DRN-4225182

The complaint

Mrs S says PSG SIPP Limited ('PSG') did as follows – failed to inform her about a merger/transfer of funds held within her PSG Self-Invested Personal Pension ('SIPP') [issue 1]; and delayed in issuing last year's annual review pack for the SIPP [issue 2]. Her submissions also allege that PSG mishandled her complaint.

What happened

One of our investigators looked into the complaint and concluded that PSG had settled it sufficiently.

With regards to issue 1, the investigator made the following findings:

- In February 2022 Octopus Investments ('OI') wrote to PSG's administrators, IVCM, with notice about a proposed merger of a number of its funds. The specific recipient was an individual who had left IVCM since 2015, so the email was undeliverable.

- In September 2022 PSG received notice that the OI fund holdings in Mrs S' SIPP had been transferred to FundRock Partners/LGT ('FundRock'). However, it did not forward this notice to her at the time. Instead, she was notified on 14 October. She has expressed her dissatisfaction about being denied prior notice and being denied the opportunity to vote on the merger (and to exercise options in that respect).

- There is no evidence that PSG knew about the merger/transfer prior to the notice it received in September. The February notice was undeliverable and OI has confirmed that it sent multiple subsequent notices to PSG but each was returned as undeliverable. However, PSG ought to have shared the September notice with Mrs S upon receipt. It should not have delayed doing so until October.

- PSG/IVCM should also have updated the contact details held by OI. With regards to OI, it is equally reasonable to expect that upon receipt of the returned undeliverable emails the normal course of action should have been to contact the relevant firm in another way to obtain updated contact details and to give notice of the emails that had previously been sent (or to re-send those emails).

- Had she received prior notice about the merger/transfer Mrs S says she would have taken financial advice on what to do. There is no way of knowing what a financial adviser would have recommended to her, so it is difficult to say whether (or not) she has lost out on anything.

With regards to issue 2, the investigator found that PSG had offered and paid Mrs S a full refund of its *annual fees* (£570) in recognition of issuing the annual review pack late. Overall, he considered that this refund amounts to more than he would have awarded in total for the trouble and upset caused to Mrs S by issue 2 and by PSG's delay in sharing the September notice (in issue 1). On this basis, he did not consider that PSG should have to do any more.

Mrs S disagrees with this outcome. She considers that the refund settlement (which, she notes, was paid late) was only for issue 2, so separate redress for issue 1 remains outstanding. She has also referred to what she says are contradictions, misrepresentations and failings in PSG's subsequent attempt to introduce a new offer (refund of half the annual fees) to settle issue 2 despite having previously made the full refund offer and payment.

Mrs S does not believe PSG's assertion that it was unaware of the merger/transfer before the September notice, and she highlights that it would have received many communications from OI throughout the process. She also says that information about other PSG account holders with the same or similar holdings in the relevant funds suggests that they too were denied prior notice of the merger/transfer as she was, so PSG has failed them collectively.

The case was referred to an Ombudsman.

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.

Having done so, I have reached the same conclusion expressed by the investigator.

In a nutshell – PSG should have shared the September notice (about the merger/transfer of funds) with Mrs S promptly after receiving it; it ought not to have delayed in issuing her the annual review pack for 2022; however, the full refund of fees (in the amount of £570) paid to her earlier this year fairly resolves both issues; there is no evidence to show PSG knew about the merger/transfer prior to September 2022; and there is no evidence of what Mrs S would have done differently in relation to her holdings had she been aware of the merger/transfer before October 2022; so, overall, there are no reasonable grounds to award the separate redress for issue 1 that she seeks.

Before explaining the conclusions summarised above, I wish to address submissions from Mrs S that suggest she considers PSG to have mishandled her complaint and that she considers this another issue to determine.

Complaint handling is not a regulated activity. My remit is as defined by the regulator's rules for our service, which in the present case is to determine the matters arising from PSG's regulated activities (as the SIPP provider). Sometimes a complaint to a firm and its handling of it might form a part of the overall substantive claim. For example, where mishandling of a complaint added to an ongoing problem or delayed its resolution. In such an example, it might be necessary to address a firm's complaint handling as part of the overall case.

The above does not apply to Mrs S' case. Issue 1 pre-existed her complaint. The alleged damage within the issue is about the lack of information (about the merger/transfer) between February and October 2022. In October she first learnt about the merger/transfer but it had concluded by that time. Therefore, it was not an ongoing problem. PSG's complaint handling from October 2022 onwards could neither have added to it nor resolved it. Its complaint handling stands in isolation and is beyond my remit, so I make no findings in this respect.

The same applies to Mrs S' comments about PSG's conduct around the matter of the settlement offer and payment. That conduct was also part of its overall complaint handling. The key facts from this issue are that the settlement was offered, paid to and received by Mrs S. Beyond that, Mrs S is entitled to her views on the confusion between the offers made by PSG, but any such confusion is not relevant to determining her complaint.

I understand the argument that PSG/IVCM ought to have ensured contact details held by OI

were up to date. Had that been done, it is more likely (than not) that the February notice would have been received. Of course, the expectation would then be for such notice to have been shared promptly with Mrs S, so in this scenario she probably would have learnt about the merger/transfer much earlier than October 2022 and she would probably have been in a position to take advice on exercising any relevant options in time.

The facts are that OI had outdated contact information for PSG/IVCM, that the February notice was sent out on this basis, that all the other email correspondence it subsequently sent out (following up on the initial notice) also happened on this basis, that all the emails were undelivered and that all were returned to OI with notices that they were undelivered/undeliverable. There is evidence from PSG and OI to support this summary of facts.

The investigator noted a counter to the above argument, whereby it could be said that OI had an equal obligation, upon realising that the initial emailed notice could not be delivered, to find an alternative way to contact PSG/IVCM in order to ensure the merger/transfer notification was delivered and to obtain updated contact information. I agree. The September notice was received because it was sent in the post so, where the initial emailed notice could not be delivered, had it then been sent by post it probably would have been received.

I am not persuaded it is necessary to draw a conclusion on who is more at fault, between OI and PSG/IVCM, in the above arguments. My focus is on determining the complaint, not on addressing either firm's information management so it is important to keep my considerations relevant to the complaint.

In this context, merit in the argument that PSG/IVCM should have updated email contact details held by OI seems quite limited. Without knowing that OI was attempting to email the notice to a defunct email address, it could not reasonably have been expected to know there was a need to update its contact details at the time and for the specific matter of the OI funds' merger/transfer.

Beyond this, the argument would be about a general responsibility upon PSG/IVCM to ensure such an update had happened. There is some merit and relevance in this, as I acknowledged earlier, but the fact that OI knew its emails were not being delivered cannot reasonably be ignored. That meant it could and should have communicated in an alternative way to ensure the notice was delivered. It does not appear to have done that until September. With regards to Mrs S' case, these facts also mean that despite any previous failure by PSG/IVCM to update email contact details, by February 2022 when her interest in the matter arose that interest could have been served equally either if there had previously been such an update or if OI had sent out the notice in another way after realising the email contact information was out of date.

Overall, on balance and for the above reasons, I am not satisfied that there are grounds to say PSG, alone or mainly, caused Mrs S' unawareness of the merger/transfer between February and September 2022.

PSG certainly caused her unawareness of the merger/transfer between September and October. It delayed, until the latter month, in sharing the posted notice it had received in the former month. It concedes this. I recognise that this, in itself, added to the trouble and upset caused to Mrs S in the case and I address this further below.

In terms of Mrs S' position in October 2022, the merger/transfer had already happened so time to exercise any associated pre-merger/pre-transfer options had expired. It is her evidence that, with timely notice about the merger/transfer and her options, she would have needed to take financial advice on what to do. As the investigator said, it is difficult, or

impossible, to say what that advice would have been. The same applies to determining whether (or not) there has been a definitive financial loss to Mrs S. Primarily, the lack of grounds to conclude that PSG was responsible for her unawareness prior to September 2022 nullifies a claim for financial loss redress (from PSG) because of such unawareness. Even if grounds to conclude PSG's responsibility exist, it remains the case that there is no evidence of a definitive financial loss resulting directly from the delayed awareness.

PSG concedes that it was late in issuing, to Mrs S, the 2021/2022 annual review pack and it has apologised to her for that. The pack was eventually issued in October 2022. PSG says the delay was caused by a backlog in producing the packs and by FundRock conducting its due diligence on the transferred funds before issuing valuations for them (valuations relevant to Mrs S' holdings and to the pack's contents).

PSG compensated Mrs S with a full refund of the annual fees she had paid for the relevant year. Both parties agree that the payment has resolved issue 2. If the matter had not been so resolved, it is probable that I would have upheld issue 2 – based on evidence of PSG's fault within it – but it is unlikely that I would have awarded a full fee refund. There is evidence that the annual fee was not limited to PSG's service in providing the annual review packs, it paid for other services and it has not been proven that provision of these packs was its 'main' service (in return for the fee) or that there was an overall failure of service in other respects. In other words, the natural arguments to consider would be that other or the majority of services were delivered and that a full fee refund would be unfair for this reason.

Given the facts of the case, I would probably have been persuaded by these arguments, would have been disinclined to award a full refund and would possibly have considered a partial refund, or an award of around £250 for the trouble and upset caused to Mrs S in the matter. Therefore, I consider that the full refund is more compensation than is fair for issue 2 alone. When combined with PSG's delay, in issue 1, between September and October 2022 in sharing notice about the merger/transfer, it is probable that I would have made an additional award for trouble and upset, but it is unlikely the total award would have been up to or above the £570 refund Mrs S received from PSG. As such, I do not consider that PSG should have to make any further payment.

On the above grounds, I am persuaded that PSG has fairly resolved Mrs S' complaint through its apologies and through the £570 payment it made to her.

My final decision

For the reasons, given above I do not uphold Mrs S' claim for additional compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 August 2023.

Roy Kuku
Ombudsman