

The complaint

Mr B says KW Wealth Planning Limited ('KW') caused delays in the transfer of his Self-Invested Personal Pension ('SIPP'), in cash, from Xafinity ('X') to Interactive Investors ('II'). He says after his instruction of 13 November 2020 the liquidations/transfers were not completed until 18 January 2021, and this caused him a financial loss in terms of reinvestments in the II SIPP. He seeks compensation and he says KW also failed to provide him with support during the process.

[All dates and months mentioned are in 2020 unless otherwise stated.]

What happened

I issued a Provisional Decision ('PD') on 19 October 2022. In it, I provisionally found as follows:

- *"KW concedes that the migration of its business to a new custodian at the time of Mr B's instruction caused the delays in executing the instructed liquidations. Its communications with him at the time confirm the same and available evidence does that too. Therefore, there it is agreed and settled that KW is liable for the delayed liquidations.*
- *There is also evidence from Mr B's complaint submissions that there were problems in the transfer process, specifically during the partial transfers, which were remote to KW and which, he alleges, were caused by II. He has referred to his pursuit of a separate complaint in this respect. It is also his evidence that he viewed the partial transfers positively in the sense that they helped to reduce his losses, but he says (or suggests) they would have been unnecessary altogether had he known the liquidations would be delayed. He says he would have either sought an opportunity to liquidate the X SIPP in one day before initiating the transfer or he would have transferred the SIPP in specie.*
- *In any event, the point I observe in this respect is that the case against KW remains limited to the delays in executing the liquidations and the direct consequences of that. It does not extend to overall responsibility for the transfer (as a whole). It must be noted that KW was the Discretionary Investment Manager for the X SIPP's portfolio, so its responsibility in the process was defined by this role and was essentially limited to executing the investment liquidations – then X was the ceding SIPP scheme and II was the receiving SIPP scheme and both retained their respective responsibilities in the transfer process.*
- *Based on KW's acceptance of responsibility for the delayed liquidations it confirms – and it is agreed between the parties (based on evidence and for the reasons I summarized in the previous section) – that, but for the delays, the ETF holdings in the X SIPP would have been liquidated on 13 November 2020 and the fund holdings in the SIPP would have been liquidated on 16 November 2020. KW has calculated that the total value that would have been generated in the SIPP from the liquidations executed on these dates would have been £483,597.98. Available evidence appears*

to support this, and I have not seen a dispute from Mr B about this. If he disagrees with this amount he is invited to comment – with supporting evidence – in response to this PD. The same applies to the actual total value that was eventually generated in the SIPP at the conclusion of the liquidations. As stated in the previous section, this amount was £489,922.20, available evidence supports it and if Mr B disagrees he is invited to comment with supporting evidence. For the present purpose in this PD, the conclusion that follows is that Mr B incurred no loss of liquidation value as a result of the liquidation delays, instead he gained (in terms of liquidation value) from the delays. This aspect of his case is therefore settled and need not be considered further.

- In a case like Mr B's, liquidation value(s) is one of the two areas in which a financial loss could have occurred. The other area is that of the post-transfer reinvestments, which appears to be the only matter that remains in dispute, and which I focus upon below.
- Compensation to Mr B for the trouble and upset he was caused by the delayed executions also appears to have been settled. Both he and KW appear to have agreed with the £200 recommended by the investigator and I too consider it a fair amount to award in the circumstances of the case – those circumstances including, especially, evidence of KW reducing the impact of the delays by maintaining communications with him, explaining matters within those communications, readily covering ancillary costs that resulted from the delays and, as I find below, proposing a reasonably timely and viable form of mitigation for Mr B. If I am wrong in concluding that Mr B agrees with the £200 award, he is invited to say so in response to this PD and to make his case if he seeks a higher award.

My views on the allegation of lack of support from KW are mainly that it is not the focus of Mr B's complaint and that it is an allegation that conflicts with evidence of his gratitude for support from KW. KW included this point in its response to his complaint and I consider it a credible one. There is evidence of two emails from him to KW in December (the first around the middle of the month and the second towards its end) in which he thanked KW for being "extremely helpful and proactive" in the liquidation/transfer matter and for all the help it had given him in the preceding weeks. I appreciate the matter was yet to conclude at the time, but it concluded relatively shortly thereafter with the final partial transfer on 18 January 2021 so, on balance, I consider this to be reasonably persuasive evidence that KW supported Mr B in the way that he wanted and appreciated. Furthermore, as I mentioned above and as the investigator noted, KW's role in the transfer was mainly to execute the liquidations, so there was a limit to how much it could help in the other aspects of the transfer process.

As the investigator repeatedly explained, consideration of any financial loss in the post-transfer reinvestments – because of the liquidation delays – must be addressed in addition to any financial loss in the liquidation values. KW says a claim for this has been defeated by Mr B's failure to mitigate, when and where he should have. My provisional views are that Mr B altered the chain of KW's liability for reinvestment loss by not undertaking its proposal of 1 December 2020 and that consideration of such loss must include this factor.

Mitigation is mainly about taking action that reduces the severity or seriousness of an occurrence. In this context, the ideal of a flawless and timely full SIPP liquidation (and then transfer) that Mr B wanted/expected at the outset becomes arguably irrelevant. Faced with the delays caused by KW's migration activities, such an experience was not happening and was no longer possible. If and where the same ideal extended to timely pre-planned reinvestments thereafter, that too was no longer possible because of the delays. A duty upon Mr B to mitigate therefore arose at the time. That required him to act, within reason and

where possible, to reduce the impact from the delays on the post-transfer reinvestments he planned to make.

At best, KW's email to Mr B of 1 December initiated and offered him a precise and practical form of mitigation, which it had the power to execute for him – and, at least, it reminded him of the need to consider mitigation. The proposal was therefore feasible and, for the reasons I address below, it was also reasonable.

Available evidence is that between around £130,000 and around £200,000 in cash was ready at the time and could have been used, in the proposed execution only account, to make some of the planned reinvestments that he had specified in his email of 29 November. There is also evidence that, beyond matching some of those planned reinvestments, further investments could also have been made in assets that were either broadly comparable to other planned reinvestments or assets that provided an interim return to the market pending subsequent liquidations and reinvestment when more of the assets he pre-planned to reinvest in became available (post migration). The next step would have been to transfer such reinvestments in specie to the II SIPP when the liquidations were concluded, and this too was viable. Mr B declined the proposal in his response on the same date (1 December).

If Mr B argues that such steps could have generated additional transaction costs, I am mindful that KW had already set a precedent for wilfully covering ancillary costs resulting from its delays. If such additional costs arose, it is more likely (than not) that KW would have also offered to cover any such additional transaction costs arising from the execution only based proposal it offered him (including any additional costs arising from in specie transfers of reinvestments in the execution only account). KW was consistent and determined in its effort to avoid any financial disadvantages to Mr B so I consider it safe to find that its approach would have extended this far.

I note from his response of 1 December that Mr B also considered the proposal unattractive because of additional effort and work he anticipated and said he could not afford to give at the time. However, I consider it reasonably clear from the contents of the proposal that his consent, in the main, was what was required (and was what KW asked for in concluding the proposal), so I am persuaded that the bulk of the arrangements (work and effort) would have been undertaken by KW, not by Mr B. If he argues that the proposal did not completely resolve the matter, I agree. However, it is also his argument that he would have made his pre-planned reinvestments earlier, but for the delays, so it stands to reason that when – on 1 December – he had the opportunity to use a significant amount of his SIPP's liquidated value to make some of those pre-planned reinvestments (and, in addition, interim reinvestments) he ought reasonably to have used that opportunity.

Mr B did not use the opportunity. He declined it, seemingly without even exploring it first. It could be argued that such conduct calls into question his entire claim that he would have made reinvestments earlier than he did if there had been no liquidation delays. If this claim cannot be established there will be no basis to consider financial loss in the post-transfer reinvestments. The implication would be that the liquidation delays were inconsequential to his reinvestments. Based on Mr B's failure to mitigate through the 1 December proposal, this could be a potentially fair conclusion.

However, a benefit from this decision being a PD is that Mr B retains a chance to argue his case further. I invite him to do so in response to the provisional findings above, and the potentially fair conclusion I have referred to. The same invitation applies to KW, if it wishes to add anything to its previous submissions or in response to the findings above.

To avoid a delay in concluding a final decision in this case, I set out below the potential outcomes for my final decision. Both parties are invited to consider and comment upon them

too, in their responses to this PD. This is important, as it is likely that a final decision will be issued without further opportunity to make such comments.

- *If, after considering and addressing all comments on the PD, I am persuaded by the aforementioned potentially fair conclusion, my final decision will be to award Mr B £200 for the trouble and upset caused to him by the delayed liquidations and nothing for financial loss (because there was no such loss in terms of the X SIPP's portfolio's liquidation value and because of a lack of evidence to find such loss in terms of the reinvestments).*
- *If, after considering and addressing all comments on the PD, I am persuaded that Mr B did not fail to mitigate and that the planned reinvestments would probably have been made earlier, but for the liquidation delays, my final decision will be to award him £200 for the trouble and upset caused to him in the matter and to award him redress for financial loss in line with the redress findings presented by the investigator (for all the same reasons he set out). Both parties are already aware of the investigator's redress findings.*
- *If, after considering and addressing all comments on the PD, I retain the conclusion that Mr B failed to mitigate from 1 December 2020, but because other liquidations (and liquidation proceeds) continued to be delayed thereafter (until the final partial transfer on 18 January 2021) I find that there are grounds to award redress for those proceeds (only) and I find that they would have been reinvested earlier but for the continuing delays, I will award Mr B £200 for the trouble and upset caused to him in the matter, I will award him nothing for financial loss in the X SIPP's portfolio's liquidation value (because no such loss exists) and I will award him redress for financial loss in the post-transfer reinvestments based on the following approach –*
 - *Available evidence is that, without the liquidation delays, the X SIPP would have been fully liquidated by 23 November at a total value of £483,597.98. For the sake of completion, there is also evidence to say this amount would have been with X on this date ready for transfer to II; that, in reality, X took up to four working days to complete its transfers to II so it probably would have taken the same length of time, up to 27 November, to complete the transfer of this amount; and that this amount would then have been available for reinvestment in the II SIPP on the next working day – on 30 November.*
 - *£483,597.98 will be 'A'.*
 - *Only the total unrealized/unliquidated value in the X SIPP as of 1 December will be the subject of redress. The total value that had already been liquidated as of this date will be excluded because Mr B's failure to mitigate in this respect closed KW's liability for this aspect. The total value already liquidated in the X SIPP as of 1 December will be 'B'.*
 - *The basis for redress ('C') will be A minus B.*
 - *The start date for the calculation of redress will be the first date after 1 December on which Mr B made reinvestment(s) in the II SIPP. Despite what I set out (for the sake of completion) in the first bullet point above, I will not consider 30 November as a fair start date because his failure to take action towards mitigation the day after (on 1 December) conflicts with the notion that he would have reinvested at the time. However, on balance, his first actual reinvestment(s) thereafter provides a broadly reasonable date on which it can*

be found that he would have reinvested all of C but for the liquidation delays after 1 December. Available evidence is that the first partial transfer of liquidated funds (a total of £318,500) to II happened on 14 December, and his first actual reinvestment(s) thereafter (so, also after 1 December) appears to have been on 18 December, but I will provide that the exact date – the start date – is confirmed with evidence.

- *I will order KW to calculate how all the amounts actually liquidated and transferred after 1 December have performed up to the date of my final decision. I will order Mr B to provide KW with all information and documentation it reasonably needs, and does not already have, in order to conduct this calculation. The actual reinvestments made with these amounts will collectively be ‘the benchmark’ and the result of this calculation will be the ‘actual value’.*
- *I will order KW to calculate how C would have performed if invested in line with the benchmark from the start date to the date of my final decision. The result of this calculation will be the ‘fair value’.*
- *If the actual value is greater than the fair value, no compensation will be due to Mr B. If the fair value is greater than the actual value, the difference will be the total compensation that must be paid to Mr B.*
- *I will order that KW pay any resulting compensation into Mr B’s SIPP, to increase its value by the amount of the compensation and any interest; that the payment should allow for the effect of charges and any available tax relief; that the compensation (and any interest) should not be paid into his SIPP if it would conflict with any existing protection or allowance; that if the compensation (and any interest) cannot be paid into his SIPP, it must be paid directly to him; that had it been possible to pay it into the SIPP, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid; that 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 likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax and if he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation).*
- *I will order KW to provide Mr B with a calculation of the compensation in a clear and simple format.*
- *I will also give the following notice – 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 a final decision. In Mr B’s case, the complaint event occurred after 1 April 2019 (it happened in 2020) and the complaint was referred to us after 1 April 2020, so the applicable*

compensation limit would be £355,000.

For the sake of transparency, and pending comments from the parties, I am provisionally, and presently, inclined towards the third outcome above."

Both parties were invited to comment on the PD. KW said it had nothing to add to its previous submissions. Mr B mainly said as follows:

- KW's overall service went beyond its discretionary management of his SIPP. It also provided him with an advisory service and, in this respect, it ought to have overseen the transfer to ensure it happened smoothly. Its bad service, in the same respect, was the subject of a separate complaint he made, which has settled. However, this wider context should not be lost in my considerations.
- He does not agree with the £200 award proposed by the investigator for trouble and upset. The devaluation of his pension, partly caused by the transfer issue, has meant a detrimental change to his retirement plans. This has caused added trouble and upset that should be compensated for.
- The end date for calculating redress should not be 18 January 2021 (when the last transfer was sent), it should be three days thereafter – 21 January 2021 – to give allowance for time up to when that transfer was settled.
- There is specific correspondence evidence that shows his full intent to reinvest as soon as possible, but for the delay caused by KW.
- Merit remains in his claim about lack of support from KW and his emails to the adviser, which have been cited against him, have been misunderstood. He expressed personal thanks to the adviser for going beyond what KW allowed him to do, but there was still an overall failure *by KW* to support him during the transfer process. Furthermore, the notion of KW covering additional costs has also been misunderstood. Contrary to what has been said, KW did not wilfully do this, it initially resisted doing so until he complained and it refused to cover the cost of the third additional partial transfer that he asked for. This also lends itself to the matter of mitigation. Primarily, and aside from his duty to mitigate, KW failed in its duty to mitigate the detriments that its delay had caused by unreasonably limiting the additional partial transfers to two. He asked for a third additional transfer prior to and after 1 December but KW refused. Had it agreed, partial transfers could have been made earlier. In this context, the duty upon him to mitigate is arguably irrelevant and it is unfair to focus on it.
- Events around, and on, 1 December have also been misunderstood. To clarify – on 27 November he complained about having to pay additional transfer fees; on 29 November he shared his planned reinvestments with the adviser; before and soon after 1 December he had also requested the third additional partial transfer (which KW refused); also before and after 1 December, KW gave repeated assurances that he would not be left with a financial detriment; the assurances were not qualified or limited and they were made with KW's awareness of his planned reinvestments, so it is fair to say they extended to financial loss in relation to the planned reinvestments; the idea of interim funds was his idea, not KW's; on 1 December he had a number of telephone calls with the adviser to explore how viable this idea was; the adviser then advised against it [for specific reasons, summarised in Mr B's submissions] and he (Mr B) agreed. Furthermore, if the idea was viable, why did KW not proceed with it. Also on 1 December, he asked for a transfer of cash, but that was not made.

- My provisional finding that KW would probably have paid any additional costs associated with its proposal of 1 December should be revised, in light of his submissions about having to fight for payment of the additional transfer costs that KW was initially reluctant to make.
- Redress to him should take a simpler form, based on the starting point valuation of £483,864 (which the PD refers to with different values on pages 2 and 6); based on the planned reinvestments he specified and on the growth on the starting valuation up to 21 January 2021; minus the transfer value on 21 January 2021; and plus interest to date.

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.

I have reviewed the case, the PD and Mr B's submissions. Having done so, I retain the findings in the PD and I have not been persuaded by his submissions to change them. I incorporate those findings into this decision. As I addressed in the PD, the matters of redress and mitigation are the key issues to resolve and I set out the three potential outcomes to reach in this decision. I also noted that the third outcome was most likely to be my conclusion. Following my review, on balance, and for the reasons given in the PD the third outcome is my conclusion in this case. I repeat those reasons in the redress section that follows below.

First, I address Mr B's points.

- In the PD, I said – *“There is also evidence from Mr B's complaint submissions that there were problems in the transfer process, specifically during the partial transfers, which were remote to KW and which, he alleges, were caused by II. He has referred to his pursuit of a separate complaint in this respect”* and *“... the case against KW remains limited to the delays in executing the liquidations and the direct consequences of that. It does not extend to overall responsibility for the transfer ... KW was the Discretionary Investment Manager for the X SIPP's portfolio, so its responsibility in the process was defined by this role and was essentially limited to executing the investment liquidations – then X was the ceding SIPP scheme and II was the receiving SIPP scheme and both retained their respective responsibilities in the transfer process”*.
- The facts and evidence continue to support the above findings. Mr B has referred to a wider (and advisory) service from KW but he also accepts that his complaint in that respect has been pursued and settled separately. Therefore, it remains the case that the present complaint is only about KW's delay(s) in liquidating the SIPP. For the above reasons, I disagree with Mr B's suggestion, or argument, that the matter to consider goes beyond this.
- For similar reasons, I am also not persuaded by his claim for more compensation from KW for trouble and upset, above the £200 set by the investigator. Either consciously or otherwise, Mr B appears to view this claim in the context of the transfer delay as a whole – or, at least, in the context of KW being mainly at fault for the overall delay. This is perhaps illustrated by his reference to the impact of the transfer upon his retirement plans. The balance of evidence does not establish such responsibility, so the remit for this claim is also limited to KW's role in liquidating the

SIPP. On this basis, and mindful that KW's agreement to cover the two additional partial transfer costs and its mitigation offer of 1 December helped to reduce the trouble and upset caused to Mr B, I consider that the award of £200 is fair and reasonable.

- As stated in the PD, the end date for the third redress outcome is "*the date of my final decision*", and the start date is "*the first date after 1 December on which Mr B made reinvestment(s) in the II SIPP*".
- Mr B's explanation of his expressions of thanks to the adviser do not alter my findings on his claim that KW failed to support him. The basis on which the adviser provided the support that he (Mr B) was expressly grateful for is irrelevant. The facts are that such support was provided by the adviser, who represented KW, and it was good enough to prompt Mr B to give unsolicited and repeated written thanks, so, on balance, his claim about lack of support from KW is defeated by this evidence.
- The issue about Mr B's reinvestment intention is mainly about the conflict it faces from the opportunity that was given to him on 1 December to begin execution of that intention and that he declined. His argument about pursuing, before and after this date, KW's coverage of a third partial transfer appears to be redundant. No partial transfer happened until 14 December. It is not clear how, prior to (or soon after) 1 December, a refusal to grant a 'third' transfer can be relevant to the matter when the 'first' transfer did not happen until 14 December. There were partial transfers, including the two additional transfers covered by KW, yet to be exhausted around 1 December, so why would there be relevance in a refusal to cover a third additional transfer? It is also not clear how this establishes a failure to mitigate by KW – and I do not consider that such has been established. Whether (or not) KW wilfully offered to cover the two additional transfers is also a redundant matter. The fact is that it covered the costs of both additional transfers.
- Returning to the conflict between Mr B's argument about his reinvestment intention and the opportunity he declined, I accept that his email of 29 November is evidence of the intention. The problem is his claim that he would have made those reinvestments earlier, but for delays. His action in declining the opportunity to begin making those reinvestments on 1 December opposes and, I consider, defeats this claim. Evidence of correspondence between both sides in this respect confirms, in his own words, that the decision to decline the opportunity was his, that it was based on his consideration of the matter and that he reached this decision because he considered that the opportunity required additional effort on his part that he could not afford to give and that it would result in an incomplete portfolio. Instead, he proposed a form of redress that he said KW should make to him after the liquidations were completed. His email to KW in this respect does not appear to refer to the telephone advice (against the option) from the adviser that he mentions and I have not seen record of such advice. In response, the adviser/KW simply accepted his position (in terms of declining the option) and continued with the idea of partial transfers. Notably, the adviser's response (also on 1 December) referred to "*£132,500 ready to go now*" "*and £65,000 next week*" and asked Mr B to do what was necessary with II and X to facilitate their transfer, so this seems to further counter the suggestion that KW delayed the partial transfers of liquidated funds.
- I have not seen evidence that KW gave an unlimited assurance to cover Mr B's financial loss, to the extent of reinvestment losses. This appears to be his interpretation of KW's offer but it is not supported by what KW actually said, or by the balance of available evidence.

- For the reasons given in the PD, I retain the view that KW would probably have covered any additional costs arising from the mitigation option that was proposed.
- The valuation mentioned on page 2 of the PD was part of my summary of the investigator's findings. The valuation on page 6 of the PD was part of my findings.
- Mr B's redress calculation proposal appears to rest on his claim for total redress – which, for the reasons I set out below (and presented in the PD), I do not uphold. I retain the basis for redress I presented in the third outcome in the PD.

Putting things right

For the reasons given above, and in the PD, I award Mr B £200 for the trouble and upset caused to him in the complaint matter.

In terms of redress for financial loss, and for the reasons given above and in the PD, I find that Mr B failed to mitigate from 1 December 2020; however, other liquidations (and liquidation proceeds) continued to be delayed thereafter (until the final partial transfer on 18 January 2021); there are grounds to award redress for those proceeds (only), as I consider that they would have been reinvested earlier but for the continuing delays; no award is due for financial loss in the X SIPP's portfolio's liquidation value because, as addressed in the PD, no such loss exists; but KW must pay him redress for financial loss in some of the post-transfer reinvestments based on what I set out below.

Available evidence is that, without the liquidation delays, the X SIPP would have been fully liquidated by 23 November at a total value of £483,597.98. There is also evidence that this amount would have been with X on this date ready for transfer to II; that, in reality, X took up to four working days to complete its transfers to II so it probably would have taken the same length of time, up to 27 November, to complete the transfer of this amount; and that this amount would then have been available for reinvestment in the II SIPP on the next working day – on 30 November.

£483,597.98 is 'A'.

Only the total unrealized/unliquidated value in the X SIPP as of 1 December is the subject of redress. The total value that had already been liquidated as of this date is excluded because Mr B's failure to mitigate in this respect closed KW's liability for this aspect. The total value already liquidated in the X SIPP as of 1 December is 'B'.

The basis for redress ('C') is A minus B.

The start date for the calculation of redress is the first date after 1 December on which Mr B made reinvestment(s) in the II SIPP. Despite what I set out above, I do not consider 30 November as a fair start date because his failure to take action towards mitigation the day after (on 1 December) conflicts with the notion that he would have reinvested at the time. However, on balance, his first actual reinvestment(s) thereafter provides a broadly reasonable date on which it can be found that he would have reinvested all of C but for the liquidation delays after 1 December. Available evidence is that the first partial transfer of liquidated funds (a total of £318,500) to II happened on 14 December, and his first actual reinvestment(s) thereafter (so, also after 1 December) appears to have been on 18 December. However, I order that the exact date – the start date – is confirmed by Mr B, and provided to KW, with evidence.

I order KW to calculate how all the amounts actually liquidated and transferred after 1 December have performed up to the date of this decision. I order Mr B to provide KW with all information and documentation it reasonably needs, and does not already have, in order to conduct this calculation. The actual reinvestments made with these amounts is, collectively, 'the benchmark' and the result of this calculation is the 'actual value'.

I order KW to calculate how C would have performed if invested in line with the benchmark from the start date to the date of this decision. The result of this calculation is the 'fair value'.

If the actual value is greater than the fair value, no compensation is due to Mr B. If the fair value is greater than the actual value, the difference is the total compensation that must be paid to Mr B.

I order that KW pay any resulting compensation into Mr B's SIPP, to increase its value by the amount of the compensation; that the payment should allow for the effect of charges and any available tax relief; that the compensation (and any interest) should not be paid into his SIPP if it would conflict with any existing protection or allowance; that if the compensation (and any interest) cannot be paid into his SIPP, it must be paid directly to him; that had it been possible to pay it into the SIPP, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid; that 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 likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax and if he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation).

I order KW to provide Mr B with a calculation of the compensation in a clear and simple format.

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 a final decision. In Mr B's case, the complaint event occurred after 1 April 2019 (it happened in 2020) and the complaint was referred to us after 1 April 2020, so the applicable compensation limit would be £355,000.

My final decision

For the reasons given above, I uphold Mr B's complaint. I order KW Wealth Planning Limited to compensate him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 December 2022.

Roy Kuku
Ombudsman