

## **The complaint**

Mr K has complained that Chase de Vere Independent Financial Advisers Limited didn't invest his pension funds in the agreed manner and that he's suffered financial loss as a result.

## **What happened**

On 18 March 2015, Chase de Vere recommended that Mr K switch his free standing additional voluntary contribution ("FSAVC") plan to a pension portfolio. Mr K's money (after he'd taken 25% from his pension pot as tax-free cash) would then be invested in a range of funds. The relevant forms were completed and the switch was completed on 2 April 2015.

On 10 April 2015 the pension provider (Aviva) called Chase de Vere to explain that all of Mr K's money had been placed into a cash fund (rather than the investment funds) so as to prevent any delays in him receiving the tax-free cash. The pension provider told Chase de Vere that for the remainder of Mr K's cash to be invested into the various funds it now needed to go into the 'post account' and "key in" the investments.

Mr K spoke to Chase de Vere in March 2021 and it told him that over the last six years his money had only been invested as cash rather than in the investment portfolios. On 14 March 2021 Mr K emailed Chase de Vere raising the lack of growth of his pension – pointing out that approximately £57,000 was invested in 2015 and the balance had remained at approximately £57,000 since then (in essence, any growth of the investment had been cancelled out by the pension provider's charges). Chase de Vere registered a complaint on its system.

Chase de Vere responded to Mr K's complaint on 22 July 2021. In summary, it felt it had acted correctly and with due care as it had instructed the pension provider on where to invest Mr K's money. And as Mr K had received regular pension statements in the intervening period which showed that his money had been held as cash, Chase de Vere felt the complaint had been made too late.

Mr K referred a complaint to us about Chase de Vere. We received it on 1 August 2021. Chase de Vere's position that Mr K had referred it to us too late was considered first by one of our investigators, and then, as Chase de Vere disagreed with his finding that the complaint was one we could consider, by an ombudsman.

That ombudsman concluded that Mr K had raised his complaint with Chase de Vere within six years of the event complained about, and so under the rules which govern our service, he said that we were able to consider the matter.

Our investigator then considered the merits of the complaint, saying that he thought the complaint should be upheld. He set out the following in summary:

- The documentation didn't suggest that Chase de Vere had made a mistake when submitting the transfer request.

- However, Aviva had made it clear to Chase de Vere that it had retained the pension fund in cash whilst the tax free cash was paid, and that it would then need to enter the “Post Retirement Account” and manually enter the funds in which it wished Mr K’s pension to be invested. And Chase de Vere acknowledged this.
- But Chase de Vere didn’t take the required action. And although it hadn’t agreed to assist Mr K beyond the initial transfer advice, it nevertheless had a responsibility to ensure that, once the transfer had completed, Mr K’s pension funds were invested as had been agreed with him.
- Had it fulfilled that requirement, Mr K’s investment would have been made on 10 April 2015.

The investigator recommended that, to put matters right, Chase de Vere should compare the notional value of Mr K’s Aviva pension plan, had it been invested as agreed, with its actual value. He also recommended that one of our benchmark indices be used if it wasn’t possible to obtain the notional value of the plan.

If there was a loss, Chase de Vere should in the first instance pay this into Mr K’s pension plan, but if this wasn’t possible, it should be paid directly to Mr K, with a deduction for the income tax he’d pay on the amount.

Further, although the investigator noted the corrective action Chase de Vere had taken on Mr K’s behalf since the issue had come to light, and that the financial impact to Mr K would be somewhat mitigated by him having other pension provision, he nevertheless considered that the trouble and upset caused to Mr K when he realised that his pension funds hadn’t been invested since the transfer warranted an additional payment of £100.

Mr K agreed with the investigator’s assessment, but Chase de Vere submitted further points, as follows:

- The proposal didn’t take into account the statements Mr K had received from Aviva, which would have showed that his pension funds were held in cash.
- Mr K had a degree of responsibility for what had happened as he should have acted when realising that his pension funds remained in cash.

The investigator reassessed his position in light of these comments and set out a further view on the matter as follows:

- Chase de Vere was responsible for the initial mistake, but there was a well-established principle that a complainant should take reasonable steps to limit the damage caused by the error.
- The suitability report made it clear that Mr K’s pension would be invested in various investment funds, but the first annual statement received in June 2015 made no reference to this – rather, it showed that the entirety of the pension fund was invested in a cash account.
- That statement, and the ones which followed, made it clear that Mr K’s pension hadn’t been invested in the manner he’d intended.
- Mr K had said that the pension valuation in the first statement had been in line with his expectations and he hadn’t realised the significance of the cash account. He’d

been pleased that he hadn't lost money, given low global interest rates and low investment growth, along with the initial set up charges which would have been applied. Further, the content of the statements didn't change over time, so he'd decided to let things run - and as it wasn't his only pension, he hadn't dedicated all his attention to it.

- But whilst the investigator understood and acknowledged those points, the investigator said that the statements nevertheless made it clear that Mr K's pension was invested in cash. And that Mr K had a responsibility to review his statements carefully.
- Mr K should therefore have acted shortly after receiving his first statement from Aviva, and his pension would then have been invested as intended.

The investigator amended his redress proposal, saying that Chase de Vere should undertake a comparison between the notional value of his Aviva pension plan as at 17 July 2015, as if it had been in the recommended investments since 10 April 2015, and the actual value of his pension plan at that date.

Chase de Vere accepted the investigator's revised view, but Mr K expressed disappointment, saying the following in summary:

- He viewed the June 2015 statement as a "stepping stone" in the initial set up process, rather than any indication that an error had been made. Later statements were more comprehensive, with graphical presentation, which started to make him wonder why his investment had "flat-lined". With hindsight, it was obvious as to why.
- If he'd been more diligent, he could have rectified the situation sooner, but this wouldn't have been apparent just a few months after the plan had been established.
- The 2016 and 2017 statements reassured Mr K that all was as it should be – some growth, balanced out by fees and his understanding of global losses equating to either zero growth, or a loss.
- He acknowledged that, after two or three similar statements, he should have realised the problem and acted, but whilst he could see that he had a degree of responsibility in the matter, he couldn't accept that Chase de Vere bore virtually none.
- He enquired as to whether, if he had acted in 2016 or 2017, Chase de Vere would still only be responsible for the period up to July 2015.
- Mr K suggested that a more equitable way of resolving the matter would be for the responsibility for any losses to be halved.

As agreement wasn't reached on the matter, it was referred to me for review.

I issued a provisional decision on the complaint on 24 October 2022, in which I set out my reasons for upholding the complaint. My findings from that decision are set out below:

*"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've reached similar conclusions to the investigator, and for some of the same reasons, but with a slightly different proposed outcome.*

*I've firstly noted the investigator's comments about Mr K having had a responsibility to review his statements carefully, but from a perspective of mitigation of his position, I've thought about how Mr K ought reasonably to have acted in the position of receiving the statements.*

*I think it's noteworthy, and to his credit, that Mr K hasn't said that he didn't review his statements. Mr K has said that he was aware of their content but considered them, certainly for the first couple of years, to have been broadly consistent with his expectations.*

*I think the general principle of there being an expectation that an individual would take action to mitigate their position within a reasonable time period of when they became aware, or ought reasonably to have become aware, that there was a problem, is sound.*

*A key consideration here is whether Mr K ought reasonably to have been aware that his pension funds weren't invested as they should have been. And in thinking about this, as noted above, Mr K has told us that he did look at his statements. And so I don't think it would be an unreasonable expectation for Mr K to have become aware that there was a problem here – a position with which Mr K himself has agreed, albeit at a later point than that identified by the investigator.*

*But I do have some sympathy with Mr K's comment that he appears to be assuming a large part of the responsibility for what was, in essence, Chase de Vere's initial error. Had it not made the error, then Mr K wouldn't have needed to take corrective action. Further, I agree with Mr K's position that he might have paid somewhat less attention to a statement which was produced in June 2015, this being only a few months after he'd initially transferred his pension plan. A broadly unchanged pension fund value wouldn't by that point have seemed particularly untoward.*

*But on the other side of the argument, and as with the investigator, I also take on board Chase de Vere's comments that Mr K was, or ought reasonably to have been by virtue of seeing later annual statements, in a position to be able to mitigate his position.*

*Therefore, I broadly agree with Mr K's proposal that a position of compromise might reasonably be reached here, but only to an extent. I think by the point of receiving the following year's statement (so in 2016), Mr K ought to have been aware of there being no real change in the value of his pension fund – in his own words, the performance had "flat-lined", which is not a pattern of growth which would be expected from anything other than a cash fund - and that this might reasonably then have brought to his attention that his pension fund was invested in the cash account.*

*As such, I currently think a fair and reasonable outcome here would be for Chase de Vere to undertake the same calculation as directed by the investigator, but effectively one year later.*

#### *Putting things right*

*As with the investigator, 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 Chase de Vere's error. And this would have meant he invested in the same investments listed on his original application on 10 April 2015.*

*Any loss Mr K has suffered should be determined by obtaining the notional value of his pension plan from Aviva on the basis that it had been in these investments from 10 April 2015 to 17 July 2016, and subtracting the actual value of the pension at that same date from this notional value. If the answer is positive, there's a loss, and this should be converted to a percentage of the fund value at the same date.*

*That same percentage of loss should be applied to Mr K's pension plan as at the date of any final decision along these lines. The resulting compensation amount should if possible be paid into Mr K's pension plan. 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.*

*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.*

*Mr K has already taken his full tax-free cash entitlement from this pension, so 100% of any loss would be taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 20% overall from the loss adequately reflects this.*

*Although I've noted the investigator's alternative suggestion of using one of our benchmark indices if it isn't possible to obtain the notional values set out above, I don't envisage that there would be any issue obtaining this from a provider such as Aviva. If Chase de Vere disagrees, I'd be grateful to hear the reasons why.*

*As with the investigator, I think the realisation that his pension fund hadn't been invested as it should have been would have caused Mr K a not insignificant amount of worry and uncertainty.*

*As such, I think the further payment of £100 in respect of this is warranted here."*

Both parties responded to say that they had nothing further to add.

### **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.

My conclusions remain the same as those set out in the provisional decision, and for the same reasons.

### **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 Chase de Vere Independent Financial Advisers Limited's error. And this would have meant he invested in the same investments listed on his original application on 10 April 2015.

Any loss Mr K has suffered should be determined by obtaining the notional value of his pension plan from Aviva on the basis that it had been in these investments from 10 April 2015 to 17 July 2016, and subtracting the actual value of the pension at that same date from this notional value. If the answer is positive, there's a loss, and this should be converted to a percentage of the fund value at the same date.

That same percentage of loss should be applied to Mr K's pension plan as at the date of this final decision. The resulting compensation amount should if possible be paid into Mr K's pension plan. 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.

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.

Mr K has already taken his full tax-free cash entitlement from this pension, so 100% of any loss would be taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 20% overall from the loss adequately reflects this.

Payment of the compensation should be made within 28 days of Chase de Vere Independent Financial Advisers Limited being notified of Mr K's acceptance of this decision. If it isn't, interest at the rate of 8% simple pa should be added to the loss amount from the date of this decision to the date of settlement.

As with the investigator, I think the realisation that his pension fund hadn't been invested as it should have been would have caused Mr K a not insignificant amount of worry and uncertainty.

As such, I think the further payment of £100 in respect of this is warranted here.

### **My final decision**

My final decision is that I uphold the complaint and direct Chase de Vere Independent Financial Advisers Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 December 2022.

Philip Miller  
**Ombudsman**