DRN-2268923

The complaint

Mrs M has complained about advice she received from Portal Financial Services LLP (Portal) to transfer a defined contribution personal pension (PP) she held to a Self-Invested Personal Pension (SIPP).

Mrs M is being represented by a third party, but for ease I'll refer to all representations as being made by Mrs M.

What happened

Mrs M was introduced to Portal in 2014 after she'd been in contact with another business, here on referred to as 'Firm C'. At the time, Firm C was an appointed representative ('AR') of a regulated business, 'Firm S'. Firm S was authorised by the Financial Conduct Authority ('FCA') to provide investment advice, but neither it, nor Firm C were permitted to provide pension transfer advice.

At the time Mrs M was aged 55 and married. The fact find indicated she was a housewife, with savings of £1,000 and that she owned her home, which had a mortgage of £128,000. While no details were recorded about Mrs M's pension in the fact-find, the suitability report notes she had a PP, that had a transfer value of £28,473. Her desired retirement age was noted as 65.

Portal carried out a risk-profiling exercise and determined Mrs M had a 'balanced' attitude to risk ('ATR'). Portal wrote to Mrs M on 7 April 2015 and recommended that she transfer her PP into a new SIPP. It also said that the investment advice in respect of the transferred funds would be provided to her by Firm C.

At the same time Portal also recommended Mrs M set up a stakeholder pension plan ('SPP') with Aviva to which she could make monthly contributions of £88.46 gross. Portal recommended the contributions should be invested equally in two mixed investment funds.

The SIPP was established in April 2015 and the value of her PP, which had increased to £28,930.70, was transferred on 11 June 2015 and just under £5,000 was invested as follows:

- Biomass Investments - £800
- Brisa Investments - £700
- Lakeview UK Invest - £800
- Strategic Residential Developments - £1,500
- Motion Picture Global - £800

In 2019, Mrs M complained to Portal via her representative that the advice to switch her PP was unsuitable. She said the advice was negligent and unsuitable for someone with no investment experience, who was risk adverse and had a low capacity for loss. She also argued that Portal couldn't make its switch recommendation without taking responsibility for assessing the underlying SIPP investments.

In response, Portal said it said it provided suitable switch advice that met Mrs M's stated objectives. It said Firm C was responsible for any investment advice and it didn't know what the current situation was with her investments.

Unhappy with this, Mrs M brought her complaint to us.

One of our investigators looked into it and said he didn't think Portal had sufficiently demonstrated that transferring Mrs M's PP into a SIPP was in her best interests. He thought that Mrs M was likely to be worse off in retirement. The investigator said while the fact find said moving to a cheaper pension wasn't a driver for Mrs M the consideration of charges was fundamental, as she had a modest pension that she wouldn't be making additional contributions to and she wanted better investment performance. The investigator also said he didn't believe it was possible for Portal to provide suitable advice without knowing where the funds were going to be invested. And that Portal should pay Mrs M £300 for the distress and inconvenience caused.

Portal didn't agree. In summary, it said ongoing adviser charges shouldn't be considered as they were an additional service provided by Firm C. It said the SIPP charges were cheaper and the fund manager charges may have increased the cost, but it didn't expect Firm C's advice to push charges above those of Mrs M's PP. In any case, performance was Mrs M's driver rather than a cheaper scheme and her PP was underperforming. Portal said Mrs M's investments were recommended by Firm C and so it wasn't responsible. It said it gave its advice in knowledge of the likely investment strategy Firm C would employ for Mrs M. Portal added that it had undertaken due diligence on Firm C and provided a copy of the "Compliance Health Check" completed in 2012. Firm C said it didn't invest clients funds in UCIS so Portal said it shouldn't be held responsible given Firm C had deviated from this.

So the complaint's been passed to me for a decision. I let Portal know Mrs M has confirmed she made a successful claim to the Financial Services Compensation Scheme ('FSCS') in respect of the UCIS investments made by Firm C, and she received an award of £3,829.42.

So, I explained to Portal that I think it should compensate Mrs M for the entirety of her loss, despite her having received compensation from the FSCS. This was because Mrs M had agreed to repay the compensation she received from the FSCS if she received compensation from a third party relating to the same claim. So, I'm satisfied Mrs M wouldn't be compensated twice for the same loss.

Portal didn't respond.

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.

Portal advised Mrs M to switch her PP to a SIPP but says it didn't provide any recommendation regarding the investments to be held in the SIPP as Firm C was providing advice on this.

I've thought about this carefully. But even if it wasn't specifically intending to advise on the investments, I think Portal needed to have an awareness of the intended investments in order to give suitable advice. This remains the case even if Firm C was actually providing that advice. It is, in my view, reasonable to expect a firm that is assessing the suitability of a pension switch to consider the overall investment strategy that applies to that proposed switch. This would include a broad understanding of the proposed investments, before it could determine whether the switch was in Mrs M's best interest. I believe that as Mrs M's financial adviser, Portal still had a duty to ensure the overall transaction was suitable, notwithstanding that another regulated firm was going to be involved.

The regulator's position

I have taken account of relevant laws and regulations; regulators' rules, guidance and standards, and what I consider to be relevant industry practice at the relevant time. These include the overarching Principles for Businesses ('PRIN'). Principles 1 (integrity), 2 (skill, care and diligence), 6 (customers' interests) and 9 (reasonable care) are of particular relevance here.

The Conduct of Business Sourcebook ('COBS') in the regulator's handbook, set out the rules regulated businesses have to follow. At the relevant time, COBS 9.2.1R required Portal to take reasonable steps to ensure that a personal recommendation was suitable for Mrs M. It had to obtain information as to Mrs M's knowledge and experience (relevant to the specific type of designated investment), his financial situation and investment objectives.

COBS 9.2.2R required Portal to gather sufficient information from Mrs M to ensure the recommendation met his objectives, that she could bear the risks involved and that she had the necessary experience and knowledge to understand the risks involved in the transaction. And under COBS 2.1.1R Portal had to act, "honestly, fairly and professionally in accordance with the best interests of its client."

Having thought carefully about what happened here, I don't think Portal's advice to switch Mrs M's PP to a SIPP was suitable for her. At the time of the advice the regulator had made its view clear that it considered in order to suitably advise on pension transfers or switches, a firm needed to consider the suitability of the underlying investments to be held in it. The regulator's position was evident in its 2013 alert where it said:

"*Financial advisers (…) are under the mistaken impression (…) they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect*.

The [regulator's] view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating (…)

If you give regulated advice and the recommendation will enable investment in unregulated items, you cannot separate out the unregulated elements from the regulated elements."

I acknowledge that in the scenario set out in the alert, the other firm that made the investment recommendations for the underlying assets of the SIPP was an unregulated introducer. Whereas in Mrs M's case, Firm C was authorised to conduct investment business under its AR agreement with Firm S, and in turn Firm C could itself be pursued for compensation by a consumer within the financial services regulatory regime.

Portal may believe that this in turn distinguished the circumstances of Mrs M's transaction from the scenario that the alert was aimed at, and as a result absolved it from its duty to assess the overall suitability of the proposed investments. It might say that was particularly the case as it had said to Mrs M that it wouldn't be providing any advice on the underlying investments as Firm C was doing that. Whilst I've given that possibility careful thought, I don't agree that the alert was limited to those very specific circumstances.

I can see that the alert makes it clear that suitable investment advice 'generally' requires consideration of the other investments held by the customer, as well as the suitability of the overall proposition when advice is given on a product that is a vehicle for investment in other products (such as the SIPP in Mrs M's case). It further refers to the broadly applicable rules and guidance that ensure that in all instances of advice, a firm must first take time to familiarise itself with the wider investment and financial circumstances. In saying that, I don't think the FCA intended that in pension switch and transfer cases, regard to the overall proposition was only required where the introducing firm was unregulated, or where the assets contemplated included unregulated investments.

In my view, the regulator was indicating that these are standards that have broad application to pension switch and transfer advice, but pointing out that it had particular concern about cases in which unregulated firms and unregulated products put the consumer at risk. So, I think the alert is relevant to firms in the position of Portal in this case. This is further demonstrated by an alert from the regulator in 2014 which stated:

"*Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable (…), then the overall advice is not suitable.*

If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer (…) at all as it will not be able to assess suitability of the transaction as a whole."

I acknowledge that the regulators' statement in the alert is not 'guidance' or 'rules' or 'standards' in the sense that such requirements are specified by the regulator in its Handbook. Nonetheless, I regard it as a relevant consideration when determining this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

Both alerts specifically referred to PRIN and COBS, which Portal was subject to. And with reference to PRIN and COBS the alerts said a firm would fall short of its obligations under these precepts if it didn't familiarise itself with the intended investment strategy and that it wouldn't be able to recommend a new product, like a SIPP, without doing so.

Portal appears to have been under the impression that, as it told Mrs M it wasn't providing any advice on the underlying investments, this enabled it to provide advice on a restricted basis. But this wasn't right. Under COBS 2.1.2 Portal couldn't seek to exclude or restrict its duty or liability to Mrs M under the regulatory system. So, saying it was operating under a limited retainer didn't absolve it of its duty of care to ensure the advice it was providing was suitable – again, this had to include consideration of how Mrs M's funds would be invested. I don't think there was any ambiguity regarding the regulator's position on the matter. Furthermore, the fact that Portal gave Mrs M advice on how she should invest her SPP somewhat undermines its position here.

As part of the fact-finding process Portal had to understand Mrs M's objectives – two of which were recorded as to have greater fund choice and improved performance – and the related risks. It wasn't free to ignore how Mrs M's funds were going to be invested irrespective of Firm C's involvement. I consider the underlying investments in the SIPP to be inextricably linked to the risks relating to the SIPP, so assessing the risk and suitability of a switch without knowing what Mrs M would invest in within the wrapper, doesn't in my mind seem reasonably possible.

As Portal didn't consider itself responsible for any advice regarding the underlying assets of the SIPP it recommended, it says it was unaware of where, further to Firm C's involvement, Mrs M's transferred funds would ultimately be invested. And although Portal said in response to the investigator's view that it set out what a suitable portfolio of assets would be for Mrs M in the suitability report, that isn't true. Portal didn't set this out in its suitability report. Ultimately though, Portal says that because Firm C was regulated and able to provide investment advice with a duty to ensure this was suitable, Portal says it saw no issue with Firm C providing the investment advice independently.

I recognise that the FCA allows for two advisers to work together to provide suitable advice to their mutual client. However, the alerts make it clear that a firm that is asked to advise on a pension switch needs to be aware of the intended investments before it advises on the switch, in order to provide suitable advice. So, it should've requested this information from Firm C before providing advice. And, as confirmed in the 2014 alert, if it didn't '*fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all*…' So, in the absence of Portal knowing the investments Firm C intended for Mrs M, it couldn't provide her with suitable advice to switch her pension benefits.

I also accept that as a result of its AR agreement with Firm S, Firm C was required to give suitable advice. However, I don't agree that this negated Portal's duty to do the same. As Mrs M's appointed financial adviser, it had a significant responsibility to provide suitable advice and act in Mrs M's best interests. And as I've said, this had to include an awareness of where Mrs M's funds would be invested.

Portal said in the suitability report that '*with this plan you do have the choice as to which funds your money is invested and I have made recommendations for these as well.*'. And it went on to say that '*Due to your risk rating balanced, your stated age of retirement and your needs and objectives we would recommend that you invest in certain fund asset classes…'.* It says it detailed the spread of asset classes. As I've said above, I can't see that it did and, in any event, this wasn't enough. Portal didn't actually specify what it considered would've been a suitable investment portfolio for Mrs M. It also didn't check with Firm C what investments it was going to recommend for Mrs M before recommending the switch. So, there was no opportunity for Mrs M to assess whether the recommendation made by Portal would align with any subsequent recommendation made by Firm C.

I haven't seen anything to suggest that Portal, at any point, checked to see how Firm C broadly proposed to invest Mrs M's funds. And I believe it should have, given the unavoidable connection this had to the switch it was proposing. As part of its duty of care to Mrs M, I consider that Portal should've at the very least asked Firm C at the outset for details of the model portfolios it adopted for various risk categories. And in doing so it ought to have checked these lined up with what it considered to suit each risk group. Further to this Portal should've also asked for the details of the portfolio intended for Mrs M and the proposed investments. I don't think Portal could've reasonably assessed the suitability of the transaction it was recommending without doing so.

The reality is that having followed Portal's transfer advice, a significant part of the funds remaining in Mrs M's SIPP was invested in UCIS. I think the regulator's 2010 UCIS findings are relevant here. Here it said that as well as UCIS only being eligible for promotion to certain customers (generally sophisticated, high net worth investors), as an example, even when a customer was deemed eligible for the promotion of UCIS, suitable advice involved limiting a client's exposure to these investments to 3% to 5% of their retirement provision. In Mrs M's case, around 20% of her SIPP funds were invested in UCIS. I don't think UCIS was suitable for Mrs M at all, and certainly not in the proportion invested. There's nothing to indicate Mrs M had the requisite knowledge or experience to accept or understand the risks associated with these types of investments.

In my view, had Portal requested information about the proposed investments and been advised that Firm C intended to invest that proportion of Mrs M's pension in UCIS, it could've queried this, given that it had only determined that she had a balanced ATR. I think that had appropriate enquiries been made, it would've become apparent something was amiss with Firm's C's proposal and that the switch was therefore unsuitable and likely to lead to Mrs M being exposed to more risk than Portal considered appropriate.

Overall, I think Portal needed to satisfy itself that its recommendation to switch took account of the investment proposition that Firm C intended for Mrs M. I think it should've asked Firm C for the specifics of this or, as a minimum, an outline of the proposition. Had it done so, and Firm C had given it a clear framework of the proposition, then I would've expected Portal to have advised Mrs M that it couldn't recommend she switch her pension in those circumstances. As a result of Portal's shortcomings here, it seems to me that Firm C was in effect given the freedom and opportunity to do as it wished with how Mrs M's SIPP was invested. And if Portal had warned Mrs M against investing in line with Firm C's proposal, I think it's more likely than not that Mrs M would've listened to it and not gone ahead with the switch.

Notwithstanding what I've said above, I don't think the suitability of Portal's advice turns solely on where Mrs M's funds were ultimately invested. Portal's recommendation that she switch to a SIPP in the first place is an important consideration. And were it not for the switch and Portal's incomplete and, in my view, flawed advice regarding this, I'm not persuaded Mrs M would've ultimately gone on to invest as she did.

The advice to switch

Having considered if the advice to switch Mrs M's existing pension plan was suitable, I don't think it was.

At the time of Portal's advice Mrs M was 55 years old, a housewife and in good health. She was a standard retail investor with 10 years until she intended to retire. The plan being switched was most if not all of her retirement provision. Other than her pension she had £1,000 in savings. And, although she was a homeowner with her husband, she had a large outstanding mortgage and appears to have depended on his income to pay this and for daily expenditure.

Mrs M's objectives were noted as wanting to move to a cheaper scheme, have greater investment choice and performance, to provide death benefits and flexibility to access her pension earlier than normal retirement age if required. I don't think any of these, either individually or collectively, provided a compelling reason to switch her existing pension into a SIPP.

Portal said Mrs M was a balanced risk investor, but she's said she was risk adverse. And many of the answers Mrs M gave in the risk assessment supports that. For example, she said people who know her would describe her as cautious and she generally looked for safer investments even if it meant lower returns. Furthermore, while Mrs M had 10 years until retirement, she had no investment experience or savings. She had an outstanding mortgage and didn't work. And, while I can see her household had a good disposable income per month, she had no income herself and no other pension provision. So I think her capacity for loss in respect of this pension was very low. In light of this, I don't think Portal's assessment of Mrs M's ATR was correct – I think a fairer assessment of her ATR in the circumstances was 'cautious'.

Portal noted that Mrs M wanted to switch to a cheaper scheme. I can see the suitability report noted that Mrs M would benefit from lower SIPP wrapper charges and I acknowledge that it wasn't particularly expensive – it had an AMC of 0.5%, which was lower than her existing scheme at 1%. But there was a clear cost to switching her existing pension plan into a SIPP. As well as the 5% initial fee charged by Portal, there would also be charges associated with Firm C's ongoing investment advice, plus other product or fund charges depending on the investments selected by Firm C. Of course, some of these could offset the charges of the existing plan. But it's clear that there would be a significant cost to switching and I don't think Portal was able to justify this, particularly in view of the fact that they didn't know of the additional charges to be made by Firm C.

Furthermore, Portal's argument that the transfer would result in lower charges in the long run was also undermined by its own statement in the suitability report:

"Overall, this strategy will cost more than your existing arrangement. Whilst the intention is that this will be more than compensated for by the increased growth of your pension fund this cannot be guaranteed."

When considering a pension switch, consideration should generally be given to recommending switching to an SPP, because the running costs are generally lower. Aside from recommending Mrs M set up a SIPP, Portal also recommended she set up an SPP to make contributions to, which she did. This has a total AMC, including fund charges, of 0.55%. It's clear to me that switching Mrs M's PP to the SPP (that she would be contributing to going forwards) would've met her objective of moving to a cheaper scheme. So, I don't know why Portal didn't recommend this course of action. And I think it's clear the SIPP would be more expensive overall once investment costs were included.

Any additional charge to a consumer would provide a strong reason not to proceed with a course of action. So, the benefits of switching would need to outweigh the cost to Mrs M's pension, as she was unlikely to be able to recoup these charges through improved fund performance over the short to medium term. So, I've considered whether it would've still been suitable advice to switch to the SIPP despite the increased costs.

Portal says Mrs M wanted higher growth and it has argued that its own modelling showed that Mrs M would be in a better position in the SIPP. It says its adviser's own calculation showed Mrs M would be better off in the long run, even after charges were taken into consideration.

A copy of this calculation wasn't provided, but I don't think this is needed when making my decision. I'm not satisfied that this is a strong justification for the recommendation given Portal didn't know how the funds were to be invested by Firm C. Portal's own model didn't know what charges would be applied on the funds within the SIPP, or how they might reasonably be expected to perform. Any comparison of both charges and performance would therefore be purely speculative and not based on the reality of how the fund was to be invested. Furthermore, if Mrs M did in fact want to achieve higher growth, she had numerous funds to choose from through the PP instead and I think this should've been explored in the first instance.

I've seen nothing to persuade me that Mrs M was seeking a sophisticated investment proposition that would give her the chance to invest outside conventional funds that the SIPP would provide. Instead I think greater investment fund choice was of limited benefit when

Mrs M had little experience of investing in stocks and shares. There wasn't any explanation as to why she wanted a greater fund choice, or what investments she wanted to make that were not available with her existing providers. Furthermore, the value of her pension was relatively low, meaning that she was unlikely to be able to spread her investment across a significantly greater range of funds than the funds her existing scheme already employed. And I don't think the adviser could reasonably conclude that Mrs M wanted or needed access to non-standard or unregulated investments, which the SIPP would provide.

While Portal noted that Mrs M wanted flexibility and to be able to access her pension benefits before she intended to retire at 65, I can't see that there was any discussion about why she wanted this or that it was a pressing need for her. I can't see that she took any of her benefits early. I appreciate she may still have wanted the choice to if the need came up. But, I think that could've been explored closer to retirement if Mrs M needed flexibility at that time.

Portal noted one of Mrs M's objectives to be consolidation, but I can't see how this could have been the case when she only had one pension. And, in any case, based on Portal's advice she went from having one pension to two, which means it made her pension arrangements bigger. This also means she was paying the AMC of 0.55% for her new SPP, as well as a 0.5% AMC for the SIPP, plus ongoing adviser charge and fund charges, leading to a more costly arrangement overall.

I accept that the investment performance prospects of the PP was poor. The AMC of 1% was comparatively too high given the poor past performance, at 2.65% per annum over the last five years. And the annual and final bonus had dropped significantly over the years to 1% and 0% respectively in 2013. In which case, for the reasons given above, I think the adviser ought to have recommended either an internal fund switch or that it be switched to the SPP when it was set up, not to a SIPP. This would've resulted in one AMC of 0.55%. It would've also provided the opportunity for better growth as the illustration showed the SPP's average performance was 5%. And Mrs M's pension arrangements would have been simpler, without exposing it to higher ongoing charges.

For the reasons set out above, I think the advice to switch Mrs M's plan to the SIPP was unsuitable because she wasn't an experienced investor and so didn't need the wider investment choice the SIPP would provide. It would also be a more costly arrangement, once the SIPP provider, fund and adviser charges were taken into account. Overall, I think Mrs M should've been advised to switch her PP to the SPP also being set up for her. This would've met her needs of providing the opportunity for higher growth, ease of administration and lower charges.

I've thought about whether, if Mrs M had been correctly advised by Portal not to switch to the SIPP, she would have gone ahead with it anyway. Having carefully considered all the circumstances in this case, I don't believe she would have. There's nothing to suggest Mrs M was seriously considering moving her existing plans prior to being referred to Portal for a pension review – she wasn't looking to access her benefits and she expected to retire in around 10 years. Also, my understanding is that this referral came about as a result of her meeting with another company – Mrs M didn't appear to be proactively seeking pensions advice. So, I don't think she'd have insisted on pressing ahead against suitable advice.

Is Portal wholly responsible for Mrs M's loss?

I recognise it can be argued Firm C is also liable to Mrs M and that in turn I should apportion only part of the responsibility to Portal. Having given this careful thought though, in the circumstances, I think it is fair to find Portal wholly responsible and, in turn, to direct it to compensate Mrs M for the whole of her loss.

I think it's important to emphasise that Firm C and Portal were in a business relationship in which each agreed to provide services designed to bring about a single outcome for clients – pension transfer advice and investment. Because Firm C wasn't authorised to provide pension transfer advice, it referred Mrs M to Portal. Portal advised Mrs M to switch her benefits to a SIPP, it set up the SIPP and arranged for her existing pension benefits to be switched to this. I acknowledge Firm C advised Mrs M to invest a significant share of her SIPP funds in UCIS. But, as I've explained, Portal's understanding that it could reasonably limit its advice to just the switch and the SIPP was wrong; it needed to consider the proposed investments too, even if Firm C was advising Mrs M on them. It was only as a result of Portal's involvement that Mrs M switched the funds held in her existing plan to the SIPP. Portal's role was pivotal, since the eventual investments were fully reliant on the funds being switched over first; if that hadn't happened, she couldn't have invested as she did. In any event, and as I say, it is clear that Firm C and Portal had agreed to enter a business relationship together which was designed to bring about the very outcome that's caused Mrs M's loss.

Portal argues that Firm C is responsible for the investment advice and so Mrs M should avail herself of any compensation she may be entitled to by making a claim to the FSCS. It also says that the amount of any award made against Portal should be limited by taking that payment into account. In ordinary circumstances, as the FSCS describes itself as a fund of last resort, it is my understanding that it is unlikely it will pay out on claims where it is aware that another firm was involved in the transaction, and where it considers there is a reasonable prospect of the consumer making a recovery against that firm for the loss suffered.

Nonetheless, whether to postpone payment of compensation (to enable the consumer to recover compensation from a third party) is a matter entirely for the FSCS.

In this case, it seems the FSCS decided to award Mrs M £3,829.42 before the determination of Mrs M's complaint with this service. In those circumstances, I'm aware that as a condition of accepting compensation from the FSCS, Mrs M was asked to give to the FSCS an assignment of her rights to make a claim against third parties. This would have enabled the FSCS to make a claim in recovery of that compensation against those third parties and the PI insurer of Firm C.

It follows that for Mrs M to make a complaint to this service about Portal, she needed to ask the FSCS for a re-assignment of those rights. I can see Mrs M has now obtained that which contains, as a condition, the following requirement:

"The Claimant agrees that in respect of the Reassigned Rights the proceeds of the claim shall first be applied to repay an amount equal to the Compensation Sum to FSCS together with interest on the Compensation Sum from the date of receipt of the proceeds by the Claimant to the date of payment by the Claimant to FSCS at a daily rate equivalent to the Bank of England base rate from time to time (subject to a minimum rate of 0.1%), such payment to be made to FSCS within 14 days of receipt. The payment to FSCS shall be made after the deduction from the proceeds of the Claimant's reasonable legal costs incurred in pursuing a claim in respect of the Reassigned Rights."

Portal may argue that because Mrs M has already recovered £3,829.42 from the FSCS, it should not have to account to her for that portion of her loss. However, as per the reassignment of rights agreement Mrs M entered into with the FSCS, I can see she has agreed to repay the compensation she received from the FSCS if she receives compensation from a third party relating to the same claim.

From this, I think that:

1. There is no real risk of Mrs M benefiting from double recovery, as she’s contractually required to pay back to FSCS the full amount of the compensation it paid to her; and
2. I have seen nothing to suggest Mrs M is unlikely to comply with that requirement in accordance with the deed of reassignment;
3. If I didn’t direct Portal to pay compensation to Mrs M for the full amount of her loss (in circumstances where I have determined it is responsible for 100% of that loss), she would nonetheless still be required to account to FSCS from the compensation she receives from Portal and would, in turn, be left out of pocket.

All in all, I maintain my view that the fair and reasonable outcome is for Portal to pay Mrs M compensation for the full amount of her loss.

Putting things right

My aim in awarding fair compensation is to put Mrs M back into the position she would likely have been in, had it not been for Portal’s unsuitable advice. I think this would have meant she would have switched the PP to the SPP.

- Compare the performance of Mrs M's investment with the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable. If the fair value is greater than the *actual value*, there is a loss and compensation is payable.

- Portal should add interest as set out below.

- Portal should pay into Mrs M's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Portal is unable to pay the total amount into Mrs M's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn’t a payment of tax to HMRC, so Mr B won’t be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age.

- For example, if Mrs M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr B £300 for the distress and inconvenience caused by the unsuitable advice, which has led to a significant loss.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest it should tell Mrs M how much has been taken off. Portal should give Mrs M a tax deduction certificate if she asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Portal should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Portal pays should be included in the *actual value* before compensation is calculated.

If Portal is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Portal may require that Mrs M provides an undertaking to pay Portal any amount she may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Portal will need to meet any costs in drawing up the undertaking.

Fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Portal should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distribution out of the investment 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Portal totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs M wanted capital growth with a small risk to her capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs M's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mrs M into that position. It does not mean Mrs M would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs M could have obtained from investments suited to her objective and risk attitude.

Distress and inconvenience

Pay Mrs M £300 for the distress and inconvenience caused by Portal failing to act in her best interest.

Future SIPP fees

The SIPP only exists because of illiquid investments. In order for the SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Portal taking over the investment, or this is something that Mrs M can discuss with the SIPP provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If Portal is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mrs M an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

My final decision

I uphold Mrs M's complaint.

My decision is that Portal Financial Services LLP should pay the amount calculated as set out above. Portal Financial Services LLP should provide details of its calculation to Mrs M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 June 2022.

Holly Jackson
Ombudsman