DRN-4806350

The complaint

Mr F complains that in 2016 In2 Planning Limited (In2) set up a small self-administered scheme (SSAS) for him and arranged investments in high risk and unregulated RRAM Bonds.

Mr F is represented in bringing his complaint. For ease I've referred to what Mr F's representative has said as if Mr F had said it himself.

What happened

I issued a provisional decision on 2 May 2024. I've repeated here what I said about the background and my provisional findings.

'Mr F was self employed and his limited company was incorporated in early 2016. Mr F was earning around £30,000 a year and living in a rental property. Mr F says he was a low risk investor with no previous pension or investment knowledge or experience. He was using a firm of accountants who I'll call Firm D for his company's tax affairs. I understand that Firm D suggested to Mr F that he set up a SASS to hold RRAM Bonds and introduced him to In2.

On 25 October 2016 Mr F signed In2's Terms of Business. In2 also sent Mr F a Terms of Engagement letter. It said he'd been introduced to In2 by Firm D, he was interested in setting up a SSAS and he'd requested limited advice on the matter. The fee for the 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 F's behalf on an execution only basis, a one-off fee of £75 plus VAT would be charged.

The suitability report issued by In2 can't now be located. A sample report has been provided. In2 says Firm D had recommended a SSAS and promoted the RRAM Bonds investment and In2's role was limited to recommending the particular SSAS. The Whitehall Group (Whitehall) SSAS was selected on the basis of price.

Mr F also completed Whitehall's SSAS application form on 25 October 2016. There was a section with questions to determine if Mr F qualified as a Sophisticated Investor. All the 'no' boxes were ticked. There were also two questions about High Net Worth (HNW) Individuals. Both boxes were ticked. The first confirmed that, during the last financial year, Mr F had received an annual income to the value of £100,000 or more. And the second box said he'd held net assets to the value of £250,000 or more. The application form was witnessed by someone I'll call Mr S who gave his occupation as 'introducer'.

On the same day Mr F signed a Sophisticated Investor Statement. 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.'

By signing the statement, Mr F also confirmed that at least one of the following applied:

'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.'

In2 sent Mr F's SSAS application form with supporting documentation, including the Sophisticated Investor Statement, to Whitehall on 25 October 2016. In2 wrote to Mr F on 1 November 2016, confirming that his SSAS had been opened.

On 12 December 2016 Mr F completed an application form to buy 3,910 RRAM bonds, at a cost of £3,910. A further 1,090 bonus bonds were issued so Mr F got 5,000 bonds in all. By signing the form, Mr F confirmed, amongst other things, that he was 'experienced in business matters and recognises that the investment is a speculative venture and has itself no history of operations or earnings'. And that he had the financial ability to bear the economic risk of his investment and he had adequate means of providing for his current needs.

The second page of the application form included a 'Certificate for Execution by Self-Certified Sophisticated Investors'. It said provided Mr F met the criteria set out, he should sign and date the certificate and return it with the application form and the remittance. By signing, Mr F 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 and as set out above.

Mr F signed Whitehall's Esoteric Investment Instruction form on 12 December 2016. It said an esoteric investment was defined by Whitehall and was one which wasn't regulated by the Financial Conduct Authority (FCA) 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). In2 sent Mr F's application form for the RRAM Bonds and the Esoteric Investment Instruction form to Whitehall.

RRAM Bonds sent a certificate on 21 December 2016 showing the SSAS trustees held 5,000 7.5% RRAM Bonds of £1 each. On 5 January 2017 In2 wrote to Mr F enclosing the original bond certificate. In2 said the investment was processed on an execution-only basis where no advice was sought or provided by In2.

By November 2019 the RRAM Bonds investment had run into difficulties. On 12 November 2019 Mr F signed a form consenting to a swap of his holdings in RRAM Bonds plc to ordinary shares of Eco Hotels UK plc at an agreed price of 12.82 pence per share. But I understand that Mr F ultimately refused and the swap never happened.

I've also seen a letter dated 1 September 2020 which said, amongst other things:

'RRAM Bonds is unfortunately in the position of having to report to you that it is unable to make interest or capital repayments to you in relation to the Bonds. As a result, RRAM Bonds is in a position where it will be forced to default on its obligations to the Bondholders.'

Mr F complained to In2 on 28 November 2022. He said In2 had failed in their duty to act in his best interests by not warning him of the complexity and high risk nature of investing in RRAM Bonds. If In2 had treated him fairly, he wouldn't have suffered a loss. Mr F was claiming from In2 the total sum he'd invested in RRAM Bonds, with interest.

In2 issued a very detailed final response (prepared by a solicitor engaged to reply to the complaint) on 24 January 2023. In summary, In2 didn't uphold the complaint. In2 had been engaged to set up a SSAS and advise on the best way to do that and the most appropriate provider. In2 hadn't offered independent financial advice. Mr F had been able to subscribe to the RRAM Bonds investment because he'd self-certified as a HNW 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. In2 said Mr F had every opportunity to seek independent financial advice. But he'd failed to do so and he was now seeking compensation from In2 for an investment he'd chosen and which had failed to perform. And when at no time had In2 put him under any pressure to sign self-certification statements.

The complaint was referred to our service. Our investigator upheld it. In summary she said:

- *Mr F had referred to COBS (Conduct of Business Sourcebook) 10.2.1R (Assessing appropriateness: the obligations) and COBS 10.4 (Assessing appropriateness: when it need not be done). The investigator agreed that under COBS 10 at the time, In2 weren't required to assess appropriateness when carrying out Mr F's instructions. But she considered there were other issues.*
- *More than one client had been referred to In2 by Firm D to open a SSAS and invest in RRAM Bonds. Whitehall had told us they'd had a total of seven referrals from In2 between March 2016 and January 2017. In accordance with PRIN (Principles for Businesses) In2 should've looked into the referrals in more detail, particularly to see if the information provided by Firm D was accurate. There was nothing to suggest Mr F was a sophisticated investor and if In2 had looked into that more In2 would've found that out.*
- *There'd been confusion regarding Mr S's role. According to the FCA's register, he held a CF30 function with In2 from 5 September 2016 to 20 July 2018 – during which period Mr F opened his SSAS. That was a clear conflict of interest which Mr F wasn't made aware of.*
- *When asked about Mr S, In2 had said that, sometime in 2016, Mr S, having sat his professional exams, was looking to find a regulated firm that could provide training and oversight into being a regulated financial adviser, specialising in protection. In2 had agreed to train him, on the basis that would be restricted to protection business. Before he was registered as a CF30 planner for In2, Mr S had confirmed he'd be de-authorised from another firm, which should be by 7 October 2016.*
- *All protection business was conducted under the trading style Wealthmax and Mr S would work with accountancy firms he knew and their clients. That was carried out under In2's supervision, where Wealthmax clients had no other advice relationship with any other In2 adviser. Mr S wasn't allowed to advise on investments or pensions and the clients he dealt with under the Wealthmax trading style were distinct from the clients Firm D introduced for pensions advice.*
- *In2's Terms of Business said: '… 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 [the client's], unless that interest is first disclosed in writing and [the client's] consent obtained.' In2 had acted in breach of their Terms of Business by not making Mr F aware of the conflict of interest relating to Mr S.

- *In2 shouldn't have gone ahead with Mr F's instructions and were responsible for the failed investment in RRAM Bonds. The investigator set out what In2 needed to do to put things right for Mr F. She proposed redress should be calculated by reference to a benchmark – the FTSE UK Private Investors Income Total Return Index.*

Mr F agreed with the investigator's findings. In2 didn't and made further comments which the investigator considered before issuing a second view. She didn't agree she'd substituted the complaint made with a different one and she referred to our inquisitorial remit. She did however adjust the redress she proposed and on the basis she accepted what Mr F had said about being a low risk and unsophisticated retail customer. The investigator proposed, for half of the investment, the benchmark she'd suggested originally and, for the other half, the average rate from fixed rate bonds.

In2 didn't accept the investigator's revised view and asked for the case to be referred to an ombudsman.

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.

As to jurisdiction, 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 the Regulated Activities Order (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 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 F any investment advice. In2's letter of 5 January 2017 says the investment was processed on an execution-only basis where no advice was sought or provided by In2. And advice about establishing a SSAS (a type of occupational pension scheme) isn't a regulated activity. But, in processing Mr F's execution-only RRAM Bonds investment instruction, In2 was carrying on the regulated activities of arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments. We can consider if In2 did anything wrong in accepting Mr F's instruction and carrying it out (on an execution-only basis).

As the investigator pointed out, we have an inquisitorial remit. That means we'll look at the whole picture. The crux of Mr F's complaint is that he's lost the money he invested in RRAM Bonds. We'll look at what led to that and In2's part in the matter and come to a decision as to what's fair and reasonable in all the circumstances of the case. In considering that we'll take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice and, where appropriate, what we consider to have been good industry practice at the relevant time.

In2 had a duty to carry out Mr F's instructions. Which In2 did by forwarding the relevant documentation to Whitehall to establish the SSAS and make the investment in RRAM Bonds. But there might be some circumstances where a firm shouldn't comply with a client's instruction or should at least query it first. I've considered if, acting in accordance with COBS

and PRIN, there were factors which should've made In2 pause.

Even if, under COBS 10 as it was in force at the relevant time, In2 wasn't required to assess appropriateness, In2 had a duty, under COBS 2.2.1R, to act honestly, fairly and professionally in accordance with the best interests of its client. In2 was also bound by PRIN which include:

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;
Principle 8 – a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

As to how PRIN operates, Ouseley J said in British Bankers Association v the Financial Ombudsman Service & Anor (2011) EWHC 999 (Admin) (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.'

Mr F was introduced to In2 in or about October 2016. By then, according to what we've been told by Whitehall, In2 had already dealt with six very similar cases – all self employed clients referred by Firm D who wanted to set up a SSAS and 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, such as the ability to make loans to the sponsoring employer. But here the requests to establish a SSAS all appeared to have been driven by the proposed investment in RRAM Bonds. That was an unusual (or, as Whitehall termed it, esoteric) high risk and illiquid investment and was generally only likely to be suitable for a very small proportion of ordinary retail clients. Yet a significant 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. In the circumstances I think In2 should've been cautious about accepting Mr F's instruction. And realised that there might be a risk of customer detriment.

In2 might say they were relying on information provided by Firm D, a professional firm of accountants. But In2 had their own regulatory responsibilities and it wasn't simply a case of processing Mr F's instructions. I think In2 should've taken a closer look at that instruction and what was going on. That isn't imposing an appropriateness test when COBS 10 didn't require one. It's part of In2's overall responsibility to act in its clients' best interests and in accordance with PRIN.

I've thought about what would've likely happened if In2 had queried Mr F's instruction. He'd signed (on 25 October 2016 and again on 12 December 2016) to say he was a sophisticated investor. In2 has said Mr F may have committed a criminal offence if the information he gave wasn't correct but that's not something that's within our remit. I'm considering here In2's responsibilities and what In2 would've likely found out if they'd acted as they should've done and not simply processed the instruction Mr F had given.

Mr F's position is that he was a low risk investor with no pensions or investment knowledge or experience. I note that, by signing the application form for the RRAM Bonds on 12 December 2016, Mr F warranted, amongst other things, that he understood the investment was a speculative venture with no history of operations or earnings and no established market. That would've given him some indication that the investment did carry risks.

There's also Mr F's emails of 1 and 21 November 2016 to Firm D. In the first, Mr F said he'd be making his own investments without additional advice or services. He also referred to linking a brokerage account to the SSAS. In the second email Mr F queried the SSAS charges and asked for some further information about the RRAM Bonds – he wanted to know who the issuer was and understand a little more about the risks. He also commented that a 7.5% coupon would suggest a certain amount of risk. Mr F appeared particularly interested in RRAM Bonds as In2's fee would be covered – he got 5,000 bonds in all, of which 1,090 were bonus bonds. And there's an email from Firm D to Mr F on 16 September 2016 which evidences Mr F's interest in a SSAS as a pension vehicle and his intention to start making regular contributions.

The emails might suggest Mr F had some understanding of, or at least an interest in, investments. But, and as I've mentioned below, I think there was an issue given that it was Firm D who were dealing with his queries. And, even if he had some knowledge, that didn't mean he was a sophisticated investor. I haven't seen anything to suggest Mr F met any of the four conditions set out on the sophisticated investor statements he signed. It may well have been unwise of Mr F to sign the statements if he didn't qualify as such. But, if In2 had queried the position – and as I've said I think there were reasons why In2 shouldn't have simply accepted and processed Mr F's instruction – I doubt Mr F would've been able to satisfy In2 that he did qualify as a sophisticated investor. And that he fully understood the risks of the RRAM Bonds investment and the possible consequences of investing.

Mr F also indicated on the SSAS application form that he was a HNW client. I've not seen anything to support that. As far as I understand, he was living in rented accommodation and his self employed earnings were around £30,000. I further note that his company had only been incorporated in early 2016. Again I think, if In2 had made further enquiries, In2 would've established that Mr F wasn't a HNW client.
The idea to set up a SSAS and invest in RRAM Bonds came from Firm D. And, as I've said, Mr F's queries about the investment were directed to Firm D. But Firm D were Mr F's accountants. Whereas In2 was a professional firm of financial advisers with direct experience and understanding of pension vehicles and investments. I think that would've carried weight with Mr F. I don't see he'd have preferred what Firm D said over any reservations expressed by In2.

In2 should also have been alive to the possibility that what Firm D had said may have amounted to unregulated investment advice. As I've mentioned, Mr F raised some queries with Firm D. And I've seen that Firm D emailed some information about RRAM Bonds to him on 13 December 2016. I don't say that was advice, as opposed to information. But what was said was positive, including that RRAM Bonds plc's payment obligations had been guaranteed. I'd assume there were discussions around the information and in response to the emails from Mr F I've mentioned. As well as at the outset when Firm D first proposed the SSAS. I think what was said may well have amounted to advice and in breach of the general prohibition in section 19 of FSMA (Financial Services and Markets Act 2000) that a person (which includes a corporate body) must not carry on a regulated activity in the UK (here that would be the regulated activity of advising on investments) unless they are an authorised or exempt person, which Firm D isn't. I think there was a very real danger that what Firm D may have said wasn't balanced and underplayed the risks.

In my view, the likely outcome, had In2 intervened, would've been that Mr F's investment in RRAM Bonds wouldn't have been made – whether because Mr F himself would've decided against proceeding or because In2 weren't satisfied he was a sophisticated or HNW investor and so he wasn't eligible to invest. If In2 had declined to carry out Mr F's instruction or told him that he'd need to seek regulated advice or find another firm to act for him, I'm not persuaded that Mr F would've gone ahead. I think any concerns expressed by In2 would've been enough to put him off proceeding. And, if he did seek regulated advice, I can't see that the outcome would've been that the investment was suitable and so he should proceed.

Further, I consider Mr S's role is problematic for In2. He witnessed Mr F's signature on the SSAS application form dated 25 October 2016 and on the Trust Deed and Rules. 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 was the registered office for RRAM Bonds plc and RRAM plc at the time. So it seems Mr S was working as an introducer for RRAM Bonds plc or RRAM plc whose principal was Stargate Capital Management Limited (SCM). I've also seen email evidence confirming, as at 2 September 2016, Mr S was employed by RRAM plc in its Business Development Department. And, regardless of what Mr S may have told In2 about another role coming to an end, the FCA's register confirms that, from 12 September 2014 to 10 February 2017, Mr S had a CF30 role in Stargate Corporate Finance Limited (SCF), a company which had links to SCM, RRAM plc's principal.

And, at the time Mr F's SSAS was set up and his investment in RRAM Bonds made, Mr S was employed by In2 (from 5 September 2016 to 20 July 2018). I note all In2 says about the arrangements it had with Mr S about the limited (protection) work he'd be doing. But the fact remains that Mr S was employed by In2 and at the same time by SCF and he was also working for RRAM plc or RRAM Bonds plc.

I've quoted above what In2's Terms of Business say about In2 undertaking to not transact any business in which any of its employees has a known interest in unless that interest is first disclosed in writing and the client's consent obtained. Mr S had an interest in Mr F's business – opening a SSAS so that he could invest in RRAM Bonds. Mr S was employed by SCF and/or RRAM plc and/or RRAM Bonds plc and who stood to profit if Mr F invested. And Mr S may also have benefitted personally – he may have received commission or some other incentive payment or reward. Even if not, he still benefitted indirectly through his employment with SCF and/or RRAM plc and/or RRAM Bonds plc in respect of which he was presumably remunerated.

In2 didn't have Mr F's consent. So, by transacting Mr F's business – his execution only instruction to purchase RRAM Bonds – In2 was acting in breach of its own Terms of Business.

In2 was also acting contrary to PRIN. 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 links to the RRAM Bonds investment.

In2 might say that its obligation under its Terms of Business was to disclose the conflict of interest in writing and obtain Mr F's consent before proceeding. And, had In2 done that, Mr F would've confirmed he wanted to go ahead. But I don't think that necessarily follows and when, as I've explained above, there were other reasons why In2, acting reasonably and in line with its regulatory obligations including PRIN, should've looked closer before complying with Mr F's instruction. In my view, if In2 had indicated to Mr F that something untoward may have been going on, Mr F would've likely decided he didn't want to be part of it. Whereas, as things happened and without In2's intervention, Mr F had no reason to think he shouldn't set up a SSAS to invest in RRAM Bonds. In the circumstances I consider In2 failed in their contractual and regulatory responsibilities.

In terms of putting things right, we now know that the SSAS was formally wound up on 15 September 2022. That means In2 won't have to meet any future SSAS fees. But closing the SSAS was only possible because Mr F bought the RRAM Bonds from the SSAS – on Whitehall's instruction, he transferred £3,910 to buy the RRAM Bonds from the SSAS on 25 May 2022. The remaining SSAS balance of £3,011.59 was transferred to another pension arrangement – a SIPP (self invested personal pension) with Hargreaves Lansdown. Documentation in support has been provided: a copy of Mr F's bank statement showing the payment of £3,910 on 25 May 2022; an email from Hargreaves Lansdown dated 28 July 2022 confirming the transfer had been completed and £3,011.59 applied to the SIPP's capital account; and a deed of dissolution to wind up the SSAS dated 15 September 2022.

The redress I've set out below includes an award in respect of the £3,910. My understanding is that's the only payment (whether in respect of fees or otherwise) that Mr F has made out of his own pocket and all other fees, charges, costs etc have been paid out of the SSAS and so will be taken into account in calculating the residual value of Mr F's SSAS.'

I went on to set out what In2 needed to do to put things right for Mr F.

Mr F accepted my provisional decision. In2 didn't offer any further comments.

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.

In the absence of any further information or evidence or arguments, my views remain as set out in my provisional decision and recapped above. What I said in my provisional decision forms part of this decision.

I'm upholding the complaint for the reasons I indicated

I also remain of the view that the redress I set out in my provisional decision was fair and reasonable so I've made an award accordingly.

Putting things right

My aim in awarding compensation is to put Mr F as far as possible in the position he'd be in now if In2 Planning Limited had dealt with things as I consider they should've done. In that situation, Mr F wouldn't have set up a SSAS, nor would the investment in RRAM Bonds

been made.

We now know that Mr F's SSAS has been wound up. That was only possible because Mr F bought the RRAM Bonds from the SSAS. I think it's fair and reasonable I that In2 Planning Limited reimburses the amount Mr F paid, with interest. As I've said, Mr F shouldn't have had the SSAS or the RRAM Bonds.

I said in my provisional decision that redress should be calculated on the basis that Mr F was a low risk investor. I don't think he could afford, or should've been advised, to take other than a small amount of risk with the SSAS which, as far as I'm aware, was his only pension provision.

I think Mr F would've invested differently. It's not possible to say precisely what he'd have done, but I'm satisfied what I've set out below is fair and reasonable given his circumstances and objectives when he invested.

To compensate Mr F fairly In2 Planning Limited must:

- Compare the performance of Mr F's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there's a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.
- Pay any additional compensation as set out below – that's a return on any loss suffered as at 28 July 2022 (when the transfer to the SIPP was made) and to bring that loss up to date.
- If there's a loss it should be paid into Mr F's new pension plan 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. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If In2 Planning Limited is unable to pay the compensation into Mr F's pension plan, it should be paid direct to him. But, had it been possible to pay it into the plan, it would've provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest/return on loss
Mr F's SSAS	Wound up	For half the investment: FTSE UK Private Investors Income Total Return index;	Date of investment	28 July 2022	From 28 July 2022 to date of settlement using the same benchmarks

		for the other half: average rate from fixed rate bonds			

actual value

This means the actual amount payable from the investment at the end date.

fair value

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

To arrive at the fair value when using the fixed rate bonds as the benchmark, In2 Planning Limited should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

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 Planning Limited totals all those payments and deducts that figure at the end instead of deducting periodically.

As noted above, Mr F paid £3,910 from his own pocket to buy the RRAM Bonds so that the SIPP could be wound up. In2 Planning Limited must refund that sum direct to Mr F with interest at the rate of 8% simple pa from the date of the payment (25 May 2022) to the date of the refund.

It's possible Mr F may be able to sell the RRAM Bonds in the future at a profit. So In2 Planning Limited may wish to require that Mr F provides an undertaking to pay In2 Planning Limited any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt. In2 Planning Limited will need to meet any costs in drawing up the undertaking. An undertaking is fair here as, although Mr F has bought the RRAM Bonds, I've said that In2 Planning Limited must reimburse what he paid. So it's fair that In2 Planning Limited should be able to benefit if Mr F is able to recover any money from the RRAM Bonds.

My final decision

I uphold the complaint. In2 Planning Limited must calculate and pay compensation as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 June 2024.

Lesley Stead
Ombudsman