DRN-4810904

The complaint

Mr I is represented by his wife. They say an Appointed Representative ('AR') of Gate Capital Group ('Gate') gave him unsuitable advice in 2016 to transfer his Co-operative Personal Pensions (the 'Co-op PPs') to an Intelligent Money ('IM') Self-Invested Personal Pension ('SIPP'), and to place the SIPP under the discretionary investment management service of Organic Investment Management ('OIM').

Gate is also represented. It was formerly known as PlutusGroup Limited. It disputes responsibility for the AR and the complaint. It acknowledges that previous decisions from our service, in other comparable complaints about Gate, found it responsible for the AR in 2016, but it says those decisions also confirm that it undertook significant due diligence on OIM's service, reasonably recommended it to clients and has no responsibility for the breach of mandate by OIM that followed. In Mr I's case, it also says the pension transfer advice was suitable.

What happened

I issued a Provisional Decision ('PD') for this complaint on 23 April 2024. One of our investigators had looked into the complaint before it was referred to me. He concluded that it should be upheld. In the PD, I provisionally concluded that Gate is responsible for the complaint, but that the complaint is not upheld.

The PD's summary of the complaint's background included the following –

"*An undated suitability report, from a firm called Huntsman Hawkes Wealth Management LLP ('H') to Mr I, sets out details of his personal circumstances and H's recommendation of the pension transfer (and OIM service). It says Mr I was introduced to H by a firm called Fenchurch Wealth Management ('F').*

The report's covering letter is dated 22 September 2016 and it (the covering letter) refers to a recent (at the time) pension review for Mr I, conducted by H. The covering letter's footnote says "Huntsman Hawkes Wealth Management LLP is an Appointed Representative of PlutusGroup Limited", and the regulator's register says H was a 'full' AR for Gate between 7 July 2016 and 9 May 2017.

The report says it relied on information obtained from Mr I, and it invited him to correct any inaccuracies about his circumstances. There is no evidence that he made such a correction.

Based on the report, his profile was mainly as follows – he was 66 years old and employed; he planned to retire at age 75; he had three Co-op PPs that had reached the normal retirement date in May 2016, worth around £66,600 (in total); in addition he had cash savings of £15,000 and shares worth £7,000; he was married with non-dependent children; he had a serious health condition a few years previously; his and his wife's combined monthly income covered their total monthly expenditure, with a disposable surplus of around £70; their separate/future annual state pension income, of around £8,000 each, was also noted; they had no individual liabilities but shared joint liability for the outstanding mortgage (£18,000) on their home; and their target net annual household income in retirement was *around £12,000.*

Mr I had a low/medium risk profile. His objectives in the pension review were to explore his options on securing arrangements for death benefits (described as very important to him given the serious health scare he had experienced), taking Tax Free Cash ('TFC') to put towards paying off the mortgage, taking flexible income from age 75 onwards, and receiving ongoing advice."

"*He (and his wife) said – "The death benefits were important to me as I would be providing for my family and also because of my health issues"; the Co-op PPs had matured at the time, so given his health issues and some employment related considerations he wanted to move the pensions away from the Co-op; he considered they should be moved whilst he could enable that, and thereby avoid leaving them stuck with the Co-op if 'anything happened' to him; he received his state pension a couple of years after the advice; paying off the mortgage was desired at the time, it was not related to any financial difficulties (there were no such difficulties); TFC from the transfer was used to pay off the mortgage as planned (otherwise, it was due to be fully paid off in 2020); and no firm, other than H, was involved in recommending the pension transfer and OIM service.*

H's suitability report summarised details of the Co-op PPs, based on information it said was obtained about them between May and August 2016.

All three matured on 19 May 2016. Only two had Guaranteed Annuity Rates ('GAR'). The Transfer Values ('TVs') for the two PPs with GAR (the 'GAR PPs') were around £41,000 (with 4% GAR) and £22,000 (with 8.3% GAR). The third PP's TV was around £3,000. According to the report, none of them had transfer penalties, protected TFC or adviser charge support, and none of them provided death benefits or partial UFPLS (meaning Uncrystallised Funds Pension Lump Sum). Premium payments continued for one of the GAR PPs, the other two PPs were paid up. Drawdown was unavailable in the GAR PPs, but available in the third PP.

The GAR PPs were wholly invested in With Profits funds. The total annual charge for the more valuable one was 1%. It was 2.44% for the other one. The third PP – with a total annual charge of 1% – was invested in Royal London funds (75% in its Fixed Interest Pension Fund and 25% in its Cash Pension Fund)."

"*The report recommended transfer of the PP with 4% GAR, and retention of the one with 8.3% GAR. H gave notice in the report that GAR would be lost upon transfer, but it considered that the former could probably be matched in the open market, whereas the latter was significantly high (double what was available in the market at the time), was unlikely to be matched in the open market and was worth retaining. H also recommended transfer of the third Co-op PP (which had no GAR).*

As part of our investigator's enquiries, he asked Mr I why, despite the recommendation to transfer only two of the three PPs, all three PPs were transferred to the SIPP. In response, Mr I's wife said his assumption at the time was that all the PPs would be treated alike, that he could not recall advice to retain one of them, and he questioned – "what would be the reason to hold one of them back?".

H said it recommended the SIPP for the following main reasons – leaving the PPs as they were, and invested, defeated the objective to access benefits; exhausting their benefits provided cash lump sums and income streams, but there would be no potential for future growth and no future control or flexibility over how the benefits were taken; in the event of Mr I's death the PPs had no spouse benefits; transfers to an employer's scheme or a section 32 plan were not viable, because the former did not exist and there was no advantage in the *latter; but transfers to a SIPP enabled access to 25% TFC, control over investment of the pension and a successor drawdown plan in the event of his death.*

In terms of what to do with the SIPP, H recommended taking the full TFC to meet Mr I's objective to do so, and then applying the remainder to a drawdown policy (or Flexi-Access Drawdown ('FAD'). It advised against an annuity, and said purchasing one was inflexible (once selected it could not be changed), that it lacked spouse benefits, it did not allow for control over how the benefits were taken and it had no potential for future growth. It advised against a phased retirement/annuity plan, and said it partly involved the unsuitable purchase of an annuity, that it resulted in access to a reduced TFC and it had inflexible death benefits factors.

H considered combining the FAD and phased retirement options but advised against it. It said the reduction in TFC in the combination would conflict with Mr I's need for all the available TFC.

The report calculated that the recommendation would allow Mr I's immediate access to TFC of around £11,000, a projected SIPP fund value of around £46,000 at age 75, and a projected annual income from that value of around £3,000 until age 100; whereas leaving the two relevant Co-op PPs invested, as they were, would provide a projected annual retirement income of £2,560. It also separately calculated that by the time of his retirement, with his and his wife's state pensions in payment and with the retained GAR PP in payment, they would have a joint total annual income from these three payments alone that exceeded their target annual household retirement income by over £5,000."

"*The report confirmed H's initial advice fee (3% of funds under advice after deducting TFC) and annual ongoing advice/servicing fee (1% of pension value). The IM SIPP illustration enclosed with the report was based on transfers of the two relevant Co-op PPs.*

Documents from the time of the transfer show that there was an annual fee (£150) to IM for "provision, establishment and ongoing operation" of the SIPP, an annual management fee of 0.25% and dealing fee of 0.25% (both calculated on the value of funds under management) for the OIM service and a custody fee of 0.10% due to the custodian of the IM SIPP."

The PD's findings were –

"*<u>Our Jurisdiction</u>*

I address this because it appears to remain a matter of dispute for Gate and because I must be satisfied that I have jurisdiction to determine the merits of the complaint.

There have been a number of complaints (about Gate) referred to us containing claims and event periods similar to those in Mr I's, and our jurisdiction to address them has already been subject to a thorough investigation and determination by another Ombudsman.

In one of those complaints, the Ombudsman issued a Jurisdiction Decision ('JD'), in 2021, confirming he could address the complaint's merits. The JD dealt with the same dispute by Gate over responsibility for the same AR (as in the present case). The AR's advice to the complainant in the case was also given in September 2016 (as in the present case). The complaint is one of those that Gate's solicitors have cited, so I expect they are familiar with the JD and its contents. Having read the JD, I do not consider that there is anything meaningful I can add to the determination of whether (or not) Gate was the principal responsible for the AR's advice in September 2016.

I quote the following from the background section above –

"An undated suitability report, from a firm called Huntsman Hawkes Wealth Management LLP ('H') to Mr I, sets out details of his personal circumstances and H's recommendation of the pension transfer (and OIM service). It says Mr I was introduced to H by a firm called Fenchurch Wealth Management ('F').

The report's covering letter is dated 22 September 2016 and it (the covering letter) refers to a recent (at the time) pension review for Mr I, conducted by H. The covering letter's footnote says "Huntsman Hawkes Wealth Management LLP is an Appointed Representative of PlutusGroup Limited", and the regulator's register says H was a 'full' AR for Gate between 7 July 2016 and 9 May 2017."

It is my conclusion that Gate was the principal firm responsible for H's advice to Mr I in September 2016. As stated in the quote above, H's correspondence to him at the time and the regulator's register confirm it was the AR of Gate (formerly PlutusGroup Limited). The Ombudsman in the other case also looked into the regulator's register. His enquiries extended to the individual adviser who operated under H, and he considered wider matters related to that individual's regulated activities in 2016. His findings are insightful and, I repeat, Gate's solicitors should already be aware of them.

In the present case, my attention is on H as the firm that gave advice to Mr I and on information (and evidence) confirming that H was Gate's AR at the time of that advice. As such, I am satisfied that Gate is responsible for, and the correct respondent to, the complaint, and that I have jurisdiction to address its merits. Based on this conclusion, I shall refer to Gate as the firm that advised Mr I.

<u>Merits</u>

First, I will address the suitability of Gate's advice to Mr I to transfer the Co-op PPs to the IM SIPP, then I will consider its recommendation of the OIM service for investment of the SIPP.

The regulator's Handbook includes Principles for Businesses that Gate will be familiar with, and that it would/should have been familiar with in 2016. Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. Case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – also confirms that The Principles are ever present requirements that firms must comply with.

Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the client's best interests rule which, as the title suggests, requires firms to uphold their clients' best interests.

There are also rules in COBS about suitability of advice that firms must follow in giving regulated advice, and I expect Gate is familiar with them.

The above broadly sums up, without being exhaustive, the regulatory context in which Gate's advice to Mr I should be determined.

Evidence from 2016 and from his contributions to our investigation confirm that Mr I did seek a pension review as stated in the suitability report and that his objectives were indeed to access TFC and to set up arrangements that ensured death benefits from his pension(s) to his wife.

He and his wife have explained to us that the serious health scare he had, not long before

2016, had heightened the importance of the second objective. They essentially said it was mainly for this reason, and because they believed there were no death benefits provisions in the Co-op PPs, that Mr I was eager to transfer those pensions while he was able to do so, and before anything happened to him. If anything happened, he did not want them left behind as they were.

Our decisions are published and Mr I's anonymity must be maintained. In order to avoid the risk of breaching his anonymity, I will not go into the details of his serious health scare. However, I consider it an important part of the background to his case. In summary, I note the following (based on evidence from the time of advice and from his (and his wife's) responses to our enquiries) – he had recovered a few years before the 2016 advice; the relevant health condition was very serious; and there was risk of potential recurrence.

Overall evidence suggests his experience played a role in encouraging him to tidy up his affairs, including his pension arrangements and with emphasis on ensuring death benefits to his wife from those arrangements. In the circumstances as they were, this was understandable and reasonable.

As I will address further below, it is clear that he was misinformed that the Co-op PPs had no death benefits. However, I still consider it important to note the above, for reasons I shall also address further below. It is also clear from the available evidence, and it is undisputed, that Mr I neither wanted nor needed to take income from his pensions at the time.

The pension transfer was not needed to enable access to TFC. At the time of advice, he was already in the position to access TFC in each of the Co-op PPs (although, for at least two of them, that would also have triggered the receipt of annuity income), so I do not consider that this objective, on its own, can reasonably be used to justify the transfer advice.

Furthermore, Mr I's evidence suggests that this objective was no more than desirable at the time. It does not look like it was something he needed to do. His evidence is that he and his wife had only around four years left – to 2020 – to pay off the mortgage on their home and that they had no problems in paying the mortgage at the time of advice. In this context, I consider it unlikely that access to TFC to clear the mortgage was the main driver for the pension review and/or pension transfer.

Having said this, his desire arose from very serious circumstances, as I addressed above. It is more likely (than not) that repaying the mortgage early was another part of what he was doing at the time to tidy up his affairs. More priority appears to have been attached to the matter of death benefits for his wife, but repaying the mortgage was also important to him.

In the above context, and for the reasons I have given, I do not consider that it would have been reasonable for Mr I's objectives to have been questioned or tested. Gate did not do that, it accepted his objectives as he presented them and, on balance (and in the circumstances of this case), that was the right thing to do.

Based on the belief that the Co-op PPs had no death benefits, the pension transfer was essentially recommended as fulfilling the objective to secure the sought after benefits, and fulfilling Mr I's desire for TFC from his pensions. Gate initially argued that the transfer advice was justified for this reason, then the investigator identified that the advice was wrong because one of the Co-op PPs held death benefits which would probably have been enough reason for him to consider the idea of a transfer redundant. As stated above, evidence of the error in the 2016 advice and of the Co-op PP with death benefits – which I have seen and considered – has been shared with Gate's solicitors.

Gate's position seems unchanged and I have acknowledged, above, the reasons why.

The task before me is to consider if the 2016 pension transfer recommendation would or would not have been suitable even if the death benefits in the relevant Co-op PP had been properly considered at the time. If I find that the transfer advice was unsuitable, I will then consider whether (or not) Mr I would have proceeded with the transfer in any case, even if he was told about the existing death benefits and/or even if he was advised against any pension transfer.

I agree with the investigator that giving Mr I the correct information about the existing death benefits alongside advice about how valuable the GARs were and how they ought not be lost in a transfer, without good reason to do so, would probably have led him into different considerations. He could have taken such advice as an indication that his important objective of securing death benefits for his wife was possibly or probably achievable as things were, without having to undertake the costs (and trouble) of a pension transfer. For example, it could be argued that avoiding the outlay of Gate's 3% initial fee for the transfer advice (based on the sub-argument that the fee was contingent on a transfer taking place), whilst achieving his main goal, would have been in his best interest.

Gate failed to uphold the Principles I mentioned above in terms of the misinformation it gave Mr I about the death benefits available from the Co-op PPs. However, it is not my role to remedy alleged regulatory breaches by firms, in isolation, that is a matter for the regulator. Gate's responsibility for this misinformation does not automatically mean its advice was unsuitable or that the complaint must be upheld.

I find problems in the idea that Mr I's objectives were suitably met in his ability to take TFC from the Co-op PPs and in the availability of death benefits from one of those PPs. He and his wife informed the investigator that he could have behaved differently had he been presented with this scenario – the claim, or at least suggestion, being that he would not have proceeded with the pension transfer.

I consider that the above faces two important problems, both of which appear to go against Mr I's best interests.

Even though I do not find that access to TFC was needed by Mr I, I accept that it was something he wanted. As I said above, it was important to him and, in the circumstances, his objectives ought not to have been questioned. The pensions were his and he was entitled to define his objectives, so I do not overlook this and I find that accessing TFC in his pension(s) was reasonable and is what he would have done in any case.

If he retained the Co-op PPs, he would have cashed them in, in order to access TFC. Drawdown was unavailable in the GAR PPs so this would have meant activating income from them (if the idea was to ensure the GARs were not lost). Drawdown was available in the third Co-op PP but it was the least valuable one (valued at around £3,000).

Mr I would have been forced to take income from two of the Co-op PPs where he had no need, desire or objective to do so. This – awarding, and/or imposing upon, him an objective he did not have – would have been the first problem. By doing so, and after exhausting the TFC withdrawals from each of them, he would have begun to use the pensions by himself for himself, with nothing left from two of them to pass to his wife in the event of his death.

They would also have been deprived exposure to the chance of future growth. This would have been the second problem, which arguably worked against what appears to have been his most important objective at the time – death benefits for his wife.

Even if he avoided income from the drawdown facility in the third Co-op PP and even if he *allowed that to grow, its relatively low value combined with his low/medium risk profile meant it, alone, was unlikely to meet the type/level of death benefits he sought to secure for his wife.*

Mr I was planning ahead for two key events – his retirement at age 75 and his passing (whenever that occurred). I have not seen specific evidence that he did not expect to reach his retirement age, but I remain mindful of the context I summarised above. Evidence shows that whilst he had grounds to be concerned about his life expectancy (given his health scare experience) he also looked forward to reaching retirement (and beyond) and he had even considered the target household income he and his wife would need in retirement. On this basis, I do no find grounds to say he had no reason to prioritise death benefits – because he clearly did – but I simply acknowledge that there is no specific evidence saying he was unlikely to reach retirement age.

It was therefore in his interest to maximise all possible growth in the remainder of his pension(s), after taking TFC, in the many remaining years (nine years) up to his retirement age and to have enough capital value in his pension(s) at that point to sustain ongoing retirement income and ongoing growth. Any ongoing growth would have served the dual purpose of supporting the income withdrawals and sustaining or adding value to the death benefits for his wife.

For the reasons given earlier above, the idea of fully crystallising his two most valuable pensions nine years before he wanted or needed to do so did not help his chances of achieving the above. Whereas the recommended transfer to the SIPP and the FAD arrangement better supported his chances of doing so. Even if he passed away before his retirement age, any pension exposure to growth up to that point would arguably have been better than no such exposure, and better than the alternative of fully cashing in the two Co-op PPs unnecessarily early and depriving them the chance of additional growth.

Of course, the GARs were valuable benefits. If Mr I did not seek to access TFC, it is arguable that – with the correct advice about the availability of death benefits in one of the GAR PPs – he could have simply left his pensions as they were. They were all invested, so they would have remained exposed to the chance of growth until he reached retirement age. At that point he could have considered his position, with suitable advice, on TFC, income and/or death benefits – depending on his objectives at the time. That may well have involved utilising the valuable GARs in the two Co-op PPs.

However, because he wanted TFC in 2016 the need to determine his position was brought forward. For the reasons given above, if he prioritised retention of the GARs, he would have been forced into taking income earlier than he wanted or needed to, and doing so would have either significantly reduced or defeated his chances of achieving his important death benefits objective.

In the above context, for the reasons I have given and on balance, I am persuaded that the circumstances in 2016 were such that the transfer of the Co-op PPs to the IM SIPP was not unsuitable.

I note that Gate's advice was to transfer only two of the three Co-op PPs and that it recommended retention of the one with the higher GAR. However, it is clear its advice opened the door to the full transfer that took place and I do not have enough evidence to explain why all three, instead of two, of the Co-op PPs were transferred. The transfer related application forms show that Gate (or H, at the time) was aware of this and supported the transfer of all three of them. I have not seen evidence that H did this under Mr I's insistence.

The claim that he was insistent has been suggested, or argued, by Gate, so it is responsible *for establishing that, and I do not consider that it has. It is reasonable to expect that H's assistance in progressing the transfer of all three PPs, despite its advice to transfer only two of them, should have happened with some form of documentation about it doing so either because it had revised its initial advice or because it stood by its advice but assisted under Mr I's insistence to extend the transfer (to the third PP). Available evidence shows neither, but H's assistance, despite awareness that the transfers went beyond what it had recommended, supports the conclusion that it can, on balance, be held responsible for them all.*

I have considered whether (or not) the costs associated with the transfer give cause to conclude that it was unsuitable.

The 3% initial advice fee was an isolated expense, but its effect can be considered on a wider basis (beyond the point of initial advice). Mr I was around nine years away from his retirement age, so he was around that far away from cashing in the SIPP's remainder benefits (after TFC). Spreading the initial fee over this period results in an annual cost of around 0.33%. It amounts to less – around 0.15% – if calculated over 20 years from the point of advice and into his retirement years. I consider this a reasonable period to use in assessing the wider effect of the initial advice fee.

In terms of a comparison between the options Mr I had at the time, his existing arrangement had an average total annual charge of around 1.5%. The SIPP, ongoing advice and OIM service recommendation had fixed annual charges totalling 1.6%. However, it appears from the fee schedule and evidence of fee related discussions between Gate and OIM that investment costs within OIM's service, and in addition to OIM's management fees, typically resulted in annual Total Expense Ratios between 0.65% to 0.8%. This meant, the total annual cost to Mr I in the recommended solution, including the 0.15% annual equivalent of the initial fee, was probably somewhere around 2.2%.

The recommendation was therefore more expensive. Nevertheless, and on balance, given the added benefits of ongoing SIPP monitoring/advice and discretionary investment management of the SIPP's portfolio – neither of which Mr I previously had – I do not consider that the costs associated with the recommended solution made it unsuitable. I develop this finding further below. Overall, I do not consider it unsuitable for Mr I to have undertaken around 0.7% in added annual costs in exchange for such additional professional services which potentially aided the ongoing performance prospects of the SIPP's portfolio and served to provide ongoing advisory support and information to him about the SIPP.

Given that I have not found that the transfer advice was unsuitable, I do not need to determine whether (or not) Mr I would have proceeded with the transfers if he was advised not to do so.

I now turn to Gate's recommendation of the OIM service.

The Ombudsman I mentioned earlier followed up the JD with a decision on the merits of the complaint he addressed. His merits decision was approached just as thoroughly as the JD. Furthermore, I have also considered merits decisions issued by another Ombudsman in two other comparable complaints about Gate that were referred to us. She too addressed their merits in detail.

The findings by both Ombudsmen in all these decisions share common ground in concluding that Gate reasonably conducted its due diligence on the OIM service before recommending it, and that it cannot reasonably be held responsible for OIM's breach(es) of mandate that followed (in the course of its delivery of the discretionary investment management service).

As I said earlier, the investigator made the same findings in Mr I's case. I too have considered the matter. The contents of my colleagues' decisions, and view, have been helpful, but I have also formed my own conclusions on the matter – conclusions which are overall, in agreement with theirs.

Mr I's retirement plans required potential for pension investment growth, but the pursuit of that had to match his risk profile. In the absence of specific reasons why such management was unsuitable for him, Gate might argue that its benefits can corelate with the potential for better investment performance. Such an outcome is rarely guaranteed and no such guarantee was given to Mr I, but I acknowledge the argument that active discretionary investment management can help a portfolio's growth.

I do not say or suggest, above, that discretionary management services are generally suitable for all clients and or cases. Each case should be considered in its circumstances and on its merits.

With no disregard or disrespect intended, Mr I's overall pension value was relatively modest. He was not a sophisticated client/investor and he was not a high net worth individual. Justification, or reasons, for discretionary management can sometimes be made out, on easier grounds, where it relates to high net worth portfolios and/or clients with sophisticated requirements. Neither was the case for Mr I. It also appears that whilst ongoing advice was another part of his objectives, the idea of discretionary management did not come from him. Instead, it was Gate's proposal.

Discretionary management can also be expensive. My findings above on costs have addressed this, and those findings have also served my consideration of whether (or not) OIM's discretionary management service was a suitable recommendation for Mr I.

I am not persuaded that he needed discretionary management for his pension portfolio. It was not part of his objectives, he did not previously have that for the Co-op PPs and his objectives were not driven by issues with their performances.

However, as I calculated above, the overall total annual cost of the recommended solution (including the discretionary management service from OIM and ongoing advice from Gate) was around 2.2%. That was 0.7% higher than the average cost of his existing arrangement.

Information from the regulator's survey of financial advisers – published in April 2016 and titled 'FCA survey of firms providing financial advice' – says "the median percentage fee for ongoing advice on investments was 0.5% for investable assets of £50,000 or less". Such ongoing advice was part of Mr I's stated objectives at the time and his pension's overall value was above £50,000. Therefore, the additional annual cost of 0.7% could have covered only the ongoing advice that he sought. Instead, it stood as an additional annual cost for the complete solution, inclusive of ongoing advice and discretionary investment management.

In other words, even though he neither asked for nor needed discretionary investment management, it appears to have been a part of the recommended solution that cost him little or no more than the additional cost he could have paid just for the ongoing advice (alone) that he wanted. In this context, on balance, and given the benefits that such management potentially gave his pension portfolio, I do not consider that its recommendation was unsuitable; and to give the SIPP's FAD arrangement a good chance of achieving growth, I do not consider that the combination of Gate's ongoing monitoring of the SIPP and OIM's discretionary management of its portfolio was unsuitable.

The conservative model of OIM's service was recommended. I have looked into this and, as Gate says, it was a reasonable match for Mr I's low/medium risk profile. Information about it *in 2016 shows that over half of it consisted of government and corporate bond holdings, around a quarter of it was exposed to equities and then there were minority holdings in commodities and cash. Evidence from RL's letter to F dated 18 May 2016, in which details of the GAR PPs were set out, shows that the With Profits funds they were invested in consisted of 32% equities, 15% Gilts, 31% corporate bonds, 15% property funds and minority holdings in alternative and other assets. It could be argued that OIM's conservative model, on paper, was therefore broadly comparable to the portfolios the GAR PPs had and comparable to investments Mr I's pension was already familiar with.*

The appearance of bond holdings, especially corporate bond holdings, can sometimes be deceptive. Corporate bonds generally carry more risks than government bonds and, depending on the stature and characteristics of the underlying corporate bodies (and the grade ratings of their bonds), some corporate bonds can carry significantly high risks. As part of the due diligence applied by Gate, it appears to have been assured by OIM that its mandate did not permit exposure of the model portfolios to non-standard assets, and that the portfolios' alignments to their risk profiles will be maintained throughout.

I have not seen evidence to show that Gate ought reasonably to have doubted or questioned information from OIM during its due diligence, that it either had or ought reasonably to have had insight into any undisclosed intention(s) OIM might have held at the time, or that it either had or ought reasonably to have had foresight of the breach(es) of the mandate that OIM proceeded to commit in managing the portfolios. Some of those breaches have been summarised in the other Ombudsmen's decisions, but I do not consider it necessary to do the same in this PD.

I consider it enough to conclude that Gate appears to have recommended OIM's conservative model service to Mr I in good faith and with a reasonable level of due diligence behind the recommendation; and that, for the reasons given above, the conservative model and the constitution of its model portfolio (a majority bond content mixed with equities, commodities and cash, and based on standard level assets) was a reasonable match for his low/medium risk profile; so, overall and on balance, I do not consider that recommendation of the conservative model (and its associated portfolio) was unsuitable."

Both parties were invited to comment on the PD. Mr I and his wife mainly said – he was unaware that Gate was formerly known as PlutusGroup Limited; the PD refers to a breach of mandate by OIM, "*… should this not be pursued?*"; he accepted H's report and put his trust in H at the time of advice; "*What did happen to the third Co-op private pension?*"; and inferences should be drawn from the number of complaints about Gate that our service has received.

Gate's solicitors confirmed their agreement with the PD. In response to Mr I's comments, they mainly said – a claim against OIM is remote to the present complaint and is a matter that Mr I can consider separately; in the absence of an indication from him that any of the information in the report was wrong, Gate was entitled to rely on that information and consider it accurate; and the existence of other complaints against Gate is not indicative of fault on its part, each case is to be considered on its own merits.

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 have also considered the comments from both parties in response to the PD.

Overall and on balance, I do not find cause to depart from the PD's findings and conclusions.

I retain those findings and conclusions (as set out in the PD and as quoted above), and I incorporate them into this decision.

The response from Mr I and his wife has been presented with notable grace and acknowledgement of the work our service has done in investigating and determining his complaint. The outcome of the PD, as retained in this decision, will undoubtedly be disappointing for them, and I appreciate that. However, I hope and expect that the reasoning set out in the PD (and quoted above) explains why the outcome has been reached. The outcome has resulted directly from the particular facts and circumstances in his case, and from how the case has been presented to us (including the input and feedback Mr I and his wife shared with us during our investigation). Different facts, circumstances and/or presentation could, in another case, result in a different outcome.

I note Mr I's statement about being unaware of Gate's previous name. Such unawareness is not relevant to the issues determined, so I do not find cause to address it further.

Any claim he considers might exist against OIM is remote to the present complaint about Gate. If he wishes, he can consider taking independent advice on any such claim. With regards to what happened to his Co-op PPs, this was addressed in the PD. Available evidence is that all three of them were transferred to the SIPP.

As mentioned in the PD, our service has received a number of complaints about Gate "… *containing claims and event periods similar to those in Mr I's* …". However, each complaint is addressed and determined on its own facts and merits. Whilst information from across the complaints can help to determine each case, the fact that they have all been referred to us does not automatically mean we can conclude that Gate is culpable in Mr I's case. The complaints that have been referred to us have had different outcomes. Like I have done in the present case, each relevant Ombudsman has addressed the particular facts and circumstances (and presentation) of the complaint before them.

My final decision

For the reasons given in the PD (and as quoted above), I do not uphold Mr I's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 19 June 2024.

Roy Kuku
Ombudsman