

The complaint

As trustee of his Small Self-Administered Scheme (SSAS), Mr F complains that Organic Investment Management (OIM) an appointed representative of Gallium Fund Solutions Limited ('Gallium') unsuitably advised him to switch the discretionary managed part of his pension portfolio to a Gallium portfolio. This went on to lose money.

What happened

Mr F had a personal pension with ReAssure. He had turned 55 in January 2014. At that point he established a SSAS with Cantwell Grove on advice from a third party which is likely – from my wider knowledge of such cases – to have been an unregulated firm. In early 2014 he also completed pension transfer forms and returned these to ReAssure, but his transfer was delayed by due diligence checks ReAssure was carrying out into pension liberation. On 17 December 2014 £42,850 was transferred and the SSAS then appears to have paid 25% tax-free cash out to Mr F.

Another regulated firm (I'll refer to this as "B") provided advice to Mr F on an unregulated property development to include in his SSAS alongside its discretionary managed portfolio. In September 2014 Mr F instructed Cantwell Grove to invest £13,882 into a Cape Verde investment offered by The Resort Group and £14,099 into B's discretionary portfolio. These instructions weren't carried out until January 2015 and March 2015 respectively, with the rest left in the SSAS bank account.

Almost straight away, and it seems in common with other individuals at that time who had originally invested through B, Mr F signed a further instruction letter on 1 April 2015, requesting that Cantwell Grove invest the full proceeds from B's discretionary portfolio plus further cash from the SSAS bank account into Gallium's discretionary portfolio. The letter also said:

"Prior to issuing this letter I [Mr F] have obtained and considered investment advice from Organic however recognise that they have only considered my proposed investment with them."

OIM wrote to Mr F to confirm that £13,995 had been invested into the Gallium discretionary portfolio on 27 April 2015. Mr F had signed a handwritten application form with Avalon branding on 1 April (the unchanged details of which were subsequently copied across to a typed Gallium application form on the same date). This indicated that he wanted a 'medium low' risk investment approach (the second of four categories where the others were low, medium high and 'higher'), for an investment term of more than ten years. He expected to invest into the 'Organic Growth' model portfolio. The application form also noted:

"Gallium will act as the provider of the portfolio management service, on advice from Organic. As set out in the terms and conditions, we intend to appoint Organic to replace Gallium as discretionary portfolio manager once Organic becomes authorised and regulated by the FCA to carry out such activities."

The OIM terms and conditions document referenced above noted:

“Before completing an application form each client will be required to undergo a Risk Profile and Suitability Assessment where we assess each client's suitability for our different products... The portfolios may not be suitable for all investors and Organic will perform suitability checks on all clients prior to provision of management services.”

OIM ceased being an appointed representative of Gallium on 4 January 2016 when it became directly authorised by the FCA, and my understanding is that it then took over the management of the portfolio directly. The value of the OIM account as of April 2016 was £14,846, i.e. more than the initial investment. And I haven't been able to find any evidence that this value resulted from any additional transfers into the discretionary portfolio.

Cantwell Grove later wrote to investors on 11 December 2018, saying that OIM had lost its regulatory permissions to be able to manage the portfolio. It subsequently confirmed that another firm had been appointed by the FCA to oversee the OIM portfolio, and that firm would also be writing directly to investors to offer advice about its suitability as well.

OIM later went into liquidation and I'm aware that investors in *some* of OIM's portfolios suffered significant losses. From what I can see that may not necessarily apply to Mr F – the values of the portfolio seems to have continued to rise. Although being hit by COVID in 2020, it reached £17,710 in 2021. However my understanding is that Organic's demise has raised concerns amongst investors, including Mr F, about whether its portfolio was suitable for them in the first place – which began when it was managed by Gallium.

What our investigator concluded

On the merits of Mr F's complaint against Gallium, the investigator concluded that no evidence had been presented to back up his representative's assertions that Gallium was responsible for the transfer of Mr F's ceding pension to the SSAS or his decision to invest in The Resort Group, or B's original portfolio.

The alleged evidence of Gallium's involvement in recommending the switch from B's portfolio to a Gallium portfolio consisted of:

- The application form for the Gallium portfolio, which included a disclaimer stating that Mr F hadn't received any advice from OIM about the suitability of the portfolio.
- The separate letter (which seems to have been pre-prepared) signed by Mr F stating that he had obtained and considered investment advice from OIM.

The investigator also noted that unregulated introducers (one in particular appears in ReAssure's papers) had been active behind the scenes, particularly when the SSAS was originally taken out. That provided another possible reason for why Mr F was prompted to initiate a switch from B's portfolio to Gallium's. On balance, he wasn't satisfied the limited evidence available showed that OIM (or Gallium) contacted or advised Mr F to switch from one discretionary provider to the other.

Neither party responded to the investigator's view, but Mr F's representative has said that this was because it was still awaiting instructions from Mr F (who had, earlier this year, actively supplied it with further information). It wished the case to be passed to an ombudsman to protect his right to a final decision if he was dissatisfied.

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.

Mr F's representative has requested this decision without providing any further evidence or arguments for me to consider. Mr F seems to have provided all the paperwork he has and I would expect his representative, having established the nature of the background to this complaint when it took on Mr F as a client, to be able to respond to the investigator's view on his behalf. There appears to be no other evidence it can provide of Gallium's alleged involvement in recommending a 'switch' from B's portfolio than that which I've bulleted above.

There's a difference between on the one hand, recommending that Mr F switch discretionary providers, or even recommending that he use Gallium in particular – and on the other, checking that his SSAS was suitable for Gallium's services and that its funds would be invested appropriately. Gallium's terms and conditions indicated that it would be doing the latter, and I'm satisfied that was what it did in this case. Managing investments with discretion is not the same as advising the client to make those investments, which is why Gallium made disclaimers to Mr F that it was not providing advice in that sense.

The letter Mr F signed to say he'd taken advice from OIM is quite clearly pre-prepared, most likely by Cantwell Grove – or another party that was aware Mr F had to take advice on such investments in order to comply with the obligations on him as a SSAS trustee. That doesn't mean that Gallium is bound by the content of a letter it (or OIM) wasn't a party to. In any event, the letter doesn't say that OIM had advised Mr F to switch from B's portfolio to its own. It says that OIM “...*have only considered my proposed investment with them.*” So, I don't find this letter inconsistent with the wider evidence.

Turning to the checks Gallium's terms and conditions said it *would* carry out, I'm aware that Mr F said on his Gallium application form that he had no experience of trading personally, and had no significant assets other than his pension. However neither of those were a bar to Gallium accepting him, as a SSAS trustee, as a client for discretionary management services.

I think Gallium was entitled to take into account that Mr F had had a need within his pension scheme to make other investments alongside the property investment he held, so that he wasn't reliant on a single asset. Noting, of course, that Gallium wasn't responsible for the suitability of the Cape Verde investment. He was also expecting ongoing income from that investment which could be reinvested. Gallium would have been mindful that he was a trustee of an occupational pension scheme and had a responsibility to ensure it was invested.

The scheme provider, Cantwell Grove, was not itself authorised to provide regulated investments. Mr F needed to locate a provider for those investments within the scheme, and he was seeking to change from the provider he was already using. On balance, and given its lack of advisory role I couldn't fairly say it was for Gallium to assess Mr F's need for an occupational pension, or the background to why he'd established it in the first place.

I've gone on to consider whether the investments Gallium employed were consistent with the medium low risk mandate selected by Mr F. I'm aware that in both April 2015 and April 2016 (at around the time OIM took over directly), the portfolio was still invested 80% in exchange traded funds tracking European and US government bonds – although the precise make-up did vary over time. Again, given that these were snapshots of a portfolio that was changing in relation to market movements, I couldn't fairly say this was inconsistent with the broad risk level selected.

By October 2016, that same government bondholding had dropped to only 20% (with

another 8% in corporate bonds). The largest component was now shares in the US, UK, Europe, Asia and emerging markets – totalling about 50%, with the rest made up of cash and physical gold.

Clearly there were some market movements as a result of the UK 'Brexit' vote, and I do not know if OIM reassessed Mr F's attitude to risk when it took over the portfolio. But if Mr F considers that he would have achieved more growth than he did had these changes not been made, I haven't found grounds to conclude that Gallium was responsible for that. OIM was now managing the portfolio itself when these changes were made

My final decision

I do not uphold Mr F's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 July 2023.

Gideon Moore
Ombudsman