DRN-3506671

The complaint

Mr K's complaint is about events beginning in 2018 and about Prescient Financial Intelligence Limited ('Prescient'), his Independent Financial Adviser at the time. Quilter Financial Services Ltd ('Quilter') is the respondent to the complaint. It says Prescient was acquired by Quilter Private Client Advisers ('QPCA') in 2020 and that QPCA is its Appointed Representative.

Mr K says Prescient arranged the transfer of his Abbey Life Pension ('ALP') to his Self-Invested Personal Pension ('SIPP') in 2018; but, as the Pension Commencement Lump Sum ('PCLS') of around £35,000 was released to him, Prescient failed to make the remainder cash (around £105,000) available to the Discretionary Manager ('DM') appointed to manage investments in the SIPP.

He refers to a 14 September 2020 email from the Prescient adviser in which he says the adviser conceded liability in the matter. He is also unhappy about a specific personal detriment that resulted from the cash remaining on deposit without his knowledge. In the main, he asked for compensation for growth that was lost because the cash remained uninvested in the SIPP's deposit account and for a refund of servicing fees paid to Prescient during the relevant period.

Quilter upheld Mr K's claim for a refund of servicing fees, because it accepts that he did not receive the annual reviews he was entitled to in 2018 and 2019, and that he did not receive the level of service he had paid for. The transfer had been concluded by August 2018. Quilter calculated the fees received by Prescient between August 2018 and October 2019, in addition to which it calculated notional gain on the total fees amount and an income tax deduction. The total fees amount it used in its calculation differed from what Mr K had calculated. Eventually Quilter agreed to pay the total fees amount that he claimed. However, that settlement is pending the outcome of this decision. Quilter also offered Mr K £250 for the trouble and upset caused to him, but he considers this insufficient.

What happened

With regards to Mr K's other two claims – lost growth and the personal detriment – one of our investigators concluded that the complaint should not be upheld and that Quilter should not have to do any more, in terms of redress, beyond the refund of servicing fees it has agreed. In the main, he said:

- Four parties were involved in Mr K's SIPP – the SIPP provider, the DM (providing investment advice), Prescient (providing financial planning advice) and Mr K (who had relationships with each of the other three parties).

- The DM was the party involved in the personal detriment claim that Mr K has made, so Prescient/Quilter has no responsibility in that respect.

- Mr K's main relationship, in terms of investing (and the investments) in the SIPP, was with the DM. In this context, his relationship with Prescient is less clear. Its suitability letter to him at the time referred to him discussing investment matters with the DM; it

made no investment recommendation; and it gave no indication that Prescient was to be involved in the investment of the transferred pension within the SIPP. There is also wider evidence, in emails between Mr K and Prescient about the negotiation of fees, that supports the conclusion that Prescient did not have a role in the investments within the SIPP.

- The Prescient adviser's email of 14 September 2020 does apologise for not arranging transfer of the cash from the deposit account and the adviser said this happened due to "*poor liaison (a communication blip)*" between Prescient and the SIPP provider. This suggests some responsibility on Prescient's part, but it also suggests the adviser was accepting joint responsibility alongside Mr K himself.

- Mr K received the PCLS on 2 August 2018; on 26 September 2019 Prescient gave notice about transfer of the cash to the SIPP's deposit account; the adviser's apology then happened around a year later; but Mr K would have known the transfer had concluded when he received the PCLS in August 2018; he knew Prescient was not to be involved with investment in the SIPP and that the DM was to manage that; so he ought to have discussed investment of the transferred fund with the DM upon knowledge that the transfer had completed; hence his main responsibility in the matter.

I issued a Provisional Decision (PD) on 28 April 2022 and reached a different outcome. I provisionally upheld the complaint and I said –

"*My provisional conclusions are as follows:*

- *I consider that Mr K's claim for a refund of fees has been settled. I endorse the settlement, based on the total fee refund amount of £11,059.82 but only with the same notional gain treatment/approach in Quilter's previous calculation. With regards to tax I intend to order this payment into Mr K's SIPP, alongside redress for the lost growth claim, so the tax related terms of my order would apply – I set these out below.*

- *Prescient/Quilter is responsible for the failure to make Mr K's transferred cash, from the ALP transfer, available for investment (in the SIPP) in 2018 and for any loss of investment growth that has caused him/his SIPP. Quilter should pay him redress for this.*

- *Quilter should also pay him a total of £650 for the trouble and upset caused to him in the matter – including the trouble and upset caused in his adverse personal effect claim. For the reasons I explain below, I consider that there is a causal link Prescient's failure to make the transferred funds available for investment and the effect that Mr K has referred to.*

<u>Refund of Fees</u>

Both parties appear to have approached this issue on somewhat different grounds – Mr K's claim seems to have been based mainly on Prescient's failure to make the transferred funds available for investment, whereas Quilter has agreed to the refund because annual reviews were not conducted by Prescient in 2018 and 2019. However, both agree on the seriousness of the missing annual reviews and on the settlement resting on this basis. Whilst initially in dispute, the total fee refund amount has since been agreed and I note that Mr K was prepared to accept payment in this respect (and conclusion of the issue) whilst the other matters were referred to an ombudsman – but he was told all matters will be subject to the

ombudsman's decision.

In the above context, I am satisfied to uphold this issue and, as I said above, to endorse the settlement that the parties have reached.

Investment of transferred cash

I understand the points upon which the investigator relied in his view, but I consider that this issue goes beyond those points.

It does not appear to be Mr K's claim that Prescient was responsible for advising on the investment(s) to be made in the SIPP with the transferred cash or that it was responsible for making such investments. He is quite clear that Prescient's responsibility was to make the transferred funds available to the DM, and that it would then have been for the DM to proceed with the investment activity.

Mr K also does not appear to dispute receipt of the PCLS in August or the inference that can reasonably be drawn from that – such inference being that he would have been aware at the time, and from the PCLS payment, that the transfer had completed. However, this does not automatically mean he should have known that the cash remained in the SIPP's deposit account or that he had a role to play in ensuring it was made available to the DM. It is important to note that he had an IFA and a DM involved in this matter.

He expected the IFA, Prescient, to make the transferred funds available to the DM; given the discretionary mandate held by the DM, the investments that should have followed would not have required any involvement by Mr K (no investment advice from the DM or investment instruction to the DM was necessary because of the discretionary mandate); and whilst Prescient's annual reviews with him would probably have covered performance of those investments, they did not happen in 2018 or 2019; so, overall and on balance, I can understand why Mr K was not aware of the transferred cash sitting in the SIPP's deposit account and it is fair to conclude that he could not reasonably have been aware of that until Prescient disclosed it. It also appears, from available evidence, that the SIPP statements sent to Prescient did not reach Mr K at the time because the annual reviews did not happen, so he did not have the opportunity to identify the inactive cash through such statements.

The present complaint is not about the DM. Quilter has said, or suggested, that the DM could have sought access to the transferred funds or sought progress in the matter but did not do so. I have not seen evidence that doing so was a part of the DM's role or that it had done that in previous transfers into the SIPP. I also have not seen evidence that the DM's action or inaction in any respect broke or diluted Prescient's primary responsibility to make the funds available to it for investment – a responsibility that the adviser's email of September 2020 affirms (and concedes was breached) and a responsibility supported by the additional wider evidence I will address below.

Quilter's position appears to be based on its arguments about responsibility to advise on investments in the SIPP and/or responsibility to invest in the SIPP. It says Prescient had neither responsibility, but as I said above this does not appear to be in dispute and is not the issue, so such arguments seem to be redundant. In contrast, Mr K's arguments have focused on the factual event that caused the transferred cash to remain unnoticed in the deposit account – that is, the adviser's failure to move the cash on to the DM for investment. The balance of available evidence supports his key arguments. I note the following:

- *To his credit, the adviser's email of September 2020 presented his a clear and wilful acceptance of responsibility – and an apology – for his failure to make the transferred funds available for investment and he explained that this was caused by a failure to*

communicate this at the time. This alone is arguably sufficient evidence on which to conclude that Prescient is responsible for the omission as Mr K alleges.

- *The SIPP provider wrote to us on 19 November 2021 to confirm that the DM did not have access/authority to move funds in the SIPP in 2018 and that this continued to be the case until 2020 when the DM obtained such access/authority after undertaking an advisory role for the SIPP. As such, the DM could not, and could not have been expected to, access the transferred cash in the SIPP's deposit account in 2018 or in 2019.*

- *Prescient was aware that investments were to follow upon completion of the transfer into the SIPP. Its financial questionnaire was completed and signed by Mr K in March 2018 and this plan/objective was reflected within it. The same applies to its "DB to DC client questionnaire", which he completed and signed in the same month, which referred to the DM and in which he said he planned to "Take tax free benefit immediately and reinvest the remainder". [my emphasis]*

- *There is evidence of previous instruction from Prescient to the SIPP provider for the movement of funds to the DM. This supports Mr K's assertion that Prescient had done this successfully on previous occasions so the same task in 2018 was nothing new to it. In its communication to us, mentioned above, the SIPP provider confirmed it had previously done this upon Prescient's instruction. Quilter also appears to accept that funds were transferred into the SIPP through Prescient in 2012 and 2014. Those funds were made available to and invested through the DM.*

Overall, on balance and for the reasons addressed above, I am satisfied that Prescient was responsible for making the transferred funds available to the DM upon completion of the transfer into the SIPP, that it did not do so, that neither Mr K nor the DM appear to have been in a position to mitigate this and that Mr K was not and could not have been aware of this omission until the adviser disclosed it to him. Mr K is entitled to redress for any lost growth in the SIPP caused by this – caused by the cash remaining uninvested in the deposit account.

Mr K's adverse personal effect claim

The facts support the conclusion that Mr K's unawareness of, and the lack of transparency about, the cash sitting in the SIPP's deposit account – until the adviser's late disclosure of it – led directly to the creation of the issue on which this claim rests. But for these facts, either the issue would not have arisen or if it did it would have been remote to Prescient/the adviser. Unfortunately for him the issue arose and it was caused directly by Prescient's omission to make the transferred cash available for investment by the DM and, through no fault of his, by Mr K being unaware of this until it was belatedly disclosed to him. A financial loss does not appear to have been caused in this issue so none needs to be compensated for, but as I said above it adds to the grounds on which I intend to award Mr K £650 for the trouble and upset caused to him."

The 'adverse personal effect claim' addressed in the PD is what I now refer to as the *personal detriment claim*. The PD proceeded to set out, provisionally, redress and compensation for Mr K. Both parties were invited to comment on the PD.

Quilter said it was minded to accept the PD. However, it had two concerns about it. First, it said the end date for calculation of redress should be when – in September 2020 – £93,500 from the inactive cash deposit was made available to the DM for investment; it accepts that, thereafter and until the date of settlement, an interest award will apply; and it requested confirmation of the specific date on which the transfer of this cash amount to the DM was

completed. Its second concern was/is about the PD's inclusion of Mr K's personal detriment claim in the award of £650 for trouble and upset caused to him. It accepts the first two grounds for the award – that is, the trouble and upset caused to him by the missed reviews and the inactive cash deposit – but it considers that the Prescient adviser shared no responsibility in the personal detriment claim. It considers that Mr K should be awarded £350 for trouble and upset instead.

Mr K accepted the PD. He said he had discussed the PD with his financial adviser and, with regards to redress, he provided the following information:

- He said transaction history evidence confirms that the period of inactivity for the cash in the SIPP's deposit account began on 2 August 2018, after the PCLS deduction was made and when the remainder of £106,039 was left behind in the deposit account. He said this should be the start date for the calculation of redress.

- Like Quilter, he too considers that the calculation's end date should be when, in September 2020, funds from the SIPP's deposit account were made available to the DM. He confirmed the exact date as 23 September 2020.

- Based on valuation evidence – and in line with the PD's use of his managed SIPP as the benchmark for redress – he confirmed that there had been growth of 17.9% in the SIPP between the start and end dates. He therefore calculated, on this basis and on the inactive cash amount, around £19,000 in redress is due to him. In addition, he repeated that the fee refund settlement of £11,059.82 is due to him and said the PD's trouble and upset award of £650 is also due to him.

- He objected to Quilter's argument that the personal detriment claim was/is remote to the Prescient adviser and he repeated the connection between the inactive cash (and his unawareness of it), caused by the adviser, and the personal detriment he faced.

- He said all compensation money should be paid in full into his SIPP account.

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 reviewed the PD's findings, and in the absence of comments from either party disputing its findings on merit, I retain those findings on merit and incorporate them into this decision. They have been quoted in the background section above so they need not be repeated in the present section.

Both parties commented on redress and compensation. To their credit, most of their comments match, and some of the comments agree with the PD's findings on redress and compensation.

Mr K helpfully confirmed the specific start date as 2 August 2018 – when the period of inactivity for the relevant cash deposit began – and both parties agree with the end date being set at the point funds from that cash deposit were eventually made available to the DM (which Mr K has confirmed as 23 September 2020). Quilter agrees that interest on the award will run from the end date to the date of settlement. Mr K's growth rate calculation has also been helpful. I have not seen evidence to doubt it. However, I am mindful that, as I set out below, it remains for Quilter to conduct the relevant redress calculation, so I do not wish to prejudice that. The fee refund settlement between the parties was reflected in the PD and

that settlement remains in place at present (pending payment by Quilter after this decision). Mr K's request for all payments to be made into his SIPP is noted. This was provided for in the PD with regards to redress and the agreed refund, and the same will be reflected in my orders below. The award for trouble and upset is one for Mr K personally. I am not certain that there is a basis for Quilter to pay it into the SIPP, but I will provide for this too if Quilter finds that it is possible.

Overall and on balance, I do not consider that Quilter has said anything that affects the PD's finding on Mr K's personal detriment claim. As I explained in the PD, the details behind this claim will not be set out "… *because it is not necessary to do so in order to determine it and because such details could breach Mr K's privacy and/or anonymity*". Nevertheless, both parties are aware of the relevant details and I consider they will also be aware that those details support the PD's finding on the matter, which I quoted above and repeat as follows –

"*The facts support the conclusion that Mr K's unawareness of, and the lack of transparency about, the cash sitting in the SIPP's deposit account – until the adviser's late disclosure of it – led directly to the creation of the issue on which this claim rests. But for these facts, either the issue would not have arisen or if it did it would have been remote to Prescient/the adviser. Unfortunately for him the issue arose and it was caused directly by Prescient's omission to make the transferred cash available for investment by the DM and, through no fault of his, by Mr K being unaware of this until it was belatedly disclosed to him. A financial loss does not appear to have been caused in this issue so none needs to be compensated for, but as I said above it adds to the grounds on which I intend to award Mr K £650 for the trouble and upset caused to him*."

Overall, on balance and for the reasons given in the PD (and above), I uphold Mr K's complaint.

Putting things right

Fair compensation

My aim is to put Mr K as close as possible to the position he would now be in but for the Prescient adviser's failing and but for any resulting lost SIPP growth, as I addressed above (and in the PD). My understanding is that the refund of fees that has been settled relates to fees that were deducted from the SIPP so, in this respect, my aim will also be to provide that the agreed refund is paid by Quilter into the SIPP, if possible. Mr K's cooperation and disclosure of relevant information has been noted above and he is ordered to engage meaningfully and co-operatively with Quilter to provide it with all information and documentation in his possession, and relevant to its calculation of redress, which it does not already have.

What must Quilter do?

To compensate Mr K fairly, Quilter must do the following:

- Compare the performance of the transferred net cash amount in the SIPP's deposit account – that is the amount after deduction of the PCLS – with that of Mr K's SIPP as managed by the DM during the period set out below. If the *fair value* is greater than the *actual value* the difference must be paid to him as *redress*. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Calculate the notional gain value on the agreed total fee refund amount based on the benchmark Quilter used in its initial proposal; then add the resulting gain value to the total fee refund amount to achieve the '*refund compensation*'.

- Pay any interest set out below. Income tax may be payable on any interest paid. If Quilter is required by HM Revenue & Customs to deduct income tax from the interest, it must tell Mr K the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.

- Pay the redress and refund compensation into Mr K's pension plan, to increase its value by their amounts and any interest. The payments should allow for the effect of charges and any available tax relief. The payments should not be made into his pension plan if they would conflict with any existing protection or allowance. If the payments cannot be made into his pension plan, pay them directly to him. Had it been possible to pay them into the plan, they would have provided a taxable income, so the total should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Mr K £650 for the trouble and upset caused to him in all of the three relevant matters – that is, caused by him being deprived of the servicing and annual reviews he was entitled to in 2018 and 2019, caused by Prescient's omission to make the transferred cash available for investment and the delay in this being disclosed to him, and caused by the effect that had on the personal detriment matter he has cited. If Quilter finds it possible to make this payment into his SIPP, it should do so.

- Provide the calculation of the compensation to Mr K in a clear and simple format.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
The net cash transferred from the ALP into Mr K's SIPP deposit account in 2018	Invested after delay	Mr K's SIPP, as managed by the DM	2 August 2018	23 September 2020	Interest at the rate of 8% simple per year from the end date to the date of settlement

actual value

This means the actual value of the transferred cash at the end date.

fair value

This is what the transferred cash would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other payment out of the cash (and/or out of any investment made with the cash) should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Quilter totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I endorse the fee refund settlement between the parties, so I have reflected above (in the refund compensation due to Mr K) the benchmark that was used as part of that settlement. With regards to redress, Mr K's SIPP serves as the natural benchmark. But for Prescient's omission to make the transferred cash available for investment and but for the delayed disclosure of this, that cash would have been subject to investment in the SIPP by the DM; so it is reasonable to base the fair value calculation on what that cash would be worth at the end date if it had been made available for investment by the DM on/from the start date. The start and end dates used above are based on available information that I consider to be liable, but if more accurate information (directly from the SIPP provider) in these respects emerges in the calculation of redress, such information should be used.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr K's case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2020 but before 1 April 2022 (it was referred to us in late 2020), so the applicable compensation limit would be £160,000.

My final decision

For the reasons given above, I uphold Mr K's complaint. I order Quilter Financial Services Ltd to pay him all the forms of compensation (and settlement) set out above and to provide him with their calculations in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 June 2022.

Roy Kuku
Ombudsman