DRN-4641636

The complaint

Mr S is represented by his solicitors. His case is about the Small Self-Administered Scheme ('SSAS') he set up for his company in July 2016, and the investments made in the SSAS (following employer contributions into it) in August 2016 and February 2017. Those investments were made in bonds issued by RRAM Bonds Plc – the 'RRAM bonds'. His complaint is that In2 Planning Limited ('In2') breached duties owed to him in the services it provided to set up the SSAS and to make the RRAM bonds investments.

The complaint was made to In2 in November 2022 and was referred to us in the following month. In2 disputes the complaint. It also said the complaint is out of time.

What happened

The Facts

Mr S' case involves a number of parties and a number of key events. The following seven paragraphs summarise the relevant parties.

Mr S created his company in 2015; both his and his company's activities were remote to financial services; his company was the employer for which the SSAS was set up; and he stood as a member trustee of the SSAS.

Whitehall Group (UK) Limited ('Whitehall') was the SSAS provider, administrator and trustee.

RRAM Bonds Plc was the issuer of the RRAM bonds, and it was a subsidiary of Red Ribbon Asset Management Plc ('RRAM Plc').

RRAM Plc was an Appointed Representative ('AR') for Stargate Capital Management Limited ('SCML') between March 2016 and July 2017 (according to the regulator's register).

The Accountancy Firm (the 'AF') – Mr S' company's accountant.

The Introducer. On 20 July 2016 this individual, stating his occupation as "Introducer", signed and witnessed Mr S' signature on the SSAS application form. He also signed and witnessed Mr S' signature on the SSAS' Trust Deed document. The address he gave in both documents was, at the time, the same address for RRAM Bonds Plc and for RRAM Plc. There is email evidence confirming he held a "Business Development" role with RRAM Plc as of September 2016. The regulator's register confirms he held a CF30 Customer role in SCML (RRAM Plc's principal) between September 2014 and February 2017, and that he held a CF30 Customer role in In2 between September 2016 and July 2018.

In2 says it gave limited advice on the SSAS, arranged the setting up of the SSAS and then arranged the RRAM bonds investments for the SSAS on an execution only basis (without advising on them and without being asked to advise on them).

The headline events are – Whitehall's confirmation on 22 July 2022 that the SSAS had been set up; investment, within the SSAS, of around £12,700 in the RRAM bonds on 18 August

2016; investment, within the SSAS, of around £9,600 in the RRAM bonds on 28 February 2017; notice of default (on the RRAM bonds) from RRAM Bonds Plc to Mr S, dated 1 September 2020; and submission of his complaint to In2 on 20 November 2022.

However, there are also key background events. In 2016, they were as follows –

- On 7 June Mr S signed and dated a High Net Worth ('HNW') self-certification form and a Sophisticated Investor ('SI') self-certification form.

- On 19 June he sent an email to the AF saying he wanted to set up a SSAS for his company, that he was aware of the tax benefits associated with it and that he wished "… *to invest in RRAM bonds & Pru-bonds on an execution only basis*".

- On 21 June the AF forwarded his email to the Introducer. On the same date the Introducer (from his address with a different accountancy firm) sent an email to In2, (which also forwarded Mr S' email to the AF, and AF's email to him). In the Introducer's email to In2, he introduced Mr S, he said the introducer for Mr S was the AF, he asked In2 to process its engagement letter for Mr S and he attached a fact find document for Mr S' company. The fact find confirmed Mr S' salary was £10,600 and that he had drawn £32,000 in dividends from the company, in the context of the company's net profit for 2016 being £72,000. The document could not provide any valuation for the company or for Mr S' shares in the company.

- On 22 June In2 sent a *letter of engagement* to Mr S (copied to the AF). It said he had been introduced by the AF, that it understood he was interested in setting up a SSAS for himself and his company, that he sought limited advice on the matter, and that the letter would form the basis for its services to him.

- On 20 July Mr S signed In2's Terms of Business, the SSAS application form and the SSAS Trust Deed document. As stated above, the latter two were witnessed and signed by the Introducer. On the same date, In2 sent his application and supporting documents (including the Trust Deed document and the SI document) for the SSAS to Whitehall. Whitehall confirmed, to In2, the establishment of the SSAS on 22 July. In2 conveyed this, and forwarded the policy documents, to Mr S on the same date.

- On 2 August In2 wrote to Mr S confirming registration of the SSAS with HMRC and forwarding the registration certificate, on the next day a £15,000 employer contribution was made into the SSAS. On 8 August Whitehall sent an enquiry to In2 about contributions into the SSAS intended by Mr S before the year end for his business. On 9 August In2 conveyed this to him and sought his instructions. A £2,000 employer contribution into the SSAS was made thereafter (on 11 October).

- On 17 August Mr S signed a Whitehall Unquoted Shares Questionnaire document and an application form for the first investment in the RRAM bonds; on the same date In2 forwarded both completed and signed documents, on his behalf, to Whitehall; on 18 August Whitehall wrote to In2, confirming execution of the investment application; a RRAM Bonds Plc certificate, dated 22 August, was subsequently issued to Mr S and Whitehall (as trustees of the SSAS) confirming the first RRAM bonds investment.

- In2 forwarded the certificate to Mr S on 31 August. However, there was a problem with the certificate, with regards to the number of bonus bonds applied to it. On 2 September, RRAM Plc, the Introducer (in his RRAM Plc capacity) and In2 all engaged in cross correspondence for the purpose of repairing the problem and having the correct certificate issued. On this date, an accounts manager in RRAM Plc

emailed and asked the Introducer to contact Mr S about the certificate error and to ask him to return the erroneous certificate, in order for a corrected version to be issued. The Introducer replied (copied to In2) and agreed to do so. Thereafter, the corrected certificate and a covering letter from RRAM Bonds Plc were sent to the SSAS on 30 September, and both were forwarded by In2 to Mr S on 6 October.

- Two further employer contributions into the SSAS were made in 2016 – £2,000 on 14 November and £2,000 on 15 December.

The key background events in 2017 were –

- Two additional employer contributions into the SSAS were made early in 2017 – £2,000 on 13 January and £2,000 on 21 February.

- On 20 February Mr S signed another SI document, signed the application form for the second investment in the RRAM bonds and signed an Esoteric Investment Instruction ('EII') form for the investment.

- On 22 February Mr S sent the AF his instruction to invest in the RRAM bonds, through the SSAS, on an execution only basis, and said he was aware of the tax benefits associated with it. As in 2016, the AF once again forwarded the instruction to the Introducer. An 'Activity Report' from In2 confirms that the Introducer forwarded Mr S' email to In2 on 27 February.

- On 24 February the AF sent an email to In2 (copied to the Introducer) titled – "*Information requested for the clients for SSAS and RRAM bonds execution*". It began with "*See information requested for below clients* …" then proceeded to summarise profile information for five individuals, including Mr S. In his case, it confirmed that he was a client of the AF and a repeat client of the RRAM bonds, then it referred to him having a Net Asset Value of more than £250,000, gross income of more than £165,000, that he understood the risks associated with such investments and that he was looking for higher returns compared to returns from traditional products.

- On 27 February In2 forwarded the completed application and EII form to Whitehall and on 28 February Whitehall wrote to In2, confirming execution of the investment application.

- A RRAM Bonds Plc certificate, dated 28 February, was issued to Mr S and Whitehall (as trustees of the SSAS) confirming the second RRAM bonds investment. RRAM Bonds Plc sent it to the SSAS on 8 March and In2 forwarded it to Mr S on 13 March.

- On 20 July Whitehall sent In2 the anniversary pack for the SSAS (for the year ending 30 June), along with the following notice – "*As the pension scheme holds unquoted shares, please ensure the cash account is increased to at least £1,000 so that liquid funds are available to pay fees and other potential scheme expenses*". On the next day, In2 forwarded the pack, and the notice, to Mr S.

- On 25 July In2 was paid £246 from the SSAS for its ongoing servicing of the SSAS.

- On 30 August Whitehall sent another enquiry to In2 about contributions into the SSAS intended by Mr S before the year end for his business. In2 passed this enquiry to him on the next day.

In2 received from Whitehall, and forwarded to Mr S, anniversary packs for the SSAS in 2018, 2019 and 2020 – in July of each year. It also received another £246 payment from the SSAS in July 2018 (for its ongoing servicing of the SSAS). The 2019 and 2020 communications from Whitehall highlighted that the SSAS held "esoteric investments" and, for this reason, it reminded In2 that they may be high risk, illiquid and unregulated. In2 conveyed exactly the same message to Mr S in its covering letters, when the packs were forwarded to him in both years.

The Submissions

Solicitors for both parties have made detailed submissions for their respective clients.

In support of the complaint, Mr S' solicitors mainly argue the following – In2 failed to act in his best interests in the matter; the RRAM bonds were complex, high risk and inappropriate for him; In2's responsibilities in the matter extended to assessing the appropriateness of the RRAM bonds investments, but it failed to do so, as such it failed to warn him (as it was obliged to do) that they were inappropriate for him; had it done so, he would not have invested in them; had that happened, he would not have suffered the total loss he has incurred; and In2 liaised with and took instruction from the AF at all times, this was in breach of sections 27/28 of the Financial Services and Markets Act ('FSMA') 2000.

They have also cited other cases – involving In2, RRAM bonds investments and the same key players (as those in Mr S' case) – that have been referred to us, and a decision that another Ombudsman has issued in one of those cases. They say our treatments of those cases support their view that Mr S' complaint should be upheld.

As part of its objection to the complaint, In2 questioned our jurisdiction to address it. It said it had not previously considered that the complaint related to suitability of the SSAS, but since we have pointed out that the complaint letter stated the SSAS and the RRAM bonds investments, it considers the complaint to be out of time.

It argued that the November 2022 complaint happened more than six years after the SSAS was set up (in July 2016), so it happened outside the six years time limit; and that the following events (which should have given Mr S cause for complaint) happened more than three years before the complaint – the last interest payment from the RRAM bonds received in March 2019, the warning issued to him in July 2019 that the investments may be high risk, illiquid and unregulated, and the first missed interest payment from the RRAM bonds in September 2019 – so the complaint is also outside the three years time limit.

With regards to merit, its solicitors made the following main arguments –

- In2 was engaged only in giving advice and making the arrangements for setting up the SSAS;
- it was neither contracted nor asked to provide investment advice on the RRAM bonds investments;
- it also had no role in promoting them;
- it arranged them for the SSAS on transparent and explicit execution only terms;
- Mr S facilitated the investments by issuing his HNW and SI self-certification statements, so if they were falsely or recklessly given to induce the investments that was/is a criminal offence;
- he was introduced by the AF and In2's arrangement with the AF was for the introduction of HNW and SI investors only, so it reasonably relied on the self-certifications in this respect;
- he approached the AF for pensions advice, was given advice by the AF to set up the

SSAS and to invest in the RRAM bonds and was referred by the AF to In2;
- if Mr S' *actual* profile, as presently pleaded, had been conveyed to In2 at the outset it would never have advised the setting up of the SSAS, so either In2 was misled by misleading information given by him to the AF (and then shared with In2), or it was misled by the AF;
- the regulator's Conduct of Business Sourcebook ('COBS') rules, at COBS 10.4.1R confirms that an execution only transaction at the initiative of a client, and involving bonds, does not trigger the duty to assess appropriateness, so In2 was under no such duty in executing the SSAS' investments in the RRAM bonds;
- however, In2 nevertheless ensured Mr S met with its internal criteria for assessing appropriateness and it did this through the requirements it put to the AF and that he (through the AF) met;
- his solicitors' submissions on sections 27/28 of FSMA are inapplicable in the face of the facts.

Our Investigation

One of our investigators looked into the complaint and concluded it should be upheld.

She disagreed with In2's position on our jurisdiction. She acknowledged our remit over regulated activities and that In2's role in establishing the SSAS stands outside that remit because a SSAS is an occupational pension scheme. However, she found that its role in arranging the RRAM bonds investments in the SSAS amounted to the regulated activity concerned with the arrangement of investments, which falls within our remit.

With regards to In2's time limit arguments she did not accept that the complaint is outside the three years time limit. She found that the RRAM bonds' coupon payments were made into the SSAS (not to Mr S directly); that the first missed coupon payment happened in August 2019; that he would not have been aware of it until he received the July 2020 anniversary pack for the SSAS; that he then had three years from that awareness (up to July 2023) to complain; so his complaint in November 2022 was in time.

The investigator then addressed the complaint's merits. She made her findings in the context of the regulatory obligations she said was owed by In2 to Mr S. She referred to the regulator's Principles for Businesses and the specific principles (2, 3 and 6) that required In2 to conduct its service with due skill, care and diligence, to make reasonable efforts to manage and control its affairs (including its risk management systems) responsibly and effectively, and to pay due regard to its customers' interests and treat them fairly. She also quoted case law confirming that the Principles for Businesses are ever present requirements that must be complied with and that support the regulatory rules. In addition, she noted the duty owed by firms with regards to customer protection.

Overall, she said these requirements meant In2 was obliged to act honestly, fairly and in the client's best interests, even if the client was already on the path to taking actions at odds with her/his best interests.

In the above context, the investigator addressed what she considered to be notable shortcomings by In2. Despite its engagement letter promising to have a conversation with Mr S in order to establish his objectives and needs for retirement planning, she said it did not do so, and as such neither party had the opportunity to establish those objectives and needs. She also noted that In2 never met or spoke to Mr S, instead it provided its service only on the basis of correspondence with him through the Introducer and the AF.

She then highlighted the following – fact find information sent by the AF to In2 in June 2016

confirmed Mr S' annual earnings as £42,600; however, in February 2017 the AF told In2 that, for the same tax year, he had gross annual income of over £165,000; despite its claim that it only accepted HNW referrals from the AF, In2 didn't question the 2016 information that Mr S may not be an HNW client; it also did not question the conflicting information received in 2017; In2 had also relied on the AF's assessment of investment risks for Mr S, but it had nothing directly from him to say the same and the AF was a firm of accountants, it was not authorised to give investment advice.

The investigator concluded that these actions and inactions by In2 showed it had failed to discharge the regulatory obligations it owed Mr S, and that its failures deprived him the opportunity to consider his position in the way he would have done if In2 had done as it was required to do, and that the failures exposed him to a risk he would otherwise not have undertaken.

The investigator set out her recommendation for redress.

Mr S' solicitors confirmed his acceptance of the investigator's view, but In2 asked for an Ombudsman's decision.

What I've decided – and why

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

Jurisdiction

The complaint summarised at the beginning of this decision reflects exactly how it was presented, by Mr S' solicitors, to In2 in November 2022. It is about In2's setting up of the SSAS, and its arrangement and facilitation of the SSAS' investments in what has been alleged as the unsuitably high risk and unregulated RRAM bonds. The complaint letter expressly states this in its first paragraph, and it appears to have essentially combined the creation of the SSAS and its investments in the RRAM bonds into one complaint issue.

However, we are bound by the legislation (FSMA 2000) that created us and the rules (from the Dispute Resolution ('DISP') section of the Financial Conduct Authority's Handbook) that define our remit and jurisdiction. As such, we must determine which, if any, of the complaint's components is/are within our remit.

Under DISP 2.3.1R we have jurisdiction to address complaints about *regulated activities* (as defined in the FSMA 2000 (Regulated Activities) Order 2001 (or 'RAO')). SSAS pensions are workplace pension schemes that operate under the regulation of The Pensions Regulator. Activities related to the setting up of a SSAS do not amount to regulated activities. In isolation, In2's actions in advising and arranging Mr S' company's SSAS (actions it has affirmed in the complaint and that evidence illustrates) were not regulated activities, and they stand outside our remit.

On the other hand, DISP 2.3.1R also grants us jurisdiction to address complaints about 'any ancillary activities, including advice' carried on by a firm in connection with a regulated activity. The Handbook's glossary defines an 'ancillary activity' as one "… *which is not a regulated activity but which is … carried on in connection with a regulated activity; or … held out as being for the purposes of a regulated activity*".

In2 accepts that it arranged the RRAM bonds investments for Mr S' SSAS. There is ample evidence of this. Under RAO, the activity of *arranging deals in investments* is a regulated activity. In2's role in arranging the RRAM bonds investments in the SSAS meet the definition

of this activity, so its actions in this respect were a regulated activity.

It is not disputed that In2 received instructions through the Introducer and the AF, that Mr S' initial instructions to the AF on 19 June 2016 were that he wished to set up the SSAS and to invest in the RRAM bonds and Pru-bonds, and that the AF conveyed his instructions through the Introducer to In2. As such, it was clear to these four parties, including In2, at the outset that the stated intention behind the setting up of the SSAS was investment in the RRAM bonds and Pru-bonds.

The facts confirm that after In2 successfully arranged the setting up of the SSAS, towards the end of July 2016, that was closely followed by its actions in arranging registration of the SSAS with HMRC, arranging the application for the RRAM bonds investments in the SSAS and confirming (to Mr S) Whitehall's execution of that application, all of which happened in August 2016. Thereafter, the SSAS was used to make the 2017 RRAM bonds investments.

This gives scope to consider that In2's actions outside of its regulated arrangements for the RRAM bonds investments in the SSAS (in 2016 and 2017) were ancillary activities carried on in connection with those regulated arrangements, or held out for the purpose of those regulated arrangements. The combined complaint and our jurisdiction for it could sit in this context. If not, it is enough that we have jurisdiction for the part of the complaint about In2's activities in arranging the RRAM bonds investments in which Mr S incurred his loss.

With regards to the time limit rules, it is not disputed that the November 2022 complaint happened more than six years after the SSAS was set up (in July 2016). However, as analysed above, the complaint's components/events are connected and have been presented as such. The setting up of the SSAS and the two RRAM bonds investments spanned the period between July 2016 and February 2017. The complaint in November 2022 was made within six years of February 2017.

Furthermore, and as the investigator addressed, Mr S would not have known something had gone wrong with the investments until he received the July 2020 SSAS anniversary pack, through In2, from which he would have learned about the missed coupon payment for the first time. Evidence shows that correspondence to Whitehall was by or through In2 and that correspondence from Whitehall to Mr S also went through In2. I have not seen evidence that he had, or ought reasonably to have had, direct awareness of the missed coupon payment as of the time it happened in 2019 or at a time earlier than July 2020. His complaint was made within three years of July 2020, so it was made in time.

Overall, and for the reasons given above, we have jurisdiction to address Mr S' complaint.

Merit

On balance, I consider that In2 should never have agreed to provide any service to Mr S and his company.

Its solicitors have argued that if it knew of the financial profile for Mr S that is presently pleaded it would not have advised the setting up of the SSAS, because that profile "*would never have been sufficient for In2 to have properly been able to advise that an SSAS was the most appropriate pension arrangement for* [Mr S and his company] *to undertake*"*;* and because the "*numbers*" provided in the profile were "*way too small to render this worthwhile advice*". Coupled with these statements are the assertions made, by In2's solicitors, about alleged misrepresentations of the profile (by Mr S and/or the AF) and the potential criminal offence associated with that.

We do not have a criminal law or law enforcement remit, so I make no comment or findings

on what In2's solicitors have said about a potential criminal offence in the case. I acknowledge the conflicting information presented in 2016 and 2017 about Mr S' financial profile, but I do not have enough evidence to determine its source. As is evident from the facts, Mr S had the AF and the Introducer existing between himself and In2. The source of the conflicting information could have been any one of the former three.

Based on its solicitors' statements and on its confirmation that it only accepted referrals of HNW and SI clients from the AF, In2 had information in June 2016, at the outset, that meant it should not have undertaken any work to advise Mr S/his company or to make any arrangements for them.

As stated in the background above, on 21 June 2016 the Introducer emailed In2 the instruction to process an engagement letter for Mr S (and his company). He forwarded the fact find for both of them. That document said Mr S' annual salary was £10,600, that the company's net profits for 2016 had been £72,000 and, it appears, that he had drawn £32,000 in dividends from those net profits (which, if so, would have left a remainder of £40,000). These *numbers* did not depict an HNW individual or, for that matter, an HNW company (especially as the fact find was unable to give a valuation for the company). According to In2's solicitors, its position would have been that such numbers would not have made a SSAS worthwhile.

I do not address the SSAS in isolation here. The Introducer's email to In2 forwarded Mr S' initial email of 19 June 2016 to the AF, in which he clearly stated the joint intentions to set up a SSAS and to invest in it (in the RRAM bonds and Pru-bonds). Had In2 rejected his referral, as it should have – because he was clearly not an HNW client (based on the fact find that came with the referral), because it only accepted the referral of such clients from the AF, and because, as its solicitors have essentially said, it would never have recommended a SSAS for a client with numbers such as those in the fact find – then Mr S would not have been able to achieve his joint intentions through In2.

The next consideration that arises is whether (or not) he would have engaged with the AF and the Introducer to find an alternative firm to advise and/or arrange the SSAS and the RRAM bonds investments. On balance, I find that this was unlikely.

The AF's email to In2 of 24 February 2017 gives insight into how the multi-party arrangement probably operated in 2016. It suggests that In2 was the firm the AF used, through the Introducer, for the referral of clients that they all sought to assist in setting up SSASs and in using the SSASs to invest in the RRAM bonds. As I said above, the email was titled "*Information requested for the clients for SSAS and RRAM bonds execution*" and it began with "*See information requested for below clients* …". This suggests that the list of potential clients had been *requested* by In2. It is not clear why In2 had asked for the list at the time and I am not persuaded that it is necessary to look into that any further. It is enough to conclude, from this evidence, that the AF and the Introducer mainly used In2 for its referrals.

The email's contents clearly sought to highlight the HNW characteristics of all of the five potential clients listed – which matches In2's claim that its arrangement with the AF was for referral of HNW clients only. If In2 had rejected the referral of Mr S in June 2016, it appears more likely (than not) that the AF would have had no alternative for him, as In2 appears to have been the main destination for its (the AF's) referrals. I have not seen evidence of a potential alternative destination at the time. It is therefore more likely (than not) that, in this scenario, the idea of Mr S creating a SSAS in order to invest it in the RRAM bonds would have come to an end without ever *getting off the ground*.

Even if I were to address the RRAM bonds investments on their own, In2 remains

responsible for a wrongdoing – and, but for that wrongdoing, it is more likely (than not) that the RRAM bonds investments would not have happened.

In2's solicitors argued that application of COBS 10.4.1R to the case means In2 was under no obligation to assess the appropriateness, for Mr S, of the RRAM bonds investments. I consider this a somewhat redundant argument because they also said the following –

"*Notwithstanding my point above that COBS 10.4.1R(l)(a) and COBS 10.4.1R(2)(b) provide that my client was not required to assess appropriateness, In2 did in fact ensure that your client met with In2's own internal criteria in terms of assessing appropriateness when engaging with your client. As well as requiring a certificate/statement signed by the client that he was a sophisticated investor or a high net worth individual, In2 also provided its checklist of requirements to be met to* [the AF]*, which in turn provided confirmation that the criteria had been met*." [my emphasis]

In other words, In2 assessed the appropriateness, for Mr S, of the RRAM bonds investments – regardless of whether (or not) it was required to.

As the investigator said, In2 was bound by Principles 2, 3 and 6 – with case law (Ouseley J at paragraph 162, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin)) confirming that The Principles are ever present requirements firms must comply with – to ensure it conducted its service with due skill, care and diligence, to manage and control its affairs responsibly and effectively, and to uphold its customers' interests and treat them fairly. I also endorse and echo her point about In2's customer protection responsibility in its service.

In the above context and with confirmation of the fact that it assessed appropriateness in Mr S' case, In2 was essentially – and in practice – required to do no less in that assessment than the regulatory provisions (for the assessment of appropriateness) expected. Indeed, the aforementioned Principles and customer protection responsibility created what could be viewed as an additional layer to the assessment whereby it was incumbent upon In2 to identify, from what was presented to it, anything in the matter that was not in Mr S' interest and/or that posed a customer protection issue.

In summary/broad terms, the appropriateness assessment that In2 conducted should have determined whether (or not) Mr S possessed sufficient knowledge, experience, familiarity and even education to properly understand the risks associated with the RRAM bonds investments.

In2's position appears to be that it delegated part of the assessment task to the AF and that, in turn, it accepted the AF's confirmation that the basis (or *its criteria*) for the assessment had been passed. This falls significantly short of a credible appropriateness assessment, especially in the context set above. The AF was a firm of accountants and In2 knew that. There is no evidence that the AF had the capability to discharge the regulated task of assessing appropriateness of an investment product and no evidence that In2 had grounds to be assured it had such capability.

The SI document was not enough for In2 to rely upon in the circumstances because there was no fact finding to support it. The only fact find information it had at the outset was the one it received on 21 June 2016, which gave no information about Mr S' knowledge of, experience of, or familiarity with investments. To compound the matter, it appears that In2 never even met Mr S or spoke to him, and no discussions with him in these respects ever happened.

With regards to safeguarding his interests and affording him customer protection, In2 ought

reasonably to have been concerned – for Mr S – by what it was presented with. The fact find document conflicted with the HNW document, with the former confirming that Mr S was not an HNW client. The SI document was without any fact finding behind it. Forwarded email correspondence and, it appears, representations by the AF, informed In2 that Mr S was probably receiving unregulated investment advice from a firm of accountants.

Then there is the concern it ought reasonably to have had about the Introducer's role – at least between June and August 2016 (when the introduction was made, the SSAS was set up and the first RRAM bonds investment was made), and before he started his CF30 Customer role with In2 in September. This individual had a direct arrangement with In2 that allowed him to be the person to convey Mr S' introduction directly to In2 on 21 June 2016. The AF had to go through him to have Mr S introduced to In2. In2 knew him and apparently had an introductions-based arrangement with him at the time. It probably also knew about his credentials, including his roles in RRAM Plc and SCML, and perhaps even his shared professional address with RRAM Bonds Plc.

The sum of the above meant it was apparent to In2 that Mr S was probably receiving unregulated advice to invest in the RRAM bonds from an accountancy firm that relied upon an individual who was associated *with* those RRAM bonds for the introduction to In2, and for the purpose of In2 arranging the investment. This – especially the probability of unregulated advice and including the inherent conflict in the Introducer's position – could not have reasonably been viewed by In2 as being in Mr S' interest. It was a scenario that also ought to have prompted In2's consideration of customer protection for him, and it was one in which it ought reasonably to have shared the aforementioned concerns with him – in the context I set out earlier.

This did not require advice from In2. It simply required, as a minimum, communication directly to Mr S in which In2, acting in compliance with the aforementioned Principles, cited these concerns as reasons for which he should not take any further step until he obtained regulated investment advice on the matter. It is more likely (than not) that he would have been guided by self-interest to do so, and suitable regulated advice would have confirmed the concerns.

Overall, on balance and for the above reasons, In2 failed in its obligations to Mr S. But for its failures he would not have set up the SSAS and would not have invested in the RRAM bonds. With regards to the latter, I have not seen evidence that he would have still proceeded with the investment if In2 had shared with him concerns about the appropriateness of the RRAM bonds (given their high risk, illiquid and unregulated nature – which it belatedly mentioned to him in 2019) and about a potential threat to his best interest. Even if he was encouraged by other parties to ignore the concerns, it is more likely (than not) that his self-interest would have guided him in this respect too, that such input from In2 would have given him cause to review and/or question the entire affair and that he would have withdrawn from it.

Putting things right

fair compensation

My aim is to put Mr S as close as possible to the position he would now be in if In2 had behaved, and had upheld its obligations to him, in the ways it was supposed to. On balance, had that been the case and for the reasons given above, I consider that he would not have set up the SSAS and he would not have invested in the RRAM bonds.

It is not possible to say *precisely* what he would have done instead, but I am satisfied, based on evidence of his expressions in the case, that he sought to invest his money at the time

and that he was prepared to take some risk for that purpose. As such, what I have set out below is based on this profile.

The start date for the calculation of redress is the date on which the initial investment in the RRAM bonds was made. The effect of Mr S' investments in the RRAM bonds – that is, any loss in value and any loss of potential returns, to date, on such lost value – presently continues, so the calculation must fairly reflect this. Therefore, the calculation of redress must be conducted to the date of settlement (the end date for the calculation).

It is impossible to know, with certainty or probability, what Mr S would have invested his money in had he not invested in the RRAM bonds. His isolated reference to Pru-bonds is insufficient to serve as evidence of a credible alternative, especially given the probability that he was led by unregulated investment advice at the time to make this reference. There does not appear to be evidence of a specific alternative investment he would have made.

In the absence of such evidence and given that he sought to invest and was prepared to take some risks in doing so, I consider it appropriate to use the redress benchmark of – the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index). It is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is a fair measure for someone who was prepared to take some risk to get a higher return, and I consider that it broadly reflects the sort of return Mr S could have obtained from an alternative investment that suited to his profile.

Mr S incurred In2 fees and Whitehall fees in setting up and maintaining the SSAS and in making and retaining the RRAM bonds investments. Those paid from the SSAS will be captured within the redress calculation. However, I will make provisions below for the refund to him of any such fees paid from his own pocket (outside the SSAS). The SSAS was created for the purpose of the investments. Neither should have, and neither would have, happened but for In2's wrongdoings, so fees related to both would also not have been incurred. For the same reason, I will make provisions to compensate Mr S for future SSAS fees if the SSAS cannot presently be wound up.

Mr S is ordered to engage meaningfully and co-operatively with In2 to provide it with all information and documentation, reasonably required for its calculation and settlement of redress, which it does not already have.

what must In2 do?

To compensate Mr S fairly, In2 must do the following:

- Compare the performance of his SSAS investments in the RRAM bonds with that of the benchmark shown in the table below. If the *fair value* is greater than the *actual value* the difference must be paid to him in compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Pay any interest set out below. Income tax may be payable on any interest paid. If In2 is required by HM Revenue & Customs to deduct income tax from the interest, it must tell Mr S the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.

- Pay the compensation (and any interest) into Mr S' pension plan other than the SSAS, if he has one, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available

tax relief. The compensation should not be paid into his pension plan other than the SSAS, if he has one, if it would conflict with any existing protection or allowance.

- If Mr S does not have a pension plan other than the SSAS, or if he does but the compensation (and any interest) cannot be paid into it, In2 must pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- If Mr S has paid, in relation to the setting up, administration and maintenance of the SSAS and in relation to the making and maintenance of the RRAM bonds investments, any fees directly out of his pocket – and not from the SSAS – In2 must calculate and refund all such fees (including any VAT charged) to him. In addition, it must pay him interest on the refund at the rate of 8% simple per year from the date(s) of the relevant fee payments and up to the date of the refund.

- In order for the SSAS to be closed, and for Mr S to avoid further fees charged in it, the RRAM bonds investments (within it) need to be removed. I have set out below how this might be achieved, but whether (or not) it can be achieved is uncertain and, if it can, I do not know how long that will take. Third parties are involved, and we do not have the power to tell them what to do.

- If the SSAS cannot presently be closed down it would be unfair for Mr S to be disadvantaged by the costs of having to maintain it (because it holds the RRAM bonds investments). Therefore, In2 must pay him an upfront lump sum of five years' worth of future SSAS administration fees at Whitehall's tariff to date. This should allow for a reasonable period, without said disadvantage, for the relevant parties to arrange closure of the SSAS.

- Provide all the calculations required from the above to Mr S in a clear and simple format.

investment name	Status	benchmark	from ("start date")	to ("end date")	additional interest
Mr S' company's SSAS (and the RRAM bonds investments in it)	Still exists, but illiquid	FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	Date of initial investment	Date of settlement	not applicable

actual value

This means the actual amount payable from the investment at the end date. If at the end date the investment (or any part(s) of it) is illiquid the *actual value* of the investment (or its illiquid part(s)) should be assumed to be zero. This is provided Mr S agrees to In2 taking ownership of the illiquid investment (or its illiquid part(s)), if it wishes to. If that is not possible

then In2 may request an undertaking from Mr S – to be drawn up at In2's expense – that he repays to In2 any amount he may receive from the illiquid investment (or its illiquid part(s)) in future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

fair value

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

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if In2 totals all those payments and deducts that figure at the end instead of deducting periodically.

compensation limits

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr S' case, the complaint events occurred before 1 April 2019 and the complaint was referred to us in December 2022, so the applicable compensation limit would be £170,000. It is unlikely that the total compensation due to him will exceed this limit, but he is still invited to consider getting independent advice in this respect.

My final decision

For the reasons given above, I uphold Mr S' complaint and I order In2 Planning Limited to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 April 2024.

Roy Kuku
Ombudsman