DRN-5094109

The complaint

Mr N has different complaints, and different parties involved in his complaints.

In May 2015 his Financial Adviser ('FA') assisted him in opening a Self-Invested Personal Pension ('SIPP') with Brooklands Trustees Limited ('Brooklands'); the SIPP profile/product he invested his money in was called the '*Brooklands Active DFM SIPP*'; Brooklands had appointed Absolute Return Investment Advisers (ARIA) Limited as its Investment Manager ('IM') for the DFM SIPP, but this arrangement was terminated in April 2015; Brooklands went into administration in 2016, and its SIPP business passed to Heritage Pensions Limited ('Heritage'); Heritage undertook administration of Mr N's SIPP with assistance from a third-party – IVCM Services ('IVCM'), formerly known as Brooklands Pensions – to whom it outsourced some administrative duties; the SIPP was renamed the '*IVCM Heritage Active DFM* SIPP"; PSG SIPP Limited ('PSG') bought Heritage's SIPP business, minus past liabilities, in November 2021; Mr N switched the SIPP to a new provider in November 2023.

Mr N has pursued complaints about Brooklands and ARIA, based on his allegations that the former failed to properly discharge its due diligence obligations towards the investment of his SIPP and that the latter mismanaged his SIPP. His complaint about Brooklands was submitted to the Financial Services Compensation Scheme ('FSCS'), and in December 2021 the FSCS concluded that he does not have a valid claim. His complaint about ARIA was submitted to our service. In October 2023 an Ombudsman decided that we do not have jurisdiction to address the complaint because there was no customer relationship between him and ARIA, so he was/is not eligible to refer the complaint about ARIA.

His present complaint, about PSG, is mainly about two issues. He says –

- He learnt, from his complaint about ARIA, that his SIPP existed on an execution only basis, not on the actively managed DFM (or Discretionary Fund Management) basis he expected from the DFM SIPP he had invested his money in. As trustee and administrator of the SIPP, PSG was obliged to conduct due diligence to ensure the SIPP was set up correctly. This should have resulted in identifying that the DFM SIPP was devoid of a DFM service, and that instead it had an execution only basis. PSG failed to identify and disclose this. He has suffered a financial detriment (in the portfolio's performance) in connection with its failure. [issue 1]

- PSG mismanaged the transfer out of his SIPP to a new provider in 2023. [issue 2]

What happened

I issued a Provisional Decision (PD) for the complaint on 7 October 2024, and my provisional findings on issues 1 and 2 were as follows –

"*Issue 1*

I should make a number of things clear in my approach towards this issue. The first is that there is no finding whatsoever that PSG bears any responsibility for Mr N's SIPP prior to

when it undertook administration of the SIPP in November 2021. I will clarify other aspects of my approach as I progress through my provisional findings.

PSG stands as respondent to issue 1 only in as far as the issue relates to the period beginning in November 2021 (when it became Mr N's SIPP administrator) and ending in November 2023 (when the SIPP was transferred out to a new provider) – the 'period of responsibility'. The end point is somewhat self-explanatory, because its responsibilities as the SIPP's provider/administrator ended when the SIPP was moved to a new provider. For the sake of completeness, the basis for the start point is as I briefly explain next.

Transfers of pension and/or investment accounts between firms – initiated by firms, as opposed to those initiated by their clients – are not uncommon. The same applies to client book transfers in which a collection of clients' accounts are moved between firms. In these transfers the rights and responsibilities in the original contracts for the accounts need to be actively addressed. Certain legal and contractual aspects arise in this respect.

Firms can assign their ongoing rights in a contract. Those rights would usually be matched by ongoing obligations in the contract. However, assignments do not automatically capture the transfer of firms' past liabilities. If they intend to transfer such liabilities, a novation is needed. Novation requires consent across the three relevant parties – the transferor firm, the transferee firm and the client whose account is being transferred. In other words, the first has to agree to transfer its past liability to the second, the second has to agree to accept that liability and the client has to agree that the former's past responsibility towards him/her can be passed on to the latter. In the absence of such tripartite express agreement, novation would not have been properly executed and would not exist.

Mr N would know about and have proof of a novation(s) between his SIPP's providers over the years because, as I said above, his agreement would have been required and sought for it/them, so he would have evidence of that. That doesn't appear to be the case. There is no available evidence of a novation, of past liability for his SIPP, to PSG. Therefore, there is no basis on which PSG can be held to have undertaken that past liability.

The finding that flows naturally from the above is that PSG had nothing to do with – and has no responsibility for – the administration of the SIPP prior to its takeover.

Findings that arise naturally from the facts of the case are that, from the SIPP's inception to date, PSG had/has nothing to do with the advice Mr N received to set up the SIPP, nothing to do with any ongoing advisory and/or monitoring service applicable to the SIPP and nothing to do with the SIPP's management. It is undisputed, and a matter of fact, that its role was limited to that of trustee and administrator for the SIPP during the period of responsibility. It also follows that this role, alone, defined its responsibilities for the SIPP. I address the relevant part(s) of those responsibilities next.

The overarching rules relevant to PSG's role and responsibilities are mainly those in the regulator's Handbook.

The Handbook's Principles for Businesses exist to provide "a general statement of the fundamental obligations of firms under the regulatory system". Principle 2 requires that a firm conduct its business with due skill, care and diligence. Principle 3 requires that a firm take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Principle 6 requires that a firm pay due regard to the interests of its customers and treat them fairly, and this is complemented by the client's best interests rule (that is, a firm's obligation to uphold its client's best interests) as set out in the Conduct of Business Sourcebook ('COBS') section of the Handbook (at COBS 2).

There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – that confirms the Principles are ever present requirements firms must comply with.

Over the years, and with relevance to the present case, the regulator has also issued publications about SIPP providers' operations, including their due diligence responsibilities in the SIPPs they operate. Guidance for this was issued in 2009, and revised in 2013. There have also been regulatory letters to the CEOs of SIPP providers – the 'CEO letters' – on the same topic.

Key excerpts from the 2009 and 2013 guidance documents are as follows –

2009 Guidance

"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients." [my emphasis]

"We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients." [my emphasis]

"The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms …

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended." [my emphasis]*

2013 Guidance

*"**Management Information (MI)***

Principle 6 of the FCA's Principles for Businesses requires all firms to pay due regard to the interest of its customers and treat them fairly. SIPP operators are not responsible for the SIPP advice given by third parties such as financial advisers. We would expect SIPP operators to have procedures and controls in place that enable them to gather and analyse MI that will enable them to identify possible instances of financial crime and consumer

detriment.

Such instances should then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPP investments that are unsuited to their members."

*"**Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions."

In our service, we commonly see SIPP due diligence cases presented in relation to problems or issues with the underlying investment in a SIPP. Indeed, some parts of the aforementioned guidance documents and the CEO letters address this specific aspect of the provider's due diligence obligations. I recognise that the present case is about something different. It is not about a specific problematic underlying investment in Mr N's SIPP portfolio. Instead, it relates to the overall management of the SIPP and, specifically, to early notice that he says PSG should have given him, but did not, about the SIPP being unmanaged. Nevertheless, the same general due diligence obligations and approach apply.

The above sets out the context in which PSG's position in the complaint is being considered. I can understand the convictions in its arguments about responsibilities on Mr N's part and on the FA's part. However, those arguments (as they have been presented) and the theme running through them (that it neither advised nor managed the SIPP/SIPP portfolio) are of limited, if any, relevance to determining the complaint. No-one has alleged or found that it advised or managed the SIPP/SIPP portfolio.

I have noted the challenges and enquiries PSG has raised, especially in relation to the FA and his role in the matter. It is not difficult to see the logic behind those challenges and enquiries. I do not say or suggest that they are unreasonable questions. However, the point to note is that even if, for the sake of argument, historical failures on the FA's part and/or on Mr N's part are established, such findings do not dilute or remove the need to address PSG's due diligence responsibilities when it took over the SIPP. Those findings would mean the FA and/or Mr N was obliged to identify the true state of the SIPP earlier than November 2021, but failed to do so. However, such failure (if found) would mean that, as a matter of fact (if found), Mr N was unaware of that true state as of November 2021. Therefore, any aspect of PSG's due diligence obligations that would have corrected such unawareness would remain very relevant.

The much stronger challenge – which I address further below and which, in part, appears to have been what prompted the investigator's revised view – is about what, if anything, Mr N knew or probably knew, as a matter of fact, about the true state of the SIPP, and when. Then there is the question about what, if anything, would have happened if PSG identified and disclosed the true state of the SIPP when it took over the administration role in November 2021. I deal with these considerations later.

First, I must apply the aforementioned regulatory rules and guidance to establish whether (or not) PSG should have identified and disclosed to Mr N the true state of his SIPP in November 2021. On balance, I consider that it should have.

I acknowledge what it says about taking on almost 5,000 SIPP accounts from Heritage,

which many of them in distress and with poor records. Needless to say, I am not in a position to verify this, but I also do not consider that I need to. It is a plausible, or at least possible, scenario. More importantly, irrespective of the circumstances surrounding the transfer of those accounts, the Principles and client's best interests rule mentioned above continued to apply.

In other words, Mr N's best interests for his SIPP/SIPP portfolio could not be unreasonably compromised by any difficulties PSG faced in the client book transfer task. Principle 2 required that it approached the task with due skill, care and diligence and Principle 3 required that, in doing so, it took reasonable care to organise and control its affairs responsibly and effectively. Principle 6 required that, in conducting the client book transfer, PSG had to pay due regard to the interests of its customers and treat them fairly, so it would not have been fair treatment to Mr N – and it would not have been in his interest – for PSG to delay its due diligence on his SIPP because of its operational problems in handling the transfer.

PSG would have known about the size (and, possibly, the state) of the client book before undertaking it, about the due diligence responsibilities associated with each SIPP, and about how important it was, in the best interests of each SIPP holder, to discharge those responsibilities upon transfer. This also stood in the context of investments (including pension investments) being inherently time sensitive, so it was inevitable that its due diligence obligations had to be promptly discharged. It is not uncommon for this to happen at the point of transfer, such that, for example, the receiving firm determines what can and cannot be held in its SIPP and communicates to the SIPP holder (or the SIPP's adviser) any instruction/requirement to liquidate disallowed assets.

Overall, on balance and for the above reasons, I consider that PSG's due diligence obligations towards Mr N's SIPP were due to be discharged at the point it undertook administration of the SIPP.

The next consideration is whether (or not) those obligations included the identification and disclosure of the true state of the SIPP.

The investigator's findings about the SIPP and its portfolio are correct. The same applies to PSG's description of the SIPP in relation to the ARIA platform.

In a nutshell, the SIPP was invested, from the outset, in a model portfolio (the ATBIP), statements for the ATBIP confirm that the FA provided ongoing servicing for it, the ATBIP was provided by ARIA but the SIPP itself was never under a DFM arrangement, instead its ATBIP was held on ARIA's execution only platform. The effect was that the SIPP's holding of the ATBIP remained unchanged from its inception and up to PSG's period of responsibility.

PSG has questioned how it could have possibly known that there was a problem in how the SIPP had been set up. The answer exists in the due diligence it ought to have conducted, at the point of transfer, into verifying that the SIPP was what it was described to be.

I do not need to repeat all that I have quoted above from the regulator's guidance. Those provisions are sufficiently clear. They support the conclusion that, in the present case, a minimum outcome of discharging its due diligence obligations would have been for PSG to ensure that the incoming SIPP was as described. The name of the SIPP created an immediate benchmark for what its characteristics could reasonably be expected to be. At the point of transfer, it was the IVCM Heritage Active DFM SIPP. This depicted a SIPP that was under active discretionary fund management. Yet, as the investigator noted, a relatively simple analysis of the SIPP's quarterly statements – over the years and up to 2021 (the year of the transfer) – shows that no DFM fees/charges were ever applied to it.

Had it checked documentation for the SIPP (including these statements), with a view to verifying that the SIPP was as described, PSG would have identified this. Had it done that, it is inevitable that it would have questioned the conflict between a DFM SIPP and the absence of DFM fees/charges. The alternative would have been to accept such a concerning conflict and to do nothing, which defeats the purpose of conducting due diligence. Its enquiries would have led to disclosure of the true facts about the SIPP and to discharge of its due diligence obligation in this specific regard.

As the investigator said, another indicator was the absence of investment switch or trading activities in the SIPP. I have considered the quarterly statements from the SIPP's inception up to the point of its transfer to PSG. It remained invested in the same ATBIP throughout. Furthermore, but for some corporate event related transactions (which appear to have been automated, without anyone's manual involvement) and some transactions which appear to have been automated for the generation of cash in the portfolio (again, seemingly without anyone's manual involvement), there does not appear to have been any dealing or trading within the ATBIP. Had this also been identified by PSG – as it should have been, as part of its verification that the SIPP was as described – this would have been notice that nothing significant in the model portfolio had changed over the years. Therefore, overall, it would have appeared that neither the SIPP (as a whole) nor the portfolio it was invested in had ever been actively and discretionarily managed in the way that could reasonably be expected in a product called an 'Active DFM' SIPP.

On balance, and for the above reasons, I find that PSG would have identified and disclosed, at the point of transfer, the conflict between Mr N's SIPP's description and its true characteristics if, at the time, it had properly conducted due diligence to verify that the SIPP was as described. It goes without saying that it was in Mr N's best to establish that his pension was invested in a SIPP that was as described. The alternative of having a SIPP that was something other than its description was certainly against his interest. That was something PSG was required to identify and address, as part of its due diligence. It did not do that at the point of transfer – and did not do that until around a year later – so it did not uphold Mr N's best interests at the time. Or it unduly delayed in upholding his best interests in this respect by around a year. Either way, it committed a due diligence failing that potentially stood to cause him a financial detriment – in the form of an unmanaged SIPP that remained as such over the course of a year.

Having said the above, and having concluded that PSG should have – but failed to – conduct proper due diligence to verify the description of Mr N's SIPP at the point of transfer, two equally important considerations must also be addressed. I mentioned them earlier. They are – what, if anything, did Mr N know about the true state of his SIPP, and when?; and, what would have happened if PSG identified and disclosed the true state of the SIPP at the point of transfer? Until now, my findings have broadly shared some common ground with those expressed by the investigator. However, with regards to these two questions, my provisional findings stand apart.

The investigator found that PSG identified and disclosed the true state of the SIPP in November 2022, when it informed the FA about the execution only platform account. The implication being that Mr N would have been promptly informed by the FA, so his awareness from that point onwards triggered the responsibility upon him to mitigate, as the investigator explained.

However, there is evidence from his complaint against ARIA confirming that he knew about the true state of the SIPP earlier than November 2022. ARIA confirmed this information directly to him in its complaint response letter of 20 April 2022. The letter's contents include the following –

"We have now investigated your complaint received on 9th of March 2022.

The account was opened as an execution only account and was managed by your adviser …" [my emphasis]

"ARIA did not assess any appropriateness or suitability of investments bought or sold on this account.

Below is the summary of activities on your account:

Cash Receipt	*£185,812.70*
Initial Investment Date	*14-May-15*
Investment Strategy	*ATP Balanced*
Adviser Name …	
Initial Adviser Fee	*£12,746.75*
Adviser Ongoing Trail	*£6,123.43*
Trustee Fees	*£2,161.45*
Custodian Fees	*£3,674.11*
Admin Fees	*£2,449.40*
Current Investment Value	*£146,709.54*
3rd Party Fee Adjusted Value	*£173,864.68*
Monetary Performance	*-21.04%*
Investment Performance	*-6.43%"*

"2020-2021 were the worst years since its inception for the All-Terrain Portfolio Strategy as we saw one of the largest divergences between economic performance and market performance however following changes made towards the back end of last year we have begun to see a sharp pick up in a strategy, although there is still more work to do."

The letter then gives information about how the portfolio's strategy was applied historically, how it was applied between 2020 and 2021 and the problems faced during that period. Towards its conclusion, the letter says –

"With regards to the investment performance of ARIA SICAV funds, ARIA Investment Platform acted on an execution only basis and not as an Investment Manager as stipulated in the complaint letter."

To provide context, Mr N's complaint to ARIA of 9 March 2022 includes the following submissions –

"I am writing this email to raise a serious formal complaint to ARIA Capital Management over the management of the pension pot I have invested with your company."

"In 2014, I transferred my … pension, which amounted to approximately £187,000, and invested the money through a Brooklands SIPP in your All-Terrain Portfolio discretionary portfolio service."

"In the early years of investing with ARIA, I raised my concerns on a number of occasions, and we held conference calls where I voiced my concerns … about the performance of my pension. From the start, it seemed that every time I received a statement, the value of my pension pot was dropping.

I was assured by [ARIA] who was supposed to be managing my portfolio, that the situation at that time was just a "temporary glitch", and that road ahead looked very positive and I

should expect to see positive returns, exactly as promised at the outset.

Rather than switch out to a different fund manager, [ARIA] convinced me to stay with ARIA and remain confident that he would turn things around for me."

"… I am out of pocket by over £100,000, and I have already retired, so I have absolutely no hope of making this money up in the future."

"I understand that there could be big swings investment values, if my money was managed with a different strategy, but the strategy ARIA was meant to be following with my money was one of capital preservation and modest returns above deposit rates – exactly the type of strategy I required for my retirement pot as I was in my final years of employment."

"As such, these losses can only be put down the fact that, either;

1. ARIA misrepresented their portfolio strategy to me in the first place, or,
2. ARIA changed their strategy without informing me and without my consent, subjecting my retirement pot to extra risk, or,
3. ARIA did not follow their strategy and risk management process and were therefore negligent in their actions.

Either way, I have suffered a serious financial loss and I need to be compensated, otherwise I risk running out of money in my retirement, which would result in serious financial hardship."

The above exchange shows that Mr N received meaningful and sufficient information about the true state of his SIPP and its portfolio – information directly from ARIA – in April 2022. That meant PSG's disclosure to the FA later in November that year was nothing new to him and, it should be said, its disclosure actually conveyed much less than he had already learned from ARIA.

Therefore, the period for redress, if any, identified by the investigator would be reduced even further to the five months (approximately) between November 2021 (when PSG took over) to April 2022 (when Mr N became aware of the true state of his SIPP). I appreciate that no disclosure was made by PSG in April 2022, but that is not the point. We are not the industry regulator and my remit does not extend to punishing PSG for its delay in verifying the SIPP's description. The task before me is to determine Mr N's claim that the delay led to his late awareness of the SIPP's true characteristics and, for that reason, caused him a financial detriment.

I cannot reasonably find that any such detriment extended beyond April 2022 because he was fully aware of the SIPP's true characteristics in this month and he had the discretion, opportunity and responsibility to mitigate his and the SIPP's position from that point onwards.

Overall, on balance and for the reasons I address next, I also cannot reasonably find that any redress for financial loss is due to Mr N.

I have reached this provisional conclusion because I do not consider that it would have made a difference to his position or to the SIPP's position if, around five months earlier, PSG had disclosed information about the SIPP and its execution only platform account at the point of transfer.

Mr N had awareness of the SIPP's true status in April 2022, and the opportunity to do something about it – that is, the opportunity to do something about a SIPP that had held the same unchanged portfolio for around 7 years. He also had the ongoing relationship with the

FA at the time, so he had professional assistance from that source. Despite these circumstances, no changes, or mitigation of any form, appears to have been applied to the SIPP at the time.

His awareness remained and continued thereafter. Then, in November 2022, PSG's disclosure to the FA would have had the effect of reminding Mr N of the same state of affairs. Yet no changes, or mitigation of any form, appears to have been applied to the SIPP at the time. No significant change was applied until around eight months later when, in July 2023, he instructed the SIPP provider switch. In other words, Mr N retained the SIPP and its portfolio as they were, and knowing what they truly were, for around 15 months, before deciding to take action to address them.

In the above context, I do not find it plausible that disclosure of the true state of the SIPP five months earlier than when he learnt about it would have made a difference to the entire case. He took no action in April and November 2022 and did not take action until July 2023, so I do not find it probable that he would have taken any action in November 2021. This defeats the idea that he has suffered a financial detriment that could have been avoided if he knew the true state of the SIPP in November 2021. Instead, it supports the conclusion that, on balance, even if he knew the true state of the SIPP in November 2021 he would have changed nothing within it.

It is not quite clear why he took no steps to mitigate his and the SIPP's positions, until July 2023. This was the subject of an exchange(s) between him and the investigator, in which he (Mr N) said he had delayed the transfer-out of the SIPP pending conclusion of his complaint against ARIA. However, as the investigator noted, mitigation actions short of a transfer-out of the SIPP – such as rebalancing its portfolio and conducting fund switches – were available to him throughout, yet none was taken.

Furthermore, it is also noteworthy that the 5 October 2023 Ombudsman's decision on our jurisdiction in the ARIA complaint – confirming we have no jurisdiction – essentially concluded that case, but Mr N instructed the transfer-out around two months earlier, in July 2023. This does not support the notion that he awaited a conclusion to that complaint before he embarked on a transfer-out of the SIPP.

An additional finding on this relates to what Mr N could have known before April 2022 and even before November 2021. As stated in his ARIA complaint, he had many discussions with ARIA about the ATBIP and its performance over time. He has referred to assurances ARIA gave him and to those assurances stopping him from switching to a different fund manager. He said something similar in his complaint to PSG. This depicts a notable level of ongoing monitoring of the ATBIP by Mr N, his direct involvement in discussions with ARIA about its performance and his consideration of appointing a different fund manager in response to the portfolio's poor performance.

In this context, it would appear either somewhat inconceivable or, at least, odd that over time and over the course of these discussions with ARIA about the ATBIP's ongoing performance he would not have known of, or been told about, or learnt about the contents of the SIPP over time, or the absence of changes within the ATBIP over time, or the absence of a DFM service for the SIPP, or the execution only ARIA platform. For this reason, I consider it possible, if not probable, that Mr N had some insight, if not full insight, into the true state of his SIPP even before its transfer to PSG in November 2021.

The above also serves as evidence of his awareness of the need to mitigate. He did not do so at the relevant times mentioned in his ARIA complaint because he says ARIA's assurances persuaded him not to. It is possible, if not probable, that those assurances might explain why he did not mitigate between 2022 and 2023, as I have described above, and

that they might also serve as grounds why he would probably not have taken any steps in the SIPP in November 2021.

Overall, on balance and for all the above reasons, I provisionally uphold issue 1, but I do not find grounds to award any redress for Mr N's claim of financial loss.

For the same reasons, I consider that the trouble and inconvenience he was caused by PSG's delayed due diligence on his SIPP would have been relatively minimal. Given that the £250 awarded by the investigator is towards the lower end of our range for such awards and as I consider that the award also adequately covers the effect on him of PSG's delay in reacting to the pension switch instruction in issue 2 (as I explain in the next section), I agree that it is fair compensation for him. If my findings in the final decision remain as they are in this PD, the only award I will be making for issues 1 and 2 will be for the payment of £250 to Mr N for the trouble and inconvenience caused to him.

Issue 2

My conclusion on this issue is the same as that expressed by the investigator, for broadly the same reasons he gave. Overall and on balance, I am not persuaded to uphold issue 2.

The investigator's descriptions of the TRIG Framework, of its step-by-step standard for pension account transfers, of the three working days allowed for each of a firm's 'steps' in the transfer process and for the allowance that should be made for legitimate stop the clock events, are correct.

The Framework provides for an end-to-end standard where there are only two counterparties in the transfer process and where assets are held in cash. This standard has the expectation that such transfers, from start to finish, should be completed within 10 to 15 working days, depending on the type of pension. However, the Framework also recognises that for more complex transfers where there are multiple parties involved, there needs to be allowance for more time and for each party in the process to be accountable for the step(s) it was responsible for, hence application of the step-by-step standard in such circumstances.

The switch Mr N instructed was the type to which the step-by-step standard would apply. It involved PSG, the new provider, ARIA, the FA and, as is evident from the communications and requirements within the process, Mr N himself. Each (with the FA sometimes acting on behalf of Mr N) had their respective steps to complete in the process. Furthermore, the SIPP was to be liquidated prior to being transferred to the new provider, so it was not a matter of simply transferring pre-existing cash.

As the investigator noted, PSG was late in reacting to the 2023 pension switch instruction from the FA. It had to be chased by the FA and, separately, Mr N before it responded, on 8 August, to the 28 July instruction. That should not have been the case. As I said in concluding the previous section, I am satisfied that the £250 trouble and inconvenience award adequately extends to covering the effect on Mr N of this delayed reaction by PSG, so I do not find any further in this respect. The formal transfer process had not begun at this point. In my view, despite the significance of the point at which PSG issued the transfer-out pack, the process began in earnest when the new provider's formal transfer request was received. That signalled the new provider's engagement in the process, and confirmation that the process was afoot. Both happened after 8 August, so I do not consider that the step-by-step standard applied at the point of PSG's delayed reaction.

The transfer-out pack was issued on 11 August and the new provider submitted its transfer request on 30 August. Keeping in the context of the step-by-step standard and the notion that each party was responsible for its own steps, I have focused mainly on the steps taken

by and related to PSG.

Mr N was eager to have the ARIA account closed and the transfer promptly completed. In the first half of September there was correspondence between him and PSG about the steps it said had to be completed before either could happen. By 12 September it chased the new provider for information about its scheme's HMRC status, and it mentioned that it was still awaiting return of the completed and signed transfer discharge forms sent to Mr N. On 13 September it instructed ARIA to close the SIPP account. On the following day ARIA confirmed the SIPP was being liquidated. On 27 September PSG received the completed discharge form from Mr N, and on the following day it chased the new provider for outstanding receiving scheme information and made a request to Mr N for proof of identity relevant to its Anti-Money Laundering ('AML') checks.

On 6 October PSG received transfer out forms from the new provider and it confirmed, to Mr N, receipt of information about his change of address. This was followed by complaints from him, on 8 and 13 October, about delays he considered PSG were causing in the process. On 13 October ARIA confirmed the assets had been liquidated and that the proceeds should be remitted in around two to three days. Between 16 and 18 October PSG, the new provider and Mr N engaged in addressing compliance and due diligence related matters. Then there appears to be a notable gap up to 26 October when PSG sought Mr N's consent to proceed with the next step in the process. He replied on the next day and expressed his dissatisfaction with PSG delaying the process and raising unnecessary or previously addressed points. On 2 November, PSG instructed payment of funds to the new provider.

Other than the gap between 18 and 26 October, the rest of the process appears to have been pursued, by PSG, broadly in line with the step-by-step standard, in terms of the three working days per step and stop the clock provisions. The latter would have been applicable to some of the compliance, due diligence and AML related tasks in the process, which whilst not to be unduly delayed were not to be unduly rushed. I note that the gap I have mentioned happened after correspondence related to compliance and due diligence, so it would appear that at least some, if not all, of the gap period was likely used by PSG, in a stop the clock context, to consider and administer all the information it had received by then. I can understand Mr N's response to the request for consent on 26 October. Given that his eagerness to complete the process quickly had been openly declared and well known to PSG throughout, I can see how he could have been frustrated by what he possibly considered to be a time wasting request for an obvious and implicit consent. However, the request appears to have been part of due process, and in any case, his SIPP's funds were transferred out shortly thereafter on 2 November.

Overall, on balance and for the above reasons, I do not find that PSG caused an undue and meaningful delay to the transfer-out process."

Both parties were invited to comment on the PD.

PSG accepted the PD and confirmed it had no further submissions to make.

Mr N strongly disagreed with the PD. In the main, he said –

- I was wrong to suggest that he deliberately undermined his own pension fund.

- It is unclear to him why his awareness of the state of the SIPP, and the timing of such awareness, is being questioned when it has already been established that PSG knew of the state of the SIPP in November 2022 but did nothing about it.

- At the time of receiving ARIA's complaint response he and his FA believed it related to a different, and small, execution only account he held with the firm, which he "… *used to purchase shares and was in no way linked to the SIPP arrangement*". He thought there was a mix-up on ARIA's part so he checked his SIPP statement and retained the view that ARIA was mistaken, because the statement (up to March 2022) continued to describe the SIPP as the Active DFM SIPP.

- It does not make sense to suggest that he previously knew the SIPP account was on an execution only basis. If that had been the case he would not have complained to ARIA about the SIPP's performance.

  [In this respect, Mr N also referred to his FA's attempts to get to bottom of what was happening in the management of the SIPP. He asserted that the outcomes of that pursuit (and of his complaints) show that PSG has been misleading about what it knew and that it had concealed information from him, and he said our service should put more weight on these elements and uphold his complaint for these reasons.]

- In response to the following statement in the PD – "*Furthermore, it is also noteworthy that the 5 October 2023 Ombudsman's decision on our jurisdiction in the ARIA complaint – confirming we have no jurisdiction – essentially concluded that case, but Mr N instructed the transfer-out around two months earlier, in July 2023. This does not support the notion that he awaited a conclusion to that complaint before he embarked on a transfer-out of the SIPP*" – it should be noted that the timing of his transfer-out instruction resulted from guidance from our service, on 21 July 2023, with regards to the ARIA complaint. He spoke to the investigator for that complaint on this date to discuss the investigator's view on our jurisdiction and his referral of the matter to an Ombudsman. He was advised by the investigator that he did not need to await the Ombudsman's decision before transferring the SIPP. He followed this guidance and instructed the transfer in the same month, ahead of the Ombudsman's October 2023 decision.

- PSG failed to meet its own standards in responding to his complaint. It failed to act on his behalf in relation to ARIA, and it unduly delayed the transfer-out that he instructed.

- "*The Ombudsman also questioned whether I could have acted more quickly. It's important to put this into context. When I had discussions with ARIA, as referenced in the preliminary decision, there were only small annual losses to my pension. Moving my pension at this stage seemed risky, as it would have meant realizing those losses, especially when ARIA reassured me that things would turn around. However, the situation changed drastically after PSG took over trusteeship.*"

  "*What I fail to understand is why, despite complaints to both ARIA and PSG, and two Ombudsman investigations, I only discovered the true status of my SIPP much later and only through my advisor and myself actively trying to find out. It is confusing and irrelevant to focus on when I discovered this information, rather than why none of the companies involved—who had control and trusteeship of my pension—failed to inform me beforehand that my SIPP would change to an execution-only basis.*"

The case was then returned to me for a 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.

I have reviewed Mr N's complaint and the PD in light of his responses to the PD. Having done so, I have not been persuaded to depart from the findings and conclusions in the PD. I retain those findings and conclusions (as quoted above), and I incorporate them into this decision.

It might be worth repeating that Mr N's complaint about issue 1 is upheld. The PD addressed the merits of issue 1 in detail and gave reasons for the conclusions reached. Those conclusions included the following –

"*On balance, and for the above reasons, I find that PSG would have identified and disclosed, at the point of transfer, the conflict between Mr N's SIPP's description and its true characteristics if, at the time, it had properly conducted due diligence to verify that the SIPP was as described. It goes without saying that it was in Mr N's best to establish that his pension was invested in a SIPP that was as described. The alternative of having a SIPP that was something other than its description was certainly against his interest. That was something PSG was required to identify and address, as part of its due diligence. It did not do that at the point of transfer – and did not do that until around a year later – so it did not uphold Mr N's best interests at the time. Or it unduly delayed in upholding his best interests in this respect by around a year. Either way, it committed a due diligence failing that potentially stood to cause him a financial detriment – in the form of an unmanaged SIPP that remained as such over the course of a year.*"

Given that merit in issue 1 has been upheld in his favour, and given that I retain that conclusion in this decision, Mr N's comments on the PD in this respect do not make a difference, and need not be addressed. Issue 1, in terms of merit, is already upheld.

It might also be worth repeating that the present complaint is only about PSG. Mr N says there should be focus on all the companies involved in his pension who failed to inform him about the execution only account. He is aware that the present complaint is only about PSG, that the complaint's remit and scope reflects this and that, as explained in the PD, PSG has no responsibility for anything related to his SIPP prior to it taking over administration of the SIPP in November 2021. Therefore, the outcome of this complaint can only relate to PSG.

Mr N appears to disagree with the PD's conclusion on issue 2, and he maintains that PSG unduly delayed execution of his 2023 transfer-out instruction. The PD gave detailed treatment to this issue too. The reasons for which I concluded that "*… I do not find that PSG caused an undue and meaningful delay to the transfer-out process*" are as set out in the PD and as quoted above. I reached the conclusion having taken into account all the relevant facts, evidence and submissions available to me when I produced the PD. I do not consider that Mr N has presented anything new on issue 2 that I did not previously take into account. Therefore, I do not find cause to alter my findings and conclusions on issue 2.

Overall, with regards to issues 1 and 2, and for the reasons given in the PD, I remain satisfied with the finding that PSG should pay Mr N £250 for the trouble and inconvenience caused to him. In this respect, I also do not consider that he has presented anything new to cause me to award something different.

The problem for Mr N, and for his claim in issue 1, is that, for the detailed reasons given in the PD, I have not found grounds to award him redress for financial loss. Those reasons are as quoted above, so I will not repeat them. I address his main comments, on the PD's treatment of this aspect of his case, as follows –

- I do not consider that the PD said or suggested he 'deliberately undermined' his

SIPP. The PD referred to facts pertaining to his inaction in mitigating the SIPP's position, which continued until his transfer-out instruction in July 2023. The PD also said – "*It is not quite clear why he took no steps to mitigate his and the SIPP's positions, until July 2023*". The facts on this are undisputed.

- The issue being addressed was, and remains, about mitigating the state of the SIPP and its performance. The consideration is about Mr N's claim for redress for financial loss, so the requirement upon him is to show that but for PSG's November 2021 due diligence failing, he would have taken steps to mitigate the state of the SIPP (and its performance) earlier than he did. In other words, his claim is essentially that PSG is responsible for his financial loss because it's due diligence failing delayed his awareness of the need to mitigate.

- The PD's conclusion was that Mr N had awareness of this need – and opportunities to address it – much earlier than July 2023. Awareness and opportunities in April and November 2022, and, it appears, in some of the years before November 2021. He took no action to mitigate over these periods. Therefore, PSG's due diligence failing in November 2023 made no difference to the state of his SIPP, to its performance and to his ability to mitigate the SIPP's performance. Overall and on balance, I do not consider that his comments on the PD convey anything that defeats this conclusion.

- I do not accept the argument, or suggestion, that Mr N was confused about whether (or not) ARIA's 20 April 2022 complaint response related to his SIPP. Quotes from that response and from the complaint (from Mr N) that the response addressed can be seen above. His 9 March 2022 complaint to ARIA made it clear he was complaining about the performance of his SIPP. ARIA's response made it clear that it was addressing the same complaint (of 9 March 2022) and the same SIPP (including references to information about its value and its other characteristics). It appears inconceivable that ARIA was mistaken about the account it was treating in the response. If, as he says, this is what Mr N considered at the time, I have not seen evidence that he corrected, or attempted to correct, ARIA – as I would reasonably expect him to have done if he thought it was addressing the wrong account. Even if he did, the main point is I disagree that he had cause to be confused by ARIA's complaint response. I remain satisfied that ARIA's 20 April 2022 complaint response informed Mr N about the execution only account related to his SIPP.

- With regards to Mr N's wider/overall awareness, I explained in the PD that – "… *it would appear either somewhat inconceivable or, at least, odd that over time and over the course of these discussions with ARIA about the ATBIP's ongoing performance he would not have known of, or been told about, or learnt about the contents of the SIPP over time, or the absence of changes within the ATBIP over time, or the absence of a DFM service for the SIPP, or the execution only ARIA platform*".

- I have noted Mr N's explanation of the reason why he instructed the transfer-out of the SIPP in July 2023 prior to the Ombudsman's decision on the ARIA case in October that year. The finding about his inaction to mitigate – until July 2023 – is unaffected by this explanation, and it is this finding that is key. There appears to have been no reasonable reason for him to delay mitigation up to 2023. He complained to ARIA about the SIPP''s performance in March 2022 and in that complaint he refers to having had concerns over years in the past, so there appears to have been cause to mitigate within those historical concerns. As I said in the PD, "… *mitigation actions short of a transfer-out of the SIPP – such as rebalancing its portfolio and conducting fund switches – were available to him throughout, yet none was taken*".

- He says the historical concerns were about small annual losses and that it would not have been sensible for him to transfer his pension at the time. However, his complaint to ARIA refers to concerns about ongoing and consistent losses of value ("*it seemed that every time I received a statement, the value of my pension pot was dropping*) and refers to him having to be persuaded by ARIA not to 'switch out' in response ("*Rather than switch out to a different fund manager, [ARIA] convinced me to stay with ARIA and remain confident that he would turn things around for me*"). Overall and on balance, I do not consider that Mr N's previous position on the state of his SIPP at the time is the same as what he now expresses.

Overall, on balance and for the reasons given above, and in the PD, I do not uphold Mr N's claim for redress for financial loss.

With regards to his comments about PSG's complaint handling, similar comments were made before the PD and I said the following (in the PD) –

"*Complaint Handling*

Based on the rules for our jurisdiction, I can determine complaints about regulated activities, but complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity.

Sometimes a complaint to a firm and its alleged mishandling of it might be part of the substantive case. If so, addressing the firm's complaint handling might then be necessary, in determining the overall complaint. However, Mr N's complaint is not that type of case. Issue 1 mainly happened in 2021, over 18 months before his June 2023 complaint, so PSG's complaint handling was not a part of issue 1. As stated above, he complained during the events in issue 2. However, his correspondence with PSG shows that the complaints and the ongoing transfer-out process were separated, and the former had no impact on the latter, so I do not find that PSG's complaint handling is a part of the substantive case for issue 2.

For the above reasons, any dissatisfaction Mr N has about PSG's complaint handling is an isolated issue, and I do not have jurisdiction to address it." [my emphasis]

I retain this finding, so the last sentence quoted and emphasised above applies.

Putting things right

To recap, I said the following in the PD about the trouble and inconvenience award to Mr N – "… *I consider that the trouble and inconvenience he was caused by PSG's delayed due diligence on his SIPP would have been relatively minimal. Given that the £250 awarded by the investigator is towards the lower end of our range for such awards and as I consider that the award also adequately covers the effect on him of PSG's delay in reacting to the pension switch instruction in issue 2 (as I explain in the next section), I agree that it is fair compensation for him. If my findings in the final decision remain as they are in this PD, the only award I will be making for issues 1 and 2 will be for the payment of £250 to Mr N for the trouble and inconvenience caused to him.*

As I have explained in this decision, my findings and conclusions on Mr N's complaint remain as the were in the PD. I award him £250 for the trouble and inconvenience caused to him (as explained in the PD) and I order PSG to pay him this amount without undue delay.

My final decision

For the reasons given above and in the PD, I uphold the merits of Mr N's complaint in issue

1 but I do not uphold his claim for redress, and I order PSG SIPP Limited to pay him £250 for the trouble and inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 21 November 2024.

Roy Kuku
Ombudsman