or pensions. But the situation here was different. I maintain there was a clear conflict of interest which centred on Mr S. At the same time as he was employed by In2, Mr S was also employed by SCF – a company which was linked to SCM of which RRAM Bonds plc was an appointed representative. The FCA register shows Mr S held a CF 30 function with SCF from 12 September 2014 to 10 February 2017. Further we've seen the email sent on 2 September 2016 which shows Mr S was employed at the time by RRAM plc. And because of the address he gave when he witnessed Mr K's signatures on the SSAS application form and the Trust Deed (9 December 2016 and 27 January 2017 respectively) it seems Mr S remained employed by or connected with RRAM plc.

Mr S's association with SCF and/or RRAM plc and/or RRAM Bonds plc overlaps with his employment with In2 which commenced in September 2016 and ended in July 2018. So at the same time as In2 was acting for Mr K, one of In2's employees – Mr S – was also working for SCF and RRAM Bonds plc. And the transaction or business that In2 would be undertaking for Mr K involved setting up a SSAS so that Mr K could purchase RRAM Bonds. I fail to see how Mr S's '*other*' roles didn't give rise to a clear conflict of interest.

In2 says I'd assumed Mr S had a known interest in the transaction as an employee of In2. I accept that Mr S was employed by In2 and he'd be remunerated for completing the transaction as part of his responsibilities with In2. But my concerns centre on the fact that he also had an interest in the transaction because of his other roles or employment and that's where a conflict of interest arises. In reality Mr S (acting on behalf of In2) was unlikely to consider the transactions objectively and whether there could be potential for consumer detriment when he was connected to SCF and/or RRAM plc and/or RRAM Bonds plc and so had a vested interest in the investments being made.

In2 has referred to '*known interest*' and '*financial interests of which* [In2] *is aware*'. I'm not sure if In2 is suggesting it was unaware of Mr S's other roles and any conflict of interest arising therefrom. If In2 is suggesting Mr S didn't disclose any other roles or employment, I think that's a matter largely between In2 and Mr S. I think it was up to In2 to find out what other interests Mr S, as In2's employee, had. And even if Mr S didn't disclose them, the FCA register is a matter of record. Mr S's concurrent and pre existing position with another firm (SCF) should've been explored. Had that been done, his involvement and interest in RRAM Bonds would've come to light.

I'd refer again to what In2's terms of business said – that In2 undertook not to transact for the client business in which any director/partner/employee has a known interest. I don't view the reference to '*known'* as significant here, given what I've said about the steps In2 should've taken to ascertain Mr S's position and any other roles/interests. Further, and in

any event, I don't just rely here on In2's terms and conditions. Again I'd point to PRIN. Principle 8 requires firms to manage conflicts of interests fairly. In2 couldn't manage fairly a conflict of interest, the existence of which In2 had failed to identify. I maintain the position surrounding Mr S is very unsatisfactory and gives rise to clear conflicts of interest which In2 failed to identify and/or manage.

In2 maintains that Mr K was a High Net Worth client. The email from Firm D dated 24 February 2017 said Mr K had gross income of over £200k pa and gross assets valued at more than £350k. Mr K says differently – that he was self employed and earning around £60k pa and that he had a property with an outstanding mortgage of £420,000. I understand In2's argument that it was entitled to rely on what Firm D, a professional firm of accountants, said about Mr K's financial position. But, as I've explained, the surrounding circumstances were such that should've meant In2 – regardless of whether it understood Mr K to be a High Net Worth client and/or a sophisticated investor – wasn't prepared to process Mr K's application to set up a SSAS to invest in RRAM Bonds.

In2 is unhappy that the redress I proposed which includes a refund of both adviser and product fees gives Mr K a '*free pension'*. In2 has also mentioned the case of *Garrison Investment Analysis v Financial Ombudsman Service* [2006] EWHC 2466 (Admin). That case involved a successful application for a judicial review of a final decision issued by one of our ombudsmen. The firm involved had argued that the ombudsman's reasons were unintelligible and/or inadequate. The High Court held there was no logical connection between the redress ordered and the error the ombudsman had found. The redress was irrational. The decision was remitted for the appropriate redress to be reconsidered.

In this case I've explained why I consider In2 to have been at fault. And why, if In2 had intervened and not processed Mr K's SSAS application, he wouldn't have gone ahead. I maintain, despite the influence of Firm D and Mr S, Mr K wouldn't have proceeded if In2 hadn't been prepared to process his application. Mr K doesn't recall Mr S anyway. And, although the idea to invest in RRAM Bonds via a SSAS came from Firm D, I don't see Mr K would've insisted on proceeding anyway if In2 hadn't been prepared to process the application and had explained why to Mr K. I think In2's view, as professional financial advisers with direct experience and understanding of pension vehicles and investments, would've carried weight with Mr K. He may have liked what Firm D had suggested but I don't think he'd have preferred what Firm D had said over and above In2's view and if In2 didn't think what was planned was a good idea and not something In2 was prepared to get involved with.

In that scenario Mr K wouldn't have had the SSAS or any other pension arrangement, given that the purpose of the SSAS was to facilitate the investment in RRAM Bonds. He'd have retained the £16,700 which he paid into the SSAS from cash reserves. So the redress I've awarded flows directly from my findings as to what In2 should've done and what the likely outcome would've been.

As to In2's fees, I said Mr K should get those back because my view is that In2 shouldn't have accepted Mr K's instructions or processed his SSAS application. Mr K's application was the last of the eight cases which In2 dealt with. So, by the time Mr K got in contact, In2 would've seen all of the other cases and should've realised there was a pattern and that something odd might be going on. In the circumstances I don't think Mr K's application should really have '*got off the ground*'. If In2 had said at the outset that they weren't prepared to act for Mr K then he'd have saved any fees. So again the redress I've awarded flows directly from my findings as to what In2 did wrong and what would've likely happened if In2 had acted as I consider they should've done.

I also said that Mr K should get Whitehall's set up fees back which I said were £600. But In2 has said that was wrong and has supplied the invoices from Whitehall which show that the SSAS establishment fee was £300 and there was an esoteric investment fee of £120 so in total £420. I've adjusted the redress to reflect that. The £600 was I think Whitehall's annual fees and which are accounted for in the redress anyway.

In2 says there's nothing to support a conclusion that the SSAS was only required for one contribution. But, equally, there's nothing to suggest that Mr K discussed making further contributions. The driver for setting up the SSAS was to allow the RRAM Bonds investment. If Mr K hadn't gone ahead with that then he wouldn't have had the SSAS and so the issue of making any further contributions into the SSAS wouldn't have arisen. So I'm not considering the matter with the benefit of hindsight although the fact that Mr K didn't make any further contributions supports what I've said and the approach I've taken.

All in all I maintain the views I set out in my provisional decision. I've recapped those in full above and they form part of this decision. And the redress remains more or less the same.

Putting things right

My aim in awarding fair compensation is to put Mr K as far as possible in the position he'd probably be in now, if In2 Planning Limited had acted as I consider it should've done and in line with its regulatory responsibilities.

The calculations should be done as at the date of my final decision, assuming Mr K accepts it.

If In2 Planning Limited is unable to carry out the necessary calculations itself then In2 will need to refer the matter to an actuarial firm. In2 will have to meet the costs of that.

The only reason the SSAS was set up was so that Mr K could invest in RRAM Bonds. I don't think Mr K would've set up the SSAS otherwise. So the charges that Mr K incurred in setting up the SSAS and the advice fees he paid should be refunded with interest. I've explained above why I don't think Mr K should've incurred any fees with In2 Planning Limited.

As I understand it, Mr K paid a fee of £1,000 to In2 Planning Limited for advice about the SSAS and to establish the SSAS. I'm not sure if VAT was payable on top. If so it should be included in the refund. In2 Planning Limited should refund the fee to Mr K with interest at 8% pa simple on the amount he paid from the date paid to the date of my final decision. Mr K also paid a fee of £75 plus VAT on his investment instruction. That fee should be returned with interest on the same basis.

In2 Planning Limited will also need to refund the set up fees of £420 Mr K paid to Whitehall, again with interest at the same rate from the date paid to the date of my final decision. The annual fees Mr K has paid to Whitehall (which include the additional fee for holding an esoteric investment) are taken into account in the redress for the loss of the investment.

To compensate Mr K fairly for the loss of his investment and the return he'd have achieved if he'd invested that money differently, In2 Planning Limited will need to compare the actual value of Mr K's SSAS with the notional value had Mr K invested differently.

In2 Planning Limited should use this benchmark to ascertain the notional value: FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, this was called the FTSE WMA Stock Market Income Total Return Index). I think it's a fair measure of return for an investor in Mr K's circumstances and who was prepared, and in a position to take, some risk with their money.

Calculating the actual value of the SSAS is complicated, given the RRAM Bonds investment is illiquid (meaning it can't readily be sold on the open market). So the RRAM Bonds investment should be given a nil value in determining the actual value. If there's any suggestion that at some point in the future it might be possible to realise some value from the investment, In2 Planning Limited may want to require that Mr K provides an undertaking to account to In2 Planning Limited for any payment he may receive, net of tax, in the future. In2 Planning Limited will need to meet any costs in drawing up the undertaking.

Ordinarily I'd say redress should be paid into the pension arrangement. But I don't think it would be appropriate for compensation to be paid into the SSAS when it's unclear Mr K needed that sort of pension vehicle. I'm unsure if he has another pension arrangement into which redress can be paid.

If redress is paid into a pension plan the payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protection or allowance.

If payment into a pension plan isn't possible, In2 Planning Limited should pay the amount of the loss direct to Mr K. But if that money had been in a pension, it would've provided a taxable income. So the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. It's reasonable to assume Mr K is likely to be a basic rate taxpayer at his selected retirement age. So 75% of his pension would be taxed at 20% assuming he's entitled to take the remaining 25% tax free. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to Mr K.

I'm unsure if the SSAS still exists and if it does if it can now be wound up. I don't know if Whitehall accepts that the RRAM Bonds investment has no value and so that, subject to payment of any outstanding costs, Whitehall would be prepared to close down the SSAS.

If the SSAS can't be closed down then I don't think it would be fair for Mr K to be disadvantaged if he's unable to close the SSAS – because it holds the illiquid RRAM Bonds investment – and transfer any remaining balance to a potentially cheaper and more strongly regulated pension vehicle. If Mr K can't wind up the SSAS then I think it would be fair for In2 Planning Limited to pay Mr K five years' worth of future SSAS administration fees at Whitehall's current tariff. Hopefully that will give sufficient time for any difficulties about winding up the SSAS to be overcome.

If payment of compensation is not made within 28 days of In2 Planning Limited being notified of Mr K's acceptance of my final decision, interest should be added to any unpaid compensation at 8% pa simple from the date of my final decision to the date of payment.

My final decision

I uphold the complaint. In2 Planning Limited must redress Mr K as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 February 2024.

Lesley Stead
Ombudsman