DRN-3672447

The complaint

Ms B complains that Plutusgroup Ltd, now trading as Gate Capital Group Ltd ('Gate'), gave her unsuitable advice to switch her existing personal pension to a Self-Invested Personal Pension ('SIPP') and invest his funds through Organic, a Discretionary Fund Manager ('DFM'). For ease of reading I'll refer to Gate throughout my decision.

What happened

Ms B says she was cold-called and offered a review of her pension. I can see that Ms B's existing pension provider (Royal London) provided details of her pension to a different financial adviser in May 2016. They were responding to a request from this firm with written authority from Ms B.

A SIPP application was completed on 21 August 2016 with Gate recorded as the financial adviser. The Organic application was completed the same day.

A fact find and risk assessment were completed a month later in September 2016. Ms B was assessed with a low to medium attitude to risk and a small capacity for loss.

On 11 November 2016 Gate issued an advice report, in which they recommended Ms B to transfer her existing personal pension worth around £27,000 to a SIPP and invest through Organic in their conservative (also referred to as moderate) model portfolio. The funds reached Ms B's SIPP the same day.

In 2018, Gate had done a due diligence review and had concerns about Organic and their investment strategy. They contacted Ms B in April 2018 to review her pension as part of their ongoing advice. In July 2018 they wrote to Ms B by registered post and marked as urgent. They said they had partially completed their advice process but they needed to finish it and hadn't heard from Ms B. They urged her to get in touch to discuss alternative investment strategies due to their concerns about Organic. She was warned that if Gate didn't hear from her by the end of July they would end the client relationship and not be liable for the performance of her investments any longer.

Ms B got in touch and Gate arranged a review with Ms B in late July. They then sent her their recommendation report to switch pensions on 31 July 2018. Gate provided call recordings to show they called Ms B several times in August (the last time on 30 August) and asked for urgent call backs to discuss the report. They said Ms B didn't return their calls or got in touch otherwise.

On 30 October 2018, Gate sent her another letter explaining that due to her lack of response, they would not provide her with an ongoing service anymore and would take no further liability or accept any future claims on performance or liquidity in relation to Ms B's investments.

Around the same time some funds in Ms B's portfolio were suspended by the fund manager as valuation of its assets became difficult.

Ms B complained in 2020 through a representative about the advice she received. Gate rejected the complaint and said the advice had been suitable. The SIPP allowed Ms B to take flexible benefits. They also had done extensive due diligence on Organic before they recommended them as a DFM and Organic had misled them. Organic did not act in accordance with their terms, but that was not foreseeable at the time of the advice. And when they became concerned about Organic's actions they tried to change Ms B's investments. If she had followed Gate's advice in 2018 some if not all losses could have been avoided.

One of our investigators upheld Ms B's complaint. She was concerned that a fact find was completed and a recommendation issued *after* application forms for the SIPP and DFM had already been signed. She said this suggested the outcome had been predetermined. She also didn't think any concrete objectives were identified for Ms B. The investigator thought Ms B's existing pension was cheaper and invested in line with her attitude to risk. She did not see that Ms B had a need to change her pension. She asked Gate to compensate Ms B for any losses she incurred.

As no agreement could be reached the complaint was passed to me for a decision. I've previously issued a provisional decision explaining that I was intending to uphold the complaint. However, I was looking to award slightly different compensation taking into account that I didn't think it was fair to hold Gate responsible for all investment losses Ms B suffered.

Ms B's representatives said they had no further comments. Gate did not respond. As I wasn't provided with any further comments or information by either party, I see no reason to depart from my findings in my provisional decision which are set out again below.

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 agree with the investigator that I can't see any persuasive reason why it was in Ms B's best interest to change her pension.

I appreciate she was invested in a with-profits fund and bonuses in the previous four years had been zero and before that had been relatively low. However, it was a low-cost plan, provided a minimum assured sum and it was invested in line with Ms B's attitude to risk.

One of the reasons for moving to a SIPP was that Ms B's existing plan did not allow her to take her benefits flexibly. However, she was 53 at the time and was looking to retire at 67 at the earliest. In was recorded that she hadn't given much thought to retirement and might work beyond state retirement age if her health permitted this. And she was still two years away from being able to take any benefits at all. So there was no need to transfer her plan in 2016. And once she did have more concrete plans of what she wanted from her retirement, she could have transferred at that point. Royal London did explain in their plan information that they offered customers to transfer their funds into a more flexible arrangement, so Ms B could have done that without or without advice if and when she had a concrete need to access the funds this way.

A stakeholder pension was considered for Ms B but discounted as it did not have sufficient fund choice. However, I'm not persuaded by the argument that Ms B liked the idea of a broader range of investments or that the ability to make investment decisions was something she needed. Ms B was an inexperienced investor with a relatively low attitude to risk, so I don't think she needed this variety.

Ms B's plan value was relatively low and given her low attitude to risk and capacity for loss, the possibility for growth would have been limited. So keeping the charges low would have been a key consideration in my view.

Gate confirmed in the suitability report that the reduction in yield due to charges was 0.4% in the Royal London plan compared to 1.1% in the SIPP (as per the SIPP pre-retirement illustration issued in September 2016). So transferring the pension to a SIPP and using a DFM made the arrangement nearly three times more expensive and this is before the ongoing adviser charges of 0.5% were factored in.

So overall reduction in yield would have been at least 1.6%. I say at least because whilst the overall DFM costs were set out to be 0.75% in the suitability report, in response to Gate's due diligence queries Organic did say that *'We will endeavour to keep TER's* [total expense ratios] *as low as possible; realistically below 0.8%, which includes Organic's management charges but could be as high as 1.00%'*. So I think there was a realistic possibility Organic's charges could be as high as 1%, leading to a total yield reduction of up to 1.85%.

I don't see any good reason why Ms B had to go into such an expensive arrangement. I appreciate that for the additional charges she would have benefitted from an ongoing adviser service and an active fund management as well as being in a flexible plan. However, I don't think she had the need for a DFM in addition to an ongoing adviser or the need for a large range of funds. I think keeping the costs lower would have been more important in her situation. I also haven't seen any persuasive evidence that Ms B would likely outperform her existing plan despite these high charges.

She was in a with-profits fund that matched her attitude to risk. I understand Gate was a restricted adviser so couldn't advise her on the whole of the market. But I think their recommended arrangement was unsuitable mainly due to its higher costs and unnecessary layers and so this shouldn't have been recommended.

Like the investigator, I think with suitable advice Ms B would have likely stayed in her Royal London plan.

It's not quite clear how Ms B ended up receiving advice from Gate in summer 2016. Gate say she had spoken to another adviser first (which is supported by the fact Royal London sent information to them in May 2016), but it's clear that when the SIPP application was completed in August, Gate was already involved -or expected to be involved- as they were the firm recorded as the financial adviser. So I agree with the investigator it's odd that applications were completed before the fact find. And SIPP statements show that the transfer payment was received the same day the recommendation report was issued. The advice process here is not quite transparent and it seems Ms B transferred before having received a written recommendation. So I don't know what Ms B was told about the switch and when.

In any event, Gate confirmed they did the fact find in September and so they definitely were involved at that point. Gate said Ms B essentially had already decided what to do when she came to Gate**.**

However, even if this was the case, Gate wasn't there to simply transact what she wanted to do but advise her properly. Based on what I've seen about Ms B's lack of investment experience and her general circumstances I think it's likely she would have listened to Gate if they had recommended her not to switch and explained why.

The investigator held Gate responsible for all Ms B's losses as in her view she should have

never switched to a SIPP and invested through Organic and so her losses could have been prevented if she had been given suitable advice and stayed with Royal London. However, in the particular circumstances of this complaint I don't think this is fair and reasonable.

We know from other cases this service has dealt with that the Gate adviser's due diligence into Organic had been based on specific questions they put to them between May and August 2016 – rather than simply accepting Organic's marketing material without question. The adviser went on to check out the pedigree of those running the business, and its external compliance consultants – recording its overall conclusions in a summary document which it has provided to the Financial Ombudsman Service.

In August 2016 Organic provided assurances to Gate that the model portfolios wouldn't be invested in *"non-standard assets"* and that they would not be managing any funds directly. Based on what I've seen I think the extent of Gate's due diligence enquiries here was reasonable and I don't consider they acted negligently in this respect. I'm satisfied the due diligence Gate had carried out in mid-2016 would have provided reasonable assurance that the portfolio would be managed appropriately. And based on the assets Ms B's portfolio was meant to hold, the recommended portfolio seems a reasonable match for Ms B's attitude to risk.

The problem is Organic diverged from what they had told Gate and invested into higher risk investments, manged their own funds and charged higher fees. Gate started having concerns about Organic after doing a due diligence review and wrote to their customers including Ms B in 2018. At this point, funds were still liquid and from what I've seen the majority of losses and liquidity issued happened from October 2018 onwards.

Based on the evidence provided, I'm satisfied that Gate reached out to Ms B on multiple occasions and tried to switch her away from Organic. And they did try and call her several times after they had done their review in August 2018 to implement another switch away from Organic. If Ms B had responded and followed Gate's advice, she would have likely been able to avoid further losses and would have not ended up in illiquid funds.

In my view Gate tried to act in their clients' best interest when they noticed Organic was not acting within their terms and going against what they had told Gate they would do during their due diligence communications. They informed Ms B about their concerns and she didn't respond despite being chased and being informed that it was important and urgent she would get back in touch.

Gate warned her in July 2018 that if she didn't respond to them, they would end the adviser relationship and told her they wouldn't take liability for the investments going forward. And this is what they eventually did when she didn't respond in August after having received Gate's advice to switch to a different SIPP with different investments.

They ended the adviser relationship from 1 August 2018. As I said above I think the advice Gate gave wasn't suitable essentially due to charges. But I don't think it would be fair and reasonable to hold Gate responsible for any investment losses after 1 August 2018 which will be mainly due to Organic's mismanagement and Ms B didn't reasonably mitigate her losses when she was given the chance. The redress below takes this into account.

Putting things right

To compensate Ms B fairly Gate should:

- Compare the value of Ms B's SIPP at 1 August 2018 with the notional value of Ms B's Royal London plan on the same date. If the SIPP value is lower there's a loss and compensation is payable. If the SIPP value is higher, no compensation is payable.

  A notional value is the fairest comparator here, but if Royal London is unable to calculate a notional value, Gate will need to determine a fair value for Ms B's previous plan instead, using this benchmark:

  For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds.

  Ms B wanted growth with a small risk to her capital so I think this benchmark is fair. The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital. The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

  I consider that Ms B's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Ms B into that position. It does not mean that Ms B would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that likely reflects the sort of return Ms B could have obtained from investments in her existing plan.

- Any loss amount should be brought up to date from 1 August 2018 to the date of this final decision by applying the same benchmark as mentioned above. Again this is to reflect the kind of returns Ms B likely could have expected given her attitude to risk if she had reasonably invested the loss amount.

- Gate also recommended Ms B to make regular contributions of £60 per month into her pension which with tax relief was £75 per month. Ms B was not making any contributions into her Royal London plan at the time. I think suitable advice would have included paying contributions into her existing plan and I see no reason why she wouldn't have followed that advice.

  So when requesting the notional value from Royal London (or using the benchmark), monthly contributions of £60 plus tax relief should be factored in from 8 November 2016 (that's when she made her first contribution into the SIPP) until 1 August 2018. Equally if Ms B did withdraw any monies from her SIPP, these amounts should be deducted from the notional value calculation.

- If there is a loss, Gate should pay compensation into Ms B's pension plan, to increase its value by the amount of the compensation and any interest. Gate's payment should allow for the effect of charges and any available tax relief. Gate shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

  If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically,

25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the overall gross loss adequately reflects this.

- The compensation amount must where possible be paid to Ms B within 28 days of the date Gate receives notification of Ms B's acceptance of my final decision. Further interest must be added at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 28 days, that it takes Gate to pay Ms B.

  Income tax may be payable on any interest paid. If Gate consider that they are required by HM Revenue & Customs to deduct income tax from that interest, Gate should tell Ms B how much they've taken off. Gate should also give Ms B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

- Provide the details of the calculation to Ms B in a clear, simple format.

My final decision

I uphold this complaint and direct Gate Capital Group Ltd to pay Ms B any compensation as calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 27 September 2022.

Nina Walter
Ombudsman