

The complaint

Mr B has complained that, after Keystone Financial Ltd had transferred his occupational pension scheme (OPS) benefits to a self invested personal pension (SIPP), it failed to ensure that they were invested and that it didn't then undertake the annual review for which he was paying it.

What happened

The investigator who considered this complaint set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Keystone's 'Initial Discovery Questionnaire' captured details of Mr B's personal and financial circumstances in order for it to provide him with appropriate advice. Keystone also assessed his attitude to investment risk.

Keystone then wrote to Mr B with its 'Engagement Letter' on 28 September 2017, which set out the agreed service it would provide.

It provided an advice report in which Keystone explained that it had evaluated whether Mr B should accept the Cash Equivalent Transfer Value (CETV) offered for his deferred OPS benefits in his ex-employer's pension scheme and Keystone recommended that he accept this, start a new SIPP with AJ Bell, and transfer his OPS benefits into it.

Keystone received the CETV from the OPS on 10 January 2018.

Keystone provided a copy of a file note, an illustration, and an investment report to evidence its contact with Mr B regarding the intended investment of his pensions savings.

The advice report explained that Mr B equated to a risk profile of "4" on a scale of "1 to 10", where "1" was the lowest risk and "10" was the highest – it considered this to be low/medium risk. Keystone's recommendation was therefore to split the investment within the SIPP between a Prudential Trustee investment Plan (TIP) invested in the PruFund Growth Fund and two discretionary funds with Parmenion, split equally between their passive "risk rated 4" portfolio and active "risk rated 4" portfolio.

But that investment ultimately didn't happen in 2018.

AJ Bell sent annual statements to Mr B from June 2018 which, amongst other things, provided him with a SIPP valuation summary and a transaction summary.

Mr B has said that, upon being prompted by his wife, he realised that he hadn't heard anything about his pension for a while and, after contacting Keystone, it came to light that his pension savings hadn't been invested.

Mr B complained to Keystone, and it accepted partial responsibility for the lack of investment but also felt that Mr B should shoulder some of the responsibility. It therefore calculated Mr

B's loss and offered him 50% of this (£62,323.31), which it discounted to £52,974.81 to allow for it being invested in a pension. It also agreed to refund the ongoing advice fees of £5,521.00.

In Keystone's consideration of the complaint, it also addressed the need to invest the funds and made a recommendation in an email dated 23 May 2022. However, Mr B wanted to know the impact of the missed investment opportunity before proceeding and the investigator understood that, as at the point of issuing his assessment, Mr B still hadn't invested his SIPP funds.

Mr B was dissatisfied with Keystone's offer, and so he referred his complaint to this service for an impartial review.

The investigator who assessed the complaint thought that it should be upheld, noting that Mr B hadn't complained about the advice to transfer, but saying the following in summary about the service provided to Mr B:

- It was important for Keystone to ensure that it provided Mr B with clear information about how and when to invest his pension funds.
- Keystone had committed to assisting Mr B fully with the implementation of its recommendations and to provide an ongoing annual advisory service, but it hadn't provided either aspect.
- The investment recommendation seemed reasonable, given Mr H's recorded attitude to risk.
- There was a file note indicating that a call took place between Mr H and the Keystone adviser on 17 January 2018 about investing the funds, in which Mr H was recorded as asking to hold off investing whilst financial markets were volatile. But Mr B had said that he made no such request, and market movements at the time didn't match the description in that phone call.
- A further note dated 8 May 2018 referred to a conversation about investing as the markets were by then more settled, and so an appointment was booked for 16 May 2018 to complete the investment forms. But the appointment didn't take place and the forms were left at Mr B's address, as he was out. Although Mr B had disputed this, the investigator was satisfied that discussions did take place as the documentation (investment illustrations) supported this.
- But it wasn't reasonable to have expected Mr B to have dealt with the forms and investment of his pension funds by himself, and Keystone had itself acknowledged that it didn't follow this up.
- Keystone had a regulatory responsibility to ensure that Mr B's pension funds were invested in line with the recommendation, and it didn't seem to be the case that it had informed Mr B of the risks of being outside of, or trying to time, the market.
- If it had genuinely been Mr B's decision to remain uninvested, then the investigator would have expected to see a revised recommendation report to cover this. In the absence of such confirmation, he concluded that Mr B had expected his pension funds to be invested immediately.

- Keystone had argued that the annual reports ought to have made Mr B aware that his pension funds weren't invested. But although the value of the SIPP was confirmed in the early pages of the reports, it wasn't until further into the report that the breakdown of holdings was shown. And given the lack of investments, Mr B's reports referred only to the value held in an "Investcentre SIPP Cash Account".
- The investigator wasn't persuaded that the annual reports were clear enough for Mr B, as an inexperienced investor, to have realised that his funds hadn't been invested as intended. He also wouldn't have been aware from reading the reports that he'd suffered any investment loss.
- But even if he took a different view on the matter of the reports, the ultimate responsibility for ensuring that Mr B's pension funds were invested lay with Keystone. And had it provided any ongoing advice, the fact that they weren't would have been identified much sooner.

The investigator concluded that Keystone was responsible for the full loss suffered by Mr B through his pension funds not being invested. But he didn't think that it should be accountable for any losses after it had a new investment recommendation on 23 May 2022, as it would be expected that Mr B would act to mitigate any losses by taking appropriate action.

As such, he recommended that Keystone compare the actual value of Mr B's SIPP with its notional value, had the SIPP funds been invested as intended, with the loss assessment running up to 23 May 2022. If there was a loss, Keystone should compensate Mr B for this. Any advice fees should also be effectively "reinstated" within the SIPP.

Any loss should in the first instance be paid into Mr B's pension plan, but if this wasn't possible, then it should be paid to him directly, with a notional deduction for the basic rate income tax he would have paid on the non-tax free cash element.

The investigator also said that Keystone should pay Mr B £300 in respect of the distress and inconvenience he'd suffered as a result of his pension funds not being invested.

Mr B accepted the investigator's recommendation, but Keystone disagreed, commenting further as follows:

- Although the investigator had said that Mr B had only realised the problem after calling Keystone, at other points Mr B had said that he found out that the funds were uninvested after calling the SIPP provider. And the original complaint was referred to Keystone after Mr B had reviewed a SIPP statement from September 2021 in May 2022.
- The call of 17 January 2018 related to the volatility in financial markets at that time, and given the sizeable sum which was to be invested, any fluctuations might reasonably have made Mr B hesitant and cautious. This was a pattern of behaviour, as also evidenced by Mr B not having invested following the recommendation it provided in May 2022.
- Although it acknowledged that it hadn't followed up the "failed" appointment when Mr B had been out, it didn't think it was fair to say that Keystone had expected Mr B to fill in the forms and deal with the investment himself – it had intended to provide that assistance.

- Mr B's pension funds couldn't have been invested without his formal instructions to do so and the accompanying forms. And as Mr B hadn't attended the pre-booked appointment to complete the investment forms, it couldn't be reasonably assumed that Mr B expected to be invested from May 2018.
- There were responsibilities on customers when receiving SIPP statements, and failure to read the content wouldn't be the responsibility of the advising firm, but of the customer. Mr B had suggested that he didn't receive such statements, but it thought it was more likely than not that they were both issued and received, given that they were correctly addressed.
- That Mr B hadn't read the content of the September 2021 statement until May 2022 wasn't Keystone's fault.
- Addressing the clarity of the annual statements, Keystone said that Mr B wouldn't need to be a sophisticated or experienced investor to be able to conclude that the funds were held in cash. This was highlighted under a bold heading called "cash and borrowing". And Keystone provided an excerpt from the 2018 statement as an example.

In conclusion, Keystone said that it had updated its offer to reflect the calculation being taken up to 23 May 2022, with the notional deduction for tax as recommended by the investigator. The total compensation would be £124,609.

But it maintained the position that it wasn't solely responsible for Mr B's losses, saying that, given the lack of investment meeting and the completion of the necessary instructions, there was no way that Mr B could have been under the impression that his pension funds were invested. And it wouldn't have been appropriate to proceed without Mr B's instructions.

The investigator offered Mr B the opportunity to comment upon Keystone's response, and he said the following:

- He didn't possess any financial knowledge, and was therefore reliant upon Keystone to act in his best interests.
- He'd signed an abundance of forms and he thought he'd be investing in the recommended funds. He wasn't asked to sign anything else and he'd already consented to his Keystone financial adviser having access to all of the funds.
- He's paid a significant amount of money for services he hasn't received.

Keystone also then confirmed in November 2022 that Mr B had contacted one of its advisers to invest his pension funds, and during that exercise it had come to light that Mr B had around £82,000 invested in Individual Savings Accounts (ISAs) and a General Investment Accounts (GIAs).

As such, it considered that Mr B was likely to possess some financial knowledge and experience of investing.

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

I issued a provision decision on the complaint on 3 April 2023, in which I set out my reasons for partially upholding it. The following is an extract from that decision:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've firstly noted what Keystone has more latterly said about Mr B's likely investment knowledge, given his ISA and GIA investments. And I think it's fair to say that this might reasonably bestow upon Mr B some knowledge of investing, but those are quite mainstream products, and don't have the complexities associated with pensions matters.

Further, as Mr B has rightly said, he was paying a significant amount of money to Keystone to help him transfer his OPS benefits and for its subsequent investment recommendation. As such, whilst I accept that Mr B may have had some investment experience, I think, as he's said, he was largely reliant (and entitled to be so) upon Keystone to guide him through the transfer and reinvestment process.

But I also think it's right to say that it wouldn't have been appropriate for Keystone to proceed without Mr B's instructions in May 2018, and this is especially the case if I'm to consider the "delay" conversation in January 2018. And I further think Keystone makes a reasonable argument about there being other points – for example following the recommendation in May 2022 - at which Mr B has exhibited hesitancy or caution, no doubt relating to the febrile state of financial markets at those times. So it would have been the right course of action to ensure that Mr B was happy to proceed in May 2018.

That appointment didn't happen, due to, as I think is accepted by both parties, Mr B being elsewhere. But as acknowledged by Keystone, it should have followed this up. And of the two parties, Keystone was the firm of professional advisers with the responsibility to ensure that its original recommendation was executed, or as noted by the investigator, re-evaluate the position and formally record any reasons as to why Mr B had decided to not invest at that point.

And even then, the regular reviews for which Mr B was paying ought to have reassessed this position on a yearly basis – but these didn't happen.

I do, however, think that the points Keystone has made about mitigation aren't unreasonable. Irrespective of whether there was a "duty" upon Mr B to read his statements and digest the contents, there's also my overriding imperative to decide this case on the basis of what's fair and reasonable in the circumstances.

And although I note that Mr B has said that he didn't receive the annual SIPP statements, I think it's reasonably clear that he did receive that of September 2021, which as far as I'm aware had been sent to the same address as previous statements. And so, whilst it may be the case that Mr B doesn't recall receiving them, I think it's more likely than not that they were sent, and also that they would have been received.

I further think that, although the cash basis of the SIPP investment may not have been on the first page of the statement, there would also have been very little change in value over the years and that, given Mr B's seeming awareness of potential for volatility in financial markets, the lack of any substantial change in the value of his pension funds might reasonably have prompted him to look at how they were invested.

There is also then Mr B's general historical reticence to invest, both in January 2018 and then again when made aware of the investment recommendation in May 2022. And I think that, although as I've said above, it was Keystone's responsibility to contact Mr B again after the failed appointment in May 2018, Mr B ought reasonably to have been aware of the purpose of that meeting and that therefore that there might have been an issue with the investment of his pension funds.

Further, whilst I think, on balance, that it's possible, and perhaps probable, that Mr B would have invested as intended in May 2018, I don't think I can entirely rule out the possibility that he would have stayed his hand with regard to investment at that point as well.

And so I currently think that a fair and reasonable outcome here would be that proposed by Keystone – i.e. that it pays half of the loss caused by Mr B not having been invested in the proposed funds.

But as no reviews were provided to Mr B, I think that the investigator's proposal that the amounts deducted from the pension plan in respect of these be "reinstated", as if they hadn't been removed, is appropriate.

Putting things right

Keystone should determine the notional value of the SIPP, as at the date of any final decision along these lines, had Mr B's pension funds been invested two weeks after the "failed" meeting in May 2018, which I think reasonably provides enough time for a further meeting to be arranged and the pension funds to be invested. This notional value should also take account of the annual fees for the reviews not being taken from the pension funds.

This should be compared against the actual value of Mr B's SIPP, as at the same date. If the notional value is higher, then Keystone should in the first instance pay into Mr B's SIPP on his behalf to make it up to the notional value, taking account of any available/unused tax relief, investment charges, and annual allowance and lifetime allowance protection issues.

If payment into the SIPP isn't possible, Keystone should pay the amount of any loss directly to Mr B, but with a notional deduction of 15% to reflect the assumed basic rate tax that he would pay on 75% of his pension benefits (allowing for tax free cash).

I do think this matter might reasonably have caused Mr B some concern, and I've thought carefully about whether a further payment in respect of this would be warranted here, as was recommended by the investigator, but I do also need to take into account the fact that Keystone provided an investment recommendation in May 2022, which, as I've noted above, Mr B didn't action immediately – as might be expected of someone who was concerned about their funds being uninvested.

And so I don't currently think that a further payment would be warranted in this case."

In response, Mr B said the following:

- With regard to Keystone's comments on his pattern of behaviour from 2018 to 2022, he and his wife had been convinced that all of the money had been invested as discussed with Keystone and confirmed by the associated paperwork.
- In 2022, Keystone suggested through a different adviser that he invest his pension funds, but he asked to hold off as he didn't think it was sensible to invest his money with a company which had made errors over the past four years.
- He sent Keystone emails confirming this at the end of May 2022 and again in June 2022, and he also said in that communication that he wanted to know the outcome of this service's investigation before deciding what to do next.
- In November 2022, Mr B sent the adviser an email asking him to look at investing his pension funds, which was a decision he came to on the basis of having been informed that it might be many months before his complaint was resolved with this

service. And the adviser gave him confidence that his money would be invested in his best interests.

Mr B provided the emails to which he referred.

Keystone wished to clarify that the proposed redress was 50% of the loss to be paid as compensation, and if this was the case, then it was prepared to pay this, along with the fees which had been taken being reinstated into the pension plan.

The investigator confirmed that the redress proposal was for Keystone to pay 50% of any loss to both Keystone and Mr B.

Mr B acknowledged this, enquiring as to how the provisional decision could be so different from the investigator's conclusions, but made no further submissions.

Keystone acknowledged confirmation of the redress proposal, and reiterated its offer on the above basis if Mr B was in agreement with it.

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've noted Mr B's further comments as to why he held off investing his pension funds once he'd realised that they hadn't previously been invested, as he'd thought was the case. I'm also grateful to him for providing the emails which he exchanged with the adviser about this.

But whilst I accept that he might have been cautious about investing at that time, other aspects of his email correspondence are nevertheless indicative of thought being given to whether or not investing the cash would have been financially advantageous, not just on the basis of uncertainty over the outcome of the complaint referred to this service, but due to movements in financial markets (as had seemingly also been the case in January 2018).

For example, in the email of 16 June 2022, Mr B noted that the funds into which the adviser had suggested he invest had lost around 4% in value over the preceding three weeks, and so he considered it to not really be "the end of the world" for the money to have remained in cash.

I do also remain of the view that, whilst acknowledging what Mr B has said about believing his pension funds had been invested from 2018 onwards as had been recommended, the annual statements ought reasonably to have placed him on notice that that they remained in cash.

But I also maintain that Keystone had a responsibility to follow up the failed meeting of May 2018 to revisit the proposed investment strategy with Mr B, and had it done so, and it was the case that Mr B remained cautious about investing his pension funds – as he'd been in January 2018 – then this could have been discussed and recorded accordingly.

And so, overall, I think that the proposed redress as set out in the provision decision remains the right outcome here.

Putting things right

My aim is to put Mr B into the position he'd now be in, but for the failure to invest his pension funds – albeit with the caveat around the potential for his own mitigation of any such losses

as set out above and in the provisional decision

Keystone Financial Ltd should therefore determine the notional value of the SIPP, as at the date of this final decision, had Mr B's pension funds been invested two weeks after the "failed" meeting in May 2018, which I think reasonably provides enough time for a further meeting to be arranged and the pension funds to be invested. This notional value should also take account of the annual fees for the reviews not being taken from the pension funds.

This should be compared against the actual value of Mr B's SIPP, as at the same date. If the notional value is higher, then Keystone Financial Ltd should in the first instance pay into Mr B's SIPP on his behalf to make it up to 50% of the overall difference, taking account of any available/unused tax relief, investment charges, and annual allowance and lifetime allowance protection issues.

If payment into the SIPP isn't possible, Keystone Financial Ltd should pay the amount of any loss directly to Mr B, but with a notional deduction of 15% to reflect the assumed basic rate tax that he would pay on 75% of his pension benefits (allowing for tax free cash).

Payment of any compensation amount should be made within 28 days of Keystone Financial Ltd being notified of Mr B's acceptance of this decision. If it isn't, simple interest at the rate of 8% pa should be added to the compensation amount from the date of this decision to the date of settlement.

My final decision

My final decision is that I uphold the complaint and direct Keystone Financial Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 June 2023.

Philip Miller
Ombudsman