

The complaint

In summary, Mr K has complained about the advice he received from Chantler Kent Investments (CKI) in 2012, when it advised him to transfer some of his pensions into a self- invested personal pension (SIPP). Mr K thinks that as a result of poor initial advice and not having received ongoing investment advice, he has suffered significant investment losses. This is due to the majority of the proceeds of transfer and ongoing contributions remaining in cash.

What happened

In 2012 Mr K received pension and investment advice from CKI. CKI's recommendation report said that the proceeds from Mr K's pensions would be held on deposit until an investment strategy had been agreed. It also recorded that he would receive one face to face review a year, and that his portfolio would be rebalanced as required.

After the SIPP was set up, there were several communications between Mr K and CKI over a number of years, about investing the proceeds of the transfers. And in October 2012, CKI provided Mr K with details of investment recommendations, which were described as the "*K... portfolio*." In 2013 part of the cash held in Mr K's SIPP was invested by CKI.

At the beginning of January 2020, Mr K wrote to CKI. He explained his requests for meetings and information hadn't been replied to over an extended period. He felt he had no choice but to terminate his client relationship with CKI. He asked for a return of the fees he had paid, as he didn't think his investments had been suitably managed.

In February 2020 CKI wrote to Mr K. It said it couldn't justify the fees it received and offered a full refund of the fees it had received. Mr K wasn't satisfied with the response provided by CKI. So, he referred the complaint to our service to look into.

One of our investigators looked into Mr K's concerns. He explained why he couldn't investigate the initial advice. And he also explained, why he didn't think he could say CKI had done anything wrong in not investing all of the cash held in his SIPP.

Mr K didn't agree with the investigator's view of his complaint. In summary he explained how he thought CKI had failed in its legal obligations to him. And he didn't think his losses should be limited from January 2014. He also said his complaint was broader than the SIPP, as he received no advice in respect of his equity ISAs. And he said fees should be refunded in respect of these. He also said he should be compensated for his losses, due to the cash in his SIPP not having been invested. He also agreed that he had an adventurous attitude to risk, and that CKI had tried to time the markets.

The case was passed to me to review. I wrote to Mr K and CKI in September 2021.

I explained why I thought we couldn't consider Mr K's concerns about the initial advice provided to him, and why I thought the complaint he had made to CKI and this service was only in respect of the SIPP, not the ISAs. But I also explained why I thought we could consider his concerns regarding the annual reviews.

In response, Mr K said he accepted what I had said with regard to only considering his concerns from January 2014. But he didn't accept that the High Court would be subject to similar limitations. And he reserved his rights in that regard. He thought I should consider documents from 2012 and that any award should cover all fees including the ISAs, as no advice was received in respect of them. He also made submissions in relation to the merits of his complaint. CKI said it had no further points that it wanted to add.

As Mr K accepted my findings in relation to jurisdiction and CKI had no further submissions to make, I issued a final jurisdiction decision. I explained that I remained of the view that the complaint had been correctly summarised as being about the SIPP. I decided that Mr K's concerns about the suitability of advice provided and the lack of investment reviews before January 2014 couldn't be looked at as they had been made too late. But I said I could consider his concerns from January 2014.

In February 2022 I issued a provisional decision in relation Mr K's complaint. I explained why I intended to uphold Mr K's complaint in part.

In response, Mr K said in summary:

- He was disappointed that I was only minded to uphold his complaint in part.
- He wanted definitive calculations of what the compensation would be and 14 days to comment on the figures.
- He explained why he thought the investment date should be 2 January 2014.
- He didn't agree with the inconvenience payment I had suggested and thought a sum of £2,000 was more appropriate.
- He asked for his legal fees be paid in full.
- He asked that the compensation include a payment for interest.
- He said he wasn't able to make a personal contribution into his SIPP due to a lack of earned income.
- He didn't agree with the tax deduction that I suggested, to allow for future income tax in relation to any cash compensation payment in respect of pension losses and asked that I reconsider the figure I had suggested.
- He asked that the losses in respect of the lack of investment of the cash in his ISAs be included in the calculation of compensation.

In response, CKI said in summary:

- It described a relevant event which it said confirmed Mr K's intention not to further invest into the portfolio recommended after the 21/06/2013. It submitted this was Mr K's recorded decision to hold cash to buy a commercial property. It said this suggested Mr K was directing the investment.
- It referred to new evidence from its file in relation to the original transfer and advice on shares. It said this showed Mr K was active in deciding what shares to cash or transfer, which indicated a self-select client behaviour.
- It also referred to Mr and Mrs K declining to accept its offer of settlement following their complaint in January 2020. It said this showed their intention to direct the investments which would negatively impact the current value of their pension.
- It also queried the impact of Mr K's own investments on the redress methodology I had proposed, and that step 4 involved looking at the current value.

I wrote to Mr K on 4 March 2022 in reply to what he had said in response to my provisional decision. In summary I said:

- Based on the information I had, I wasn't persuaded to reduce the tax deduction that I suggested, to allow for future income tax in relation to any cash compensation payment in respect of pension losses.
- I said I was prepared to reconsider this if Mr K provided any evidence in relation to this issue.
- I explained why any compensation would be limited to £160,000.
- I explained why I wouldn't be able to provide the detailed calculations he had asked for.
- I also explained why I didn't think it was appropriate to make any award in relation to legal costs.
- I also said I would address any lost investment growth resulting from a deduction of fees within the redress methodology and that interest would be appropriate if any compensation wasn't paid within 28 days of the decision being accepted.
- I also said that in relation to the ISAs, I hadn't seen anything which led me to change what I had said in my jurisdiction decision.
- And in relation to the investment date, I hadn't changed my opinion on that for the reasons I had set out in my provisional decision.
- I also explained why I thought the distress and inconvenience award I had proposed, remained an appropriate figure.

Mr K wrote to me again replying to the points I had made in my e-mail of 4 March 2022. In summary:

- He was disappointed I wasn't prepared to take the claim back to 2014. He couldn't understand why it should not go back to the earliest possible time, as he seemed to think I had accepted that the consideration of a property only came up as a consequence of the lack of intended investment.
- He thanked me for the diligence with which I had considered his complaint.
- He provided details of how he and Mrs K would achieve their income in retirement. And he explained drawing on capital in retirement would be more tax efficient rather than drawing on his SIPP to a level that incurred 40% tax.
- He said that at retirement he wouldn't have any mortgages, so he wouldn't be drawing income to pay mortgage interest or repayments.
- His and Mrs K's income over the next 10 years would cover their expenditure so they would approach age 65 with significant cash or liquid funds.
- Irrespective of the fact that they would have sufficient funds from elsewhere to avoid using the SIPP, they would not need to spend £2,000 a week with no mortgage outgoings.
- As they got older, they would use capital to supplement their income. It made no sense to draw a SIPP that could pass to their children free of IHT.
- Office for National Statistics (ONS) life expectancy data was provided in support of his arguments.
- He wasn't confident that CKI would provide accurate or transparent calculations.
- He felt he was forced to take legal advice as a result of what he believed was an inconsistent conclusion by the investigator.
- He asked if he could make a complaint to CKI or the ombudsman regarding the ISAs.

I considered what Mr K had said. Our investigator wrote to Mr K on my behalf. In summary:

- I had said that the lack of reviews after 2014 could be considered. I hadn't accepted the consideration of a property only came up as a consequence of the lack of intended investment. I had nothing further to add regarding that point.
- I had reviewed the information provided regarding his assets and income. In light of the further detail provided, I was now persuaded that a 20% tax deduction would be more appropriate in respect of any compensation paid to Mr and Mrs K, rather than the 30% deduction (in respect of Mr K) I had set out in my provisional decisions to them.
- I had also considered Mr K's request for lost investment growth to be taken into account in relation to the fees that were deducted by CKI, from the monies invested in the SIPPs.
- Having reflected on what Mr K had said, he said I didn't now think it was appropriate for a refund of fees to be paid. This was because I didn't think it fair or reasonable for him and Mrs K to have the benefit of redress which compensated them both on the basis of what should have happened if they had received the advice they ought to have been given. And to also compensate them for the cost of that advice.
- Regarding the costs in respect of the legal advice he have obtained, he said my opinion on this hadn't changed, for the reasons I had already given.

Mr K provided further submissions in response to the investigator's e-mail had. In summary:

- He didn't think there was any evidence anywhere that the original intention was anything other than to invest in an equity portfolio. Diversification away from other assets had been discussed with CKI. He attached a chain of information including notes of his.
- He argued that there was no mention of direct property investment back in 2012. And he referred to correspondence that he had with CKI.
- He had purchased other properties that could have been acquired wholly or partially in his SIPP in 2012 and 2013. He said these purchases evidenced he had no intention of using his SIPP for a property purchase until the inaction of CKI in a rising stock market.
- He asked that I reconsider the start date in light of the information he had provided.
- He didn't deny he considered property investment in 2014, but mistakes by CKI occurred before 2014. He thought the calculation date should reflect this and the original intention.
- He was grateful that I had reconsidered the tax rate applied to his SIPP. He said he would definitely take the 25% tax free lump sum (TFLS). And he asked that I reinstate the tax deduction I had set out in my methodology to reflect the benefit of the TFLS. He said he would take this before age 75.
- In relation to the refund of CKI's fees, he accepted and understood the rationale for the three-year period in which compensation for losses was being suggested. But he argued that the funds would have received earned dividends which would have covered part of the fees. And he asked for a refund of an appropriate proportion of fees for the periods outside of the three years.
- He asked that I clarify the calculation dates within my decision to take into account if any fell on a weekend.

I considered what Mr K had said. An investigator and wrote again to CKI on my behalf and attached a copy of Mr K's e-mail to me.

- In summary I explained that having considered what Mr K had said, I was satisfied that Mr K had the means to draw income and assets in an inheritance tax (IHT) efficient way. And I went on to explain why I now thought a notional deduction of 15% should be made from any compensation payment made directly to Mr K and Mrs K.
- I also said If the calculation dates, I set out in this redress methodology fell on a weekend or on a bank holiday, the calculation should use any unit values/prices on

the following business day.

No response was received from CKI.

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 remain of the opinion that Mr K's complaint should be upheld in part. I've set out my reasoning below.

Mr K and CKI have made a number of arguments in relation to this complaint – and in response to my provisional decision. In reaching my decision, I haven't commented on every point of concern Mr K and CKI have raised. I don't intend to offend them by doing so or mean any disrespect in taking this approach. Instead I've focussed on the key issues I think I need to consider in deciding whether or not CKI has done anything wrong regarding the concerns Mr K has raised – and what and how, CKI needs to do to put things right. Although I can't consider Mr K's concerns about the suitability of the initial advice and the impact of a lack of any reviews prior to January 2014, I can consider his concerns about the lack of reviews after that date. And I'll also consider the lack of ongoing investment advice.

In the first instance I've thought about what the agreement was to provide reviews between Mr K and CKI. When Mr K's pensions were transferred in 2012, the suitability letter set out the basis for recommending the transfer of Mr K's existing pensions into a SIPP. As I've explained above, I won't be looking at the suitability of that advice.

In relation to ongoing charges, the letter explained that the ongoing fee would be 0.5% a year of the portfolio value. The suitability letter also addressed Mr K's risk profile. And in respect of this it recorded:

*"We have discussed the concept of risk and the relationship between volatility of capital and income and the potential for investment returns over the long term. We have discussed your attitude to risk, which we agreed can generally be described as **adventurous**."*

The detailed recommendation section also recorded that Mr K wanted to have the opportunity to invest in a wide range of assets and make his own investment decisions. The letter also set out the services CKI would provide on an ongoing basis. It said in relation to the services that would be provided:

"Chantler Kent Services

As part of our ongoing service to you we undertake to provide you with the following;

- *One face to face review per year*
- *Rebalancing of your portfolio as required*
- *Communication by e-mail to ensure you are kept fully informed of the proposed changes to your portfolio.*
- *To allow you the facility to view your Wrap account online.*
- *To receive ongoing investment advice utilising sophisticated IT technology."*

So, I'm satisfied the agreement Mr K had with CKI included the provision of annual reviews and ongoing investment advice. I'm also satisfied from the correspondence I've seen from CKI, that it now accepts its contact with Mr K was sporadic.

I need to decide in light of the lack of ongoing reviews, what steps (if any) Mr K would have taken in respect of his pension after January 2014, if CKI had provided the face to face reviews it accepts that it should have. In assessing this, I think it's important I consider what happened before that point. I say this because I think what happened prior to 2014 is indicative of what Mr K might have done after 2014 if reviews had taken place.

Prior to January 2014, I can see from the information I've been provided with by CKI and Mr K, that there were several e-mail exchanges between the parties about when the proceeds of the transfers should be invested. The suitability letter explained that the proceeds of transfer would remain in cash until an investment strategy had been agreed. In October 2012 CKI provided Mr K with investment recommendations, which were described as the "K.... portfolio."

In April 2013, Mr K made a lump sum contribution of £64,000 into his SIPP. And in June 2013 there was an exchange of e-mails between CKI and Mr K regarding the investment of the cash. CKI's e-mail to Mr K of 20 June 2013 says;

".....I think it would be worthwhile to now begin the strategy of drip feeding monies into the market." And it went on to say:

"The way ahead is unclear. However, I do feel that with recent setbacks, now is an appropriate time to begin."

Mr K in response said..."I have been watching the markets keenly as you might have guessed and agree it's probably time to commit!"

CKI then suggested Mr K commit (invest) 25 / 30% of the cash held within the SIPP, with a view to reviewing this in 4/5 weeks' time. Mr K agreed in principle to that suggestion and CKI replied that it would proceed on that basis. And on 22 June 2013, £84,000 was invested in 7 different funds. And the funds were similar to those set out in the "K.... portfolio" which CKI had provided details of the previous October.

There are four significant points that stand out to me from the above. Firstly, that CKI was providing Mr K with investment advice in relation to the cash held in his SIPP. Secondly when Mr K was provided with a specific recommendation to invest, he accepted that recommendation and acted on it.

And thirdly, the investments made appear to have been in line with the adventurous attitude to risk (ATR) Mr K had been assessed as having by CKI. I say this because the investments were made into equity funds with a geographical spread ranging from the Far East to Europe and the UK. They also encompassed specialist funds. And I think at that time, these funds could have been considered to be potentially more volatile than other types of equity-based investments.

Finally, the correspondence suggests that the investments would be reviewed within a short period of time. This would seem logical, because after having made that initial investment of £84,000, there remained approximately £225,000 remaining in the SIPP to be invested.

In November 2013, Mr K contacted CKI about the possibility of purchasing a commercial property within his SIPP. The property appears to be one that he was developing with other

family members. The anticipated cost was around £225,000. There was a further e-mail exchange regarding this in May 2014. And there was additional correspondence regarding the potential commercial property investment, and about using a different SIPP provider, in September 2014. That purchase never went through. But I think this correspondence between Mr K and CKI, is indicative of an interest on Mr K's part in investing in commercial property.

In its communications with Mr K, CKI has argued that he was what it described as a "self-select" client, who wanted to make his own investment decisions. And it also claimed that the lack of investment was due to his concerns about equity markets, and his desire to invest in commercial property. I'll deal with these issues in turn.

In respect of Mr K being a self-select client, I'm not persuaded the evidence supports that. I say this because if that was the case, I would have expected CKI's own analysis of Mr K's circumstances and objectives to have identified that. I accept that the suitability report records that Mr K wanted the opportunity to invest in a wide range of assets and to make his own investment decisions. But it also indicates that he was expecting CKI to advise him about the investment of his pension monies. For example, CKI's e-mail to Mr K of 18 July 2012 summarises various action points following a meeting. It says:

Mrs K "to complete the paperwork for Transact, this will include the pension transfer docs forI will then provide specific recommendations for an investment strategy both for the pension.....funds."

It concludes by saying:

"I will now proceed to prepare my full report for the protection plans. I will also put forward an investment strategy for the incoming pension monies."

And the recommendation report it prepared in 2012 indicates Mr K was looking to produce a balanced investment portfolio. As I've already summarised above, the suitability letter explicitly says that Mr K would receive ongoing investment advice. And it also said that his pension funds would be held on deposit within the SIPP until Mr K and CKI had agreed an investment strategy.

Although the proceeds of transfer were held in cash, the letter concluded that a meeting would be arranged in the November to review Mr K's portfolio and arrange pension and ISA contributions. And the fact that a portfolio of suggested funds to invest in was sent to Mr K in October 2012, also persuades me that CKI accepted it was providing Mr K with investment advice.

In addition, the keyfacts document provided by CKI, doesn't support its argument that Mr K was a self-select client. I say this because in relation to investment business the document sets out a number of different options regarding the services it provided. The first which is ticked says:

"We will advise and make recommendations for you after we have assessed your needs."

The second option sets out that no advice or recommendation would be received. The third offers basic advice in relation to a limited range of stakeholder products. So, I'm persuaded CKI's own keyfacts document records that it intended to advise and make recommendations to Mr K. And if the advice was to have been limited in any way, I would have expected that to have been recorded by CKI.

In addition, the investment by CKI of £84,000 in funds it selected in June 2013, isn't suggestive to me of Mr K being an individual who wanted to exclusively make his own investment decisions. And I believe the correspondence that I've summarised above supports that.

In the years following the setting up of the SIPP, Mr K did make some investments of his own choice. But I don't agree the available evidence when looked at holistically, supports CKI's contention that Mr K was a self-select client. I think the evidence indicates that he was looking for investment advice from CKI but was also prepared to consider other investments that he felt were appropriate for him.

In relation to Mr K's concerns about equity markets and his desire to invest in commercial property, I don't think the situation is as straightforward as CKI has suggested. The e-mail exchanges between Mr K and CKI do indicate discussions took place about the timing of the reinvestment of the proceeds of transfer.

For example, in August 2012 there was a discussion about the timing of any reinvestment. Mr K in his e-mail of 2 August 2012, does make a suggestion as to the timing of any reinvestment and asks for CKI's views on his proposal. And in its e-mail response the same day, CKI expresses the view that:

"...the markets have ticked up recently, in a period of low volume trading. I am of the view that there is more downside risk. I do not see that being out of the market, in the short term will be harmful."

In September 2012 Mr K asks for a call to catch up where they were and to discuss what to do regarding the investments. CKI said in response that it would contact Mr K to discuss investment options. And on 13 December 2012, CKI expresses surprise that *"markets have ticked up the way they have."* And it went on to say:

"On the question of timing, it may be an idea to drip some into the market. I was thinking of no more than 25%, at this time. We can watch how the market looks in January and make a further decision at that time."

I think this correspondence paints a picture where Mr K is questioning when the investments should be made. But I also think the correspondence also indicates that CKI had concerns about market timing. And its advice appears to be a combination of wait and see how markets would perform, and to make investments over a period of time. And in June 2013 that strategy began to be implemented. I think from the evidence I've seen; the timing of any investments was more of an issue for CKI than Mr K.

Mr K appears to have had considerable experience of investing in property through his profession. And it's not surprising therefore that he also considered property investments with which he was familiar for his SIPP, particularly given that the majority of his pension money hadn't been invested.

CKI has argued the evidence suggests Mr K wanted to invest in commercial property in his SIPP. I agree that a SIPP is potentially an appropriate vehicle for investors who want to invest in commercial property within their pensions. And as I've said above, in November 2013, Mr K contacted CKI about the possibility of purchasing a commercial property within his SIPP.

Mr K has consistently said that part of his reasoning for doing this was as a reaction to a lack of investment by CKI, rather than an intended course of action on his part to invest in the SIPP. I accept that could be a reason why Mr K expressed an interest in investing one

of his properties into his SIPP. But I'm not persuaded by the available evidence that this was necessarily the case. Mr K has commented that I'm not certain on this point. I don't need to be certain, that isn't the test I need to apply. I need to consider the evidence and make my findings on a balance of probabilities basis.

I've reached this conclusion because the recorded expression of interest in property investment came a few months after the initial tranche of investment back in June 2013. I've not seen any evidence of correspondence from Mr K or from CKI for that matter in 2013, about further investing in the portfolio of funds. I accept that this was going to be reviewed. But, if Mr K had originally been wanting to continue investment into the recommended portfolio at that point in time, I would have expected to see some evidence to that effect.

The next correspondence on this issue is an e-mail from Mr K dated 6 May 2014. He asks for an update about the transfer of the property originally discussed in November 2013, into his SIPP. There was a further chaser on 22 May 2014 and another one in June 2014. In September 2014 information about investing in commercial property via another SIPP provider was sent to Mr K by CKI. Mr K has said it became apparent that the management required within the SIPP structure wasn't going to work for the transfer of the property that was being proposed. So that option wasn't taken forward. It's not clear to me when Mr K reached that conclusion.

I've thought very carefully about the correspondence and what Mr K has said about why he considered investing commercial property into his SIPP. And I acknowledge he has said that he was seeking diversification of investment within his SIPP, given the property portfolio he already had.

But, given the evidence available to me that I've summarised, I can't safely conclude that in 2014 he wasn't actively considering investing in commercial property within his SIPP. And in his response to me of 17 March 2022, he doesn't deny considering a property investment in 2014.

And I've not seen enough evidence to persuade me that this was necessarily as a result of his remaining cash in the SIPP not having been invested by CKI. So, it seems to me, that even if further investments had been recommended along the lines of the K.... portfolio in 2014, I can't safely say that it's more likely than not Mr K would have acted on any such recommendation at that time in relation to his SIPP; given the interest in commercial property that he appears to have had around that time.

The next record of any contact from CKI with Mr K was 27 August 2015, when CKI e-mailed Mr K to suggest a review. In response Mr K says:

"Your email is opportune as I have been thinking quite a bit about my pension recently, not surprisingly!"

A date was subsequently agreed by Mr K and CKI for the 17th of September. Mr K set out in his response confirming the date and time, the issues he wanted to discuss. He said:

"To give you an update I am just letting the shop in that I had thought might be transferred into my pension, but for the time being I need to leave it in the investment partnership, so I think I am generally keener on going back to a diversification strategy (away from property) in my pension ...

Please can you update on the following:

- Value (obviously)

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- *Strategy for investment – me*
- *Fee levels – Transact?”*

In response CKI said:

“....Now that you have decided that you are not seeking a property purchase within the SIPP, we can look at investment options.....”

I think this exchange of correspondence is significant for several reasons. Firstly, I believe it indicates CKI’s acknowledgement that a review was due. Secondly it reinforces what I have said above that Mr K had been considering investing in commercial property. Thirdly, I’m also satisfied it records that at this point in time, Mr K had decided against investing in commercial property. Fourthly I think it clearly shows that Mr K was now looking towards a strategy of diversification away from property within his SIPP. And finally, it records that CKI’s agreement that investment options would be considered at the review meeting.

The next correspondence that I’ve seen, is an e-mail from Mr K to CKI on 22 September 2015. Mr K writes to CKI and asks:

“I am scared to ask but seeing the markets tumbling today I wonder if you have placed my pension yet?”

CKI’s response was:

“....As yet I’ve done nothing. The particularly dovish tones that came out from the FED, led me to believe that the extreme volatility in markets would worsen...and it has. Will be in touch shortly....”

This e-mail indicates to me that following on from the review meeting on 17 September 2015, there had been an agreement to invest Mr K’s pension funds. Mr K’s enquiry although indicating a nervousness that the funds had been invested given investment volatility that day, also indicates he was expecting the monies in his pension to have been invested.

I’m also a little surprised at the response from CKI. It clearly indicates to me that it hadn’t taken any action to invest the monies held in the SIPP, when the e-mail exchanges suggest there had been an agreement and intention to do so, following on from the review meeting. It seems to me from CKI’s e-mail of 22 September 2015, that it was attempting to “time the market” regarding investing the remainder of the money in the SIPP.

Mr K’s SIPP was a long-term investment. In September 2015 he was 44 years of age. The majority of the funds had been held in cash in the SIPP since its inception in 2012. Given this and the adventurous risk rating CKI appears to have assessed Mr K as having (which Mr K and CKI don’t appear to dispute), there doesn’t seem to have been any logic to me, in holding off any longer in investing the pension monies held in cash within the SIPP.

Mr K was clearly keen at this point in time, to implement a strategy of investment diversification away from commercial property investment, with the monies held in the SIPP. Mr K had over 20 years to state retirement age, and over 10 years until he could access his pension. And as concerned as CKI may have been with market timing, given the context I’ve summarised above, I also think there was a risk of not investing monies which were intended to be a long-term investment. The consequences of not investing could have led to the pension money not benefitting from investment growth, which would reduce the amount of capital available to generate income at the point of retirement. And by remaining in cash

without the potential to benefit from investment growth, the pension also ran the risk of losing value in real terms through the effects of inflation.

I've noted that in June 2013, the agreed percentage of funds were invested within a couple of days of Mr K confirming his agreement to invest. And given that there appears to have been a similar agreement to invest in September 2015, I don't understand why Mr K's pension money wasn't similarly invested in a timely fashion. I can only surmise from the information I have, that this was due to CKI not having acted promptly in implementing the agreed investment strategy, or as a result of subsequent concerns it had in respect of the timing of investing the cash held in the SIPP.

CKI has argued Mr K was in essence nervous about the timing of any investment. It seems to me from the analysis that I've summarised above, that the evidence suggests CKI was the party concerned about the timing of when to invest. I acknowledge Mr K's e-mail to CKI of 22 September 2015 suggests he was nervous about the potential consequences of having invested given the market volatility he's referred to. But I'm satisfied that if CKI had acted promptly on the apparent agreement to invest, then Mr K's funds would have already been invested when he sent that e-mail. And by 21 September 2015 at the latest.

Even if there hadn't been the agreement to invest (which I think the e-mails suggest there was), I've considered what appropriate advice should have been given at the review meeting. I do think that by the time the review meeting took place, the e-mail exchanges I've set out above, demonstrate that Mr K wanted to discuss investing the pension monies. And against the backdrop of the cash in his SIPP not having been invested for a number of years, due in part to him considering a commercial property investment in 2014, I think an appropriate investment strategy should have been discussed and recommended at that meeting. I've also thought about what CKI told Mr K in 2012, when it said;

"I do not see that being out of the market, in the short term will be harmful."

I think taking into account this statement by CKI in 2012, serious consideration should have been given by it as to whether the monies held in the SIPP in cash, not having been invested for nearly three years, was detrimental to Mr K. And this should have been of particular concern given the context I've set out above. And as I've said, I think the evidence suggests it was CKI that was more concerned about investment timing than Mr K.

I also think it's significant that when an investment recommendation was made to Mr K in 2013, he accepted it. And I think his agreement to invest in 2013, strongly suggests to me that that if an investment recommendation had been made to him in September 2015, he would have acted on any similar recommendation to invest.

I say this because there doesn't appear to be any dispute that Mr K had an adventurous ATR. He's accepted such a categorisation in his response to the investigators view, and CKI don't appear to disagree with its own categorisation of his ATR. I accept it's possible Mr K might have been advised to invest in a different range of funds. But the difficulty I have is that there is no record of what investment recommendations were discussed and agreed at the review meeting.

There are different approaches I could use to direct how CKI should calculate any compensation that might be due to Mr K. And one of those could involve using an investment benchmark as a comparator with the value of his pension. But I don't think that would be appropriate in this particular case. This is because as I've set out above, Mr K had made some investments within the SIPP in 2013 as a result of CKI's advice. He is recorded as wanting to diversify away from property in his pension. And I don't think it's unreasonable for me to conclude based on Mr K's acceptance of the previous investment

recommendation, that he would more likely than not have invested the remaining cash in the same funds as the investment made in 2013 was made into.

In coming to this conclusion, I've also taken into account what Mr K told us about how he has calculated his losses. In the loss analysis he's provided in support of his complaint, Mr K has carried out his own calculation based on the funds suggested in the "K.... portfolio" in 2012. As he has used the funds originally recommended in 2012 to calculate his investment losses, I believe this supports my conclusion that Mr K would have accepted a similar recommendation if one had been made to him in September 2015. And as I've set out above the investment made in 2013 used a portfolio of funds which were very similar to the funds set out in the "K.... portfolio." It also provided a broad range of funds in line with the "adventurous" ATR that Mr K accepts he has. I've thought carefully about what Mr K and CKI have said. But for the reasons I've set out above, I remain of the opinion that the investment date should be 21 September 2015.

After the review meeting in September 2015, Mr K made a further contribution into his pension in April 2016. This remained in cash within the SIPP. Given what I've said above, I think this contribution should also have been invested as well. It's more difficult to decide when that contribution would have been invested. But I think with such a substantial contribution having been made, this would have been another opportunity for a review to have taken place with Mr K. And I think if a review had been arranged, it's more likely than not that this could have taken place, and the monies invested within a month of Mr K having made the contribution.

I accept that a different time frame could be argued. But I think taking into account the necessity for CKI and Mr K to coordinate diaries, the time frame I've suggested is not unreasonable or unrealistic. So, given that the contribution was made on or about 4 April 2016, I think the funds would have been invested no later than the end of April 2016. And for the same reasons I've expressed above, I think the monies would have been invested in the same funds as the 2013 tranche of money.

CKI in its response to my provisional decision, referred to an external compliance report that recorded Mr K was holding cash to in his SIPP to purchase a property. As I've explained, I do think Mr K had an interest in commercial property in 2014.

I've also thought about what CKI said in relation to the offer of settlement it made to Mr K. I've explained when and why I think he would have invested the remaining cash in his SIPP. And Mr K's response to the offer made to settle the complaint was at a point much later in time and involving different circumstances.

So, what Mr K may have said in relation to an offer of settlement in respect of the complaint, isn't in my opinion directly relevant to the lack of advice he and Mrs K received from CKI, and what they were likely to have done if they had received the advice they had paid for. And given their concerns about the service and advice provided by CKI, it's not surprising they chose to move their investments at that point in time.

In its response to Mr K's complaint, CKI offered to refund the fees it charged Mr K. In my provisional decision I said that I thought that was an appropriate offer for it to have made. As I've summarised above, Mr K in response to my provisional decision, asked for any investment losses to also be paid in respect of the money deducted from the fund in respect of CKI's charges.

Mr K's arguments have caused me to reflect on the offer made by CKI. It offered to repay the fees that had been deducted from the SIPP because no investment advice had been provided. And it made no offer or proposal in relation to investment losses.

My aim is to put Mr K back in the position he would have been in as far as is practicably possible, (within the time period I've has outlined that losses should be considered for), if the advisory function that CKI should had offered him, had taken place.

Having reflected on what Mr K said, I don't now think it is appropriate for a refund of fees to be paid. I say this because on reflection, it doesn't seem fair or reasonable to me, for Mr K to have the benefit of redress which compensates him on the basis of what should have happened if he had received the advice he ought to have been given. And to also at the same time, compensate him for the cost of that advice. That would in essence provide a double benefit to him. This is because it would put him in a position he would have been in if he had received appropriate advice, but also reimburse him for the cost of that advice.

Mr K has said in response to this that he understands the rationale for my change of opinion in relation to the three-year period for which I've explained why investment losses should be calculated. But he's argued that earned dividends would have covered part of the fees. And he thinks that CKI provided negligent strategic advice outside of the three-year period. I'm not persuaded by Mr K's arguments. The agreement Mr K had with CKI allowed it to deduct its fees from the monies held in the SIPP. It didn't specify that this should be paid from dividend income produced by any investments. I acknowledge what Mr K has said about what happened after the SIPP was set up. But I've already explained in my jurisdiction decision, that I can't look at Mr K's concerns prior to January 2014.

I've also thought about the actions of Mr K in relation to the reviews and the investment of the cash in his SIPP. Although I think for the reasons I've set out, CKI should have carried out regular reviews of Mr K's pension and invested the money held in his SIPP, I do think Mr K also has some responsibility for his funds not being invested. I'll explain why.

The next recorded contact between CKI and Mr K was in March 2018. Mr K wrote to CKI and said he was surprised that having made a large pension contribution in April 2016, he hadn't had any contact in the nearly two years since. He asked if CKI had any thoughts on his pension position. In September 2018 Mr K contacts CKI again to say that he had received no contact from it. He was told he would be contacted. But he received no further contact from CKI until he complained to it in 2020.

It seems to me that after the meeting in September 2015, there was very little if any contact from CKI with Mr K. And promises of contact and reviews weren't kept. Against this background, it's difficult to understand why Mr K didn't take any alternative steps to facilitate advice and the investment of his pension monies. I understand that Mr K was paying for reviews and ongoing advice which he not unreasonably expected to receive. But I think there had to be a time when he realised, he wasn't getting the service he was paying for, and for him to have considered seeking alternative financial advice.

I think to some extent an explanation has been provided by Mr K. He's told us in various conversations with our investigators that he had:

"buried his head in the sand and didn't want to engage too much". He also said that he had: *"denied it all for years ...he had found it all too stressful".*

And in subsequent conversations with another of our investigators, Mr K explained he had found the situation with his *pension*; *"very stressful and had genuinely tried to bury it."*

He also said that he had; *"spent 8 years waiting for a stock market crash."*

I do understand that Mr K has found the concerns he had about his pensions to be very stressful and difficult to address. But what he has told our investigators also indicates to me that he has recognised that there had been a specific problem with the lack of investment of

his pension money for several years. And that the lack of investment was as a result of CKI not having invested the cash held within his SIPP, as he had expected it to do. And notwithstanding what Mr K told our investigators, I still think he would have acted on any investment recommendations for the reasons I've set out above.

All of this leads me to conclude that Mr K was aware of the lack of service and advice from CKI. I don't think it was unreasonable of him not to have taken any steps to have done anything about this in the short to medium term. He had a reasonable expectation that CKI would be in contact and provide him with the investment reviews and advice he was expecting. But I think when he didn't receive a response to his enquiry to CKI in September 2018, this should have prompted him to seek investment advice elsewhere.

I say this as I believe it should have been apparent to Mr K at that point, that CKI wasn't engaging him with him or providing him with the advice he needed and wanted. But Mr K didn't take any reasonable steps to mitigate his position resulting from the poor service and lack of advice. And for the reasons I've explained I think he should have taken steps to seek advice and mitigate his position by the end of September 2018.

Mr K has also made a number of submissions regarding the notional reduction I specified should be made, if any compensation payment couldn't be paid into the SIPP. He has said a compensation payment for investment losses can't be paid into his SIPP as he hasn't had any earned income since 2016. He has argued that due to the other sources of income he has been living off, he won't need to access his SIPP to provide income in retirement. As a result, he doesn't think that a 30% deduction from any compensation payment should be made.

I've considered the information provided by Mr K and CKI. CKI's fact find from the time of the original advice in 2012, records that Mr and Mrs K had substantial assets outside of their pensions. Mr K has now provided further detail about his current assets and income. These indicate that his assets and income are similar to those recorded in 2012 by CKI. So, I think this is corroborative of what Mr K has told us about his finances.

It seems to me that Mr K hasn't had any earned income since 2016 and has been living off the assets and income that he's provided details of. As he is able to live off those resources and has provided details of them, I'm now persuaded that he isn't likely to have to draw down on his SIPP in order to generate income.

As a result, I'm also persuaded his SIPP would be left to his beneficiaries as part of his inheritance tax planning. And it was on this basis that I believed that a deduction of 20% to allow for any beneficiaries expected marginal rate of income tax was more appropriate. I wrote to CKI and Mr K explaining this.

Mr K in response said he would take the tax-free cash before age 75. I've reconsidered the arguments and evidence in relation to this point. I am now persuaded from what Mr K has said, that maximising any inheritance tax (IHT) saving is important to him. And the assets and income streams he and Mrs K appear to have, does suggest that he and Mrs K have the means to draw on income and assets in an IHT efficient way.

There is a risk that Mr and Mrs K might not live for 7 years after taking any tax-free cash. That would mean the tax-free cash could be subject to IHT. But taking into account what Mr K has said about the reasoning and timing of taking any tax-free cash, it seems to me that it's equally possible and plausible, that such an exercise might be successful. And I can see the logic in why Mr and Mrs K might want to do take the tax-free cash, to help their children at some point in the future when they are older. In my experience that isn't an unusual thing for parents who have substantial assets such as Mr and Mrs K have, to do with their tax-free cash.

As Mr K himself acknowledges, the beneficiaries in relation to the SIPP's will have to pay tax at their marginal rate of income tax. That can't be known at the moment given. But given that the likely beneficiaries will be Mr and Mrs K's children, I think it's appropriate to assume a 20% tax rate on any income that might be taken from the SIPP, to reflect the beneficiaries likely marginal rate of income tax.

Mr K has confirmed that he hasn't yet taken any tax-free cash from the SIPP. As he isn't yet 55 (the earliest current age that he could draw benefits from the SIPP), that makes sense to me.

I set out in the redress methodology in my provisional decision, that if any compensation payment couldn't be paid into the SIPP, it should be paid directly to Mr K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

As Mr K hasn't yet taken any tax-free cash from his SIPP, 25% of the loss would be tax-free and 75% would have been taxed according to the likely income tax rate on any income drawn. As I've explained, I'm satisfied this would more likely than not be drawn down by the beneficiaries of Mr K's estate and that this is likely to be at a marginal rate of tax of 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this, rather than the 20% I previously indicated.

Mr K has also argued that he should be entitled to recover legal costs that he has incurred. And he thinks the answer provided by the investigator left him with no option but to do so. I can consider making an award in respect of legal costs. But I think the starting point is that the ombudsman service is an informal service and free to use for complainants. We don't expect complainants to articulate or present their cases in the same way as might be directed by court rules. And we will carry out an investigation into a complaint that we consider necessary.

Complainants can of course take legal advice if they choose to. But by doing so, that doesn't mean that they will automatically be awarded those costs if their complaint is upheld. Taking into account the facts and circumstances of Mr K's complaint, I'm not persuaded that he needed to take legal advice in order to present his and Mrs K's cases to our service. The facts and issues in their cases are not complicated in my opinion.

The financial ombudsman service has a two-stage complaint handling process. The case has been reviewed afresh by me and I have considered all of the information and arguments made by Mr K and CKI afresh. And I don't think it is appropriate for me to make any award in respect of Mr K's legal costs, as I'm not persuaded given the issues to be decided; that he needed legal representation to present his complaint to our service.

Mr K doesn't agree with the amount of compensation I said should be paid in respect of the distress and inconvenience he incurred as a result of CKI's actions. And he thought the figure I had indicated should be similar to that put forward by the investigator.

In respect of the award for distress and inconvenience, I am not bound by the findings of our investigator. My role is to review the case afresh and reach my own conclusions. And having done so I have reached a different conclusion to that of the investigator.

I upheld the substantive part of Mr K's complaint in part when the investigator didn't. And I directed that CKI should pay him compensation for any financial losses that might be calculated. I've also explained that I think some of the delays and losses are because of Mr K not taking steps to mitigate his position. So, based on everything I've seen, I remain

satisfied that £500 is an appropriate amount of compensation to reflect the impact of the distress and inconvenience Mr K has incurred.

Putting things right

My aim in awarding fair compensation is to put Mr K back into the position he would likely have been in, had it not been for CKI's error. CKI should calculate any compensation that may be due using the methodology I've set out below.

- 1) I think the money held in Mr K's SIPP, should have been invested in the same funds that the initial tranche of money was invested in, back in 2013 (the 2013 portfolio).
- 2) Any loss Mr K has suffered should be determined by obtaining the notional value of the SIPP, on the basis that the remaining proceeds of transfer not invested in 2013, had been invested in the same funds as the 2013 portfolio. For the purposes of calculating the notional value of those monies, the investment date should be assumed to be 21 September 2015. The end of the investment period should be 30 September 2018.
- 3) Mr K made a further pension contribution in April 2016. A notional value for this contribution should also be calculated on the basis that it was also invested in the same funds as the 2013 portfolio. For the purposes of calculating the notional value for those monies, the investment date should be assumed to be 30 April 2016. The end of the notional investment for these monies period should be 30 September 2018.
- 4) The value of Mr K's SIPP as at 30 September 2018 should then be subtracted from the notional values calculated in steps 2 and 3. If the answer is negative, there's a gain and no redress is payable.
- 5) If Mr K has suffered an investment loss, the compensation amount should if possible be paid into Mr K's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- 6) If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
- 7) Mr K hasn't yet taken any benefits from his plan, and for the reasons explained above, it is unlikely that he will need to. If his beneficiaries inherit the SIPP after age 75, they will need to pay tax on any monies drawn down at their marginal rate of income tax – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.
- 8) For the reasons I've set out, I'm satisfied that the lack of reviews and ongoing investment advice has caused Mr K significant distress and inconvenience. And I'm satisfied that this has had a considerable impact on him over a number of years. CKI should also pay Mr K £500 for the distress and inconvenience this has caused him.
- 9) If the calculation/investment dates, I have set out in this redress methodology fall on a weekend or on a bank holiday, the calculation should use any unit values/prices on the following business day.
- 10) Pay interest at the rate of 8% simple per year from final decision to settlement (if not settled within 28 days of Chantler Kent Investments receiving Mr K's acceptance)
- 11) Provide Mr K with a detailed breakdown of the calculation it carries out to determine whether he has suffered any losses.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to

pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Chantler Kent Investments pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Chantler Kent Investments should pay the amount produced by that calculation up to the maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend Chantler Kent Investments pays Mr K the balance plus any interest on the balance as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 April 2022.

Simon Dibble
Ombudsman