DRN-3368959

The complaint

In summary, Mrs K has complained about the advice she received from Chantler Kent Investments (CKI) in 2012, when it advised her to transfer her pension into a self-invested personal pension (SIPP). Mrs K thinks that as a result of poor initial advice and not having received ongoing investment reviews and advice, she has suffered significant investment losses due to the proceeds of transfer remaining in cash.

What happened

In 2012 Mrs K and her husband received pension and investment advice from CKI. The discussions were conducted through Mr K. And he dealt with matters on her behalf. She is represented by Mr K in bringing the complaint.

CKI's recommendation report said that the proceeds from Mrs K's pension would be held on deposit until an investment strategy had been agreed. It also recorded that she would receive one face to face review a year, and that her 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 transfer. And in October 2012, CKI provided Mr K with details of investment recommendations, which were described as the *"K…. portfolio."*

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 and Mrs K had paid as he didn't think the funds 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. Mr K wasn't satisfied with the response provided by CKI. So, he referred the complaint on behalf of Mrs K to our service to look into.

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

Mr K didn't agree with the investigator's view of the complaint. In summary he explained how he thought CKI had failed in its legal obligations to them both. And he didn't think their losses should be limited from January 2014. He also said the complaints were broader than the SIPP, as Mrs K received no advice in respect of her ISAs. And he said fees should be refunded in respect of their ISAs as they had been left in cash.

The case was passed to me to review. I wrote to Mrs K and CKI in September 2021. I explained why I thought we couldn't consider Mrs K's concerns about the initial advice provided to her, and why I thought the complaint Mr K had made to CKI and this service on

her behalf, was only in respect of the SIPP, not the ISAs. But I also explained why I thought we could consider her concerns regarding the annual reviews.

In response Mr K said on behalf of Mrs K, that they accepted what I had said with regard to only considering the concerns from January 2014. But they didn't accept that the High Court would be subject to similar limitations. And they reserved their 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. Mr K also made submissions in relation to the merits of the complaint. CKI said it had no further points that it wanted to add.

As Mr K and Mrs K accepted my findings in relation to jurisdiction and CKI had no further submissions to make, I issued a final jurisdiction decision. 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 Mrs K's concerns from January 2014.

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

In response, Mr K said he was authorised by Mrs K to respond on her behalf. In summary, in relation to Mrs K:

- He was disappointed that I was only minded to uphold the complaint in part.
- He wanted definitive calculations of what the compensation would be and 14 days to comment on the figures.
- He didn't agree with the inconvenience payment I had suggested and thought a sum of £2,000 was more appropriate.
- He asked that the compensation include a payment for interest.
- Mrs K's tax rate should be adjusted for the nil rate band
- He asked that the losses in respect of the lack of investment of the cash in her 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 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 relation to the relevant points in respect of Mrs K, in summary:

- 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.
- 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 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 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 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.
- 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, 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 obtained, the investigator 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. In summary in respect of Mrs K:

- 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 CKIs 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 he 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 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.

Mr K has confirmed he has authority from Mrs K to make representations on her behalf in respect of this complaint. He 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 on behalf of Mrs K – and what and how, CKI needs to do to put things right.

Although I can't consider Mrs 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 her concerns about the lack of reviews after that date. And I'll also consider the lack of ongoing investment advice.

It's clear to me from the documentation I've seen that Mr K took responsibility for both his and Mrs K's investments with CKI. So, she wouldn't have received the correspondence between Mr K and CKI. But given that Mr K was dealing with the pension investments on behalf of them both, I think it's highly improbable that he didn't discuss with Mrs K what was going on with their investments. And if in the unlikely event that he didn't, then if Mrs K had questioned Mr K as someone in her position ought reasonably to have done, then I'm satisfied that she would have known what was happening. But even if she didn't, I think she would have had constructive knowledge of what was going in relation to the SIPP, as a result of the information Mr K had.

In the first instance I've thought about what the agreement was to provide reviews between Mrs K and CKI. When Mrs K's pension was transferred in 2012, the suitability letter set out the basis for recommending the transfer of Mrs K's existing pension into a SIPP. As I've explained above, I won't be looking at the suitability of that advice. But the suitability letter records she had a paid-up group personal pension plan from a previous employment. She wasn't currently working. The pension had a value of just under £23,000.

In relation to ongoing charges, the letter explained that the ongoing fee would be 0.5% per annum of the portfolio value. The suitability letter also addressed Mrs 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 Mrs K wanted to have the opportunity to invest in a wide range of assets and make her 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 Mrs 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 that its contact with Mr and Mrs 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 Mrs K's 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 that 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 on behalf of Mrs K 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 funds should be invested. The suitability letter explained that the funds 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 June 2013 there was an exchange of e-mails between CKI and Mr K regarding the investment of the cash held in the SIPPs. 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"* 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 Mr and Mrs 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 into Mr K's SIPP, there remained over £225,000 remaining in Mr K's SIPP to be invested.

In its communications with Mr K, CKI has argued he was what it described as a "self-select" client, who wanted to make his own investment decisions. I'll address this as it is potentially relevant to any investment decisions, he may have made on behalf of Mrs K.

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 CKIs own analysis of Mr K's circumstances and objectives to have identified that. I accept 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 he was expecting CKI to advise him about the investment of his and Mrs K's pension monies. For example, CKIs e-mail to Mr K of 18 July 2012 summarises various action points following a meeting. 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 key facts 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 that CKI's own key facts document records that it intended to advise and make recommendations to Mr and Mrs 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 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 Mr K does make a suggestion as to the timing of any reinvestment and asks for CKIs 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 indicates that CKI had concerns about market timing. And its advice appears to have been 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. And 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. But in relation to Mrs K, I've not seen any evidence that investing in commercial property was ever a consideration for her. Her circumstances and the size of her pension fund, all indicate to me that investment in commercial property wasn't a relevant consideration in respect of her pension.

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.

I think this correspondence from Mr K should have been responded to by CKI. I've not seen any evidence that indicates that it was. The lack of any response to Mr K is at a minimum indicative of poor customer service towards him and Mrs K. And I also think the contact from Mr K should have acted as a trigger for CKI to have organised a review meeting with Mr K to discuss his and Mrs K's pensions.

For the reasons I've set out in my decision in relation to Mr K's complaint, I don't think he would have invested the cash in his SIPP after any such review meeting, due to his interest in commercial property at that point. But as I've already explained, that wasn't a relevant consideration in relation to Mrs K's pension. So, taking into account her funds had remained in cash for approximately two years, I think the investment of the cash in her SIPP would have been a priority topic for discussion at the review meeting. And I think that is supported by Mr K's e-mail to CKI of 16 June 2014, when he said:

"Please can I ask you to come back on this. As the equity markets continue to march on, it is increasingly important that I sort out this transaction to try and recover what has been a disappointing 2 years to say the least."

Although this statement was in respect of Mr K's concerns about the lack of investment of the cash in his SIPP, I think that as he was taking responsibility for Mrs K's investments as well; I think it's likely he would also have had similar concerns regarding the investment of her pension cash at this time.

And in the context of any discussion about where the cash in Mrs K's SIPP should be invested, I think a relevant consideration would be what had been agreed and decided in June 2013, in respect of the partial investment of some of Mr K's pension cash. In the absence of any evidence to the contrary, I think it's more likely than not that Mr K would have been guided by the recommendation made to him at that time.

In respect of when that meeting would have taken place, I think CKI should have responded to Mr K after his first e-mail on 6 May 2014. And I see no reason why after allowing for coordinating diaries, a meeting couldn't have taken place between Mr K and CKI by the end of May 2014 at the latest.

Mrs K's SIPP was a long-term investment. In May 2014 she was 37 years of age. The proceeds of the transfer from her old pension 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

Mrs K as having (which Mr and Mrs 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.

Mrs K had 25 + years to state retirement age, and over 18 years until she could access her pension. And as concerned as CKI may have been back in 2012 with market timing, given the context I've summarised above, I also think there was also 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 thought very carefully about what appropriate advice should have been given at the review meeting. I do think that by the time the review meeting would have taken place, the e-mail exchanges I've set out above, demonstrate that Mr K wanted to discuss investing the pension monies. And I think the discussion would and should have also addressed Mrs K's pension. It seems logical to me that an appropriate investment strategy for Mrs K's pension 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 approximately two years, was detrimental to Mrs K. This should in my opinion 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 or Mrs 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 respect of Mrs K's pension in May 2014, he and Mrs K would have approved any similar recommendation to invest.

I say this because there doesn't appear to be any dispute that Mrs K had an adventurous ATR. Mr K hasn't disputed his or Mrs K's ATR as assessed by CKI. And CKI don't appear to disagree with its own categorisation of her ATR.

There are different approaches I could take to direct how CKI should calculate any compensation that might be due to Mrs K. And one of those could involve using an investment benchmark as a comparator with the value of her 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 his SIPP in 2013 as a result of CKI's advice.

And I don't think it's unreasonable for me to conclude based on Mr K's acceptance of the previous investment recommendation in respect of his SIPP, and as he took responsibility for his and Mrs K's investments with CKI; that he would more likely than not have agreed to invest the cash in Mrs K's SIPP, in the same funds as the investment made into his SIPP 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 and Mrs K's investment losses. In the loss analysis he's provided in support of their complaints, Mr K has carried out his own calculation based on the funds suggested by CKI 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 respect of Mrs K's SIPP in May 2014. 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 Mrs K had.

I've noted that in June 2013, the agreed percentage of funds in respect of Mr K's SIPP were invested within a couple of days of Mr K confirming his agreement to invest. And based on what happened then, I see no reason why the cash in Mrs K's SIPP wouldn't have been invested in a similar time frame. So, even if the review meeting hadn't taken place until the end of May 2014, I think it's not unreasonable to assume that the cash would have been invested by 4 June 2014 at the very latest.

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. But as I've also explained, I don't think this was a relevant consideration in relation to Mrs K's SIPP.

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 into Mrs K's 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 and Mrs 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 funds 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 Mrs K back in the position she 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 Mr K on her behalf, 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 Mrs K to have the benefit of redress which compensates her on the basis of what should have happened if Mr K had received the advice he ought to have been given on her behalf. And to also at the same time, compensate her for the cost of that advice. That would in essence provide a double benefit to her. This is because it would put her in a position she would have been in if she had received appropriate advice, but also reimburse her 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 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 investment 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 Mrs K's funds not being invested. I'll explain why.

In August 2015, CKI contacted Mr K to carry out a review. That took place in September 2015. The outcome of that review was that there was an agreement to invest the cash held in Mr K's SIPP. In September 2015 Mr K asked if the investment had been made. CKI told him that it hadn't. And this seems to be because it had concerns about volatility in equity markets at that time. Mr K's response seems to indicate that he on reflection, he was relieved that the investment of the cash held in his SIPP hadn't been made. So, I don't think Mr K would have had had any particular concerns about his pension cash not being invested at that time.

The next recorded contact between CKI and Mr K was in March 2018. Mr K wrote to CKI and said that he was surprised that having made a large pension contribution in April 2016, he hadn't 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 and Mrs K's pension monies. I understand that Mr and Mrs K were paying for reviews and ongoing advice which they not unreasonably expected to receive. But I think there had to be a time when they realised, they weren't getting the service they were paying for, and for them 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 and Mrs K's 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 and Mrs K's SIPPs, as they 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 and Mrs K were aware of the lack of service and advice from CKI. I don't think it was unreasonable of Mr K on behalf of Mrs K not to have taken any steps to have done anything about this in the short to medium term. They both had a reasonable expectation that CKI would be in contact and provide them with the investment reviews and advice they were expecting. But I think when Mr K didn't receive a response to his enquiry to CKI in September 2018, this should have prompted him to seek investment advice elsewhere for both himself and Mrs K.

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 or Mrs K's position resulting from the poor service and lack of advice. And for the reasons I've explained I think he and Mrs K should have taken steps to seek advice and mitigate their 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.

I've considered the information provided by Mr K and CKI. CKIs 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 their 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 and Mrs K's finances.

It seems to me that Mrs K doesn't have much if any earned income. She and Mr K have been living off the assets and income that Mr K has provided details of. As they are able to live off those resources and have provided details of them, I'm now persuaded that Mrs K isn't likely to need to draw down on her SIPP in order to generate income.

As a result, I'm also persuaded her SIPP would be left to her beneficiaries as part of her 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. He's not specifically referenced Mrs K. But I think it's more likely than not, that she will do the same as Mr K. 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 Mrs K. And the assets and income streams he and Mrs K appear to have, does suggest that they 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 SIPPs 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 tax.

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 Mrs K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

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 Mrs 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. Some of those costs are likely to relate to Mrs K's position as well. So, for the avoidance of any doubt, I will address that issue in relation to Mrs K as well.

Mr K thinks the answer provided by the investigator left him with no option but to obtain legal advice. 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 Mrs K's complaint, I'm not persuaded that she or Mr K needed to take legal advice in order to present their 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 legal costs incurred on behalf of Mr and Mrs K, as I'm not persuaded given the issues to be decided; that Mrs K needed legal representation to present her 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 and Mrs K incurred as a result of CKIs 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 Mrs K's complaint in part when the investigator didn't. And I directed that CKI should pay her 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 or Mrs K's 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 Mrs K has incurred.

Putting things right

My aim in awarding fair compensation is to put Mrs K back into the position she 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 Mrs K's SIPP, should have been invested in the same funds that the initial tranche of money in Mr K's SIPP was invested in, back in 2013 (the 2013 portfolio).
2) Any loss Mrs K has suffered should be determined by obtaining the notional value of the SIPP, on the basis that the cash in her SIPP, 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 4 June 2014. The end of the investment period should be 30 September 2018.
3) The value of Mrs K's SIPP as at 30 September 2018 should then be subtracted from the notional value calculated in step 2. If the answer is negative, there's a gain and no redress is payable.
4) If Mrs K has suffered an investment loss, the compensation amount should if possible be paid into Mrs 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.
5) If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
6) Mrs K hasn't yet taken any benefits from her plan, and for the reasons explained above, it is unlikely that she will need to. If her 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.
7) For the reasons I've set out, I'm satisfied that the lack of reviews and ongoing investment advice has caused Mrs K significant distress and inconvenience. And I'm satisfied that this has had a considerable impact on her over a number of years. CKI should also pay Mrs K £500 for the distress and inconvenience this has caused her.
8) 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.
9) 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 Mrs K's acceptance)
10) Provide Mrs K with a detailed breakdown of the calculation it carries out to determine whether she 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 Mrs 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 Mrs K to accept or

reject my decision before 26 April 2022.

Simon Dibble
Ombudsman