DRN-3113129

The complaint

Mr G is unhappy with the advice he received from Portal Financial Services LLP (Portal) to transfer his Section 32 pension to a Self-Invested Personal Pension (SIPP) and to invest in multiple high-risk investments in 2011.

What happened

Mr G was advised by Portal, in July 2011, to transfer his Section 32 pension to a SIPP. He took 25% tax-free cash and the residual funds were invested in a number of Unregulated Collective Investment Schemes (UCIS) meaning they weren't authorised or regulated by the Financial Conduct Authority (FCA).

Mr G's Section 32 pension had a fund value of approximately £54,000 and a transfer value of just over £70,000. The difference being the terminal bonus (a further bonus payable when Mr G transferred or retired). The pension provider confirmed that the policy didn't have any guarantees or safeguarded benefits.

According to the suitability report, at the time of advice Mr G was 62 years old and lived in a property worth £180,000. He was working as an Office Manager earning £500 per month. He also received an income from Disability Living Allowance and Tax Credits of £1,000 per month. He had a credit card balance of £1,000 and had no other assets or liabilities. His attitude to risk was assessed as being a balanced investor.

Our investigator upheld the complaint, she said that the investments recommended were unsuitable for Mr G.

Portal didn't accept the investigators recommendation. It said Mr G had a need to access the tax-free cash for home improvements and its advice allowed him to do so. But the investigator responded to say she hadn't changed her mind. She said the investments selected were wholly unsuitable for Mr G. The switch meant that Mr G would incur higher charges and it wasn't properly explored with Mr G whether he could have financed his home improvements in other ways. She said there was no indication that the home improvements were required straight away and she noted the incomings and outgoings recorded at the time showed Mr G had a reasonable surplus of income at the end of each month.

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 think the advice given was wholly unsuitable. I say this because:

- Mr G was 62 years of age and assessed as a balanced investor and yet the advice was to put the large majority of his funds in high-risk funds. This put his retirement provision at risk with little time to recover if large fluctuations occurred.

- The advice meant that the charges taken from his pension fund were increased significantly without any evidence of likely benefit bar the ability to take tax-free cash without the need for an annuity. This could've been achieved without such an increase in charges.

- Mr G didn't have many years left until his likely retirement and therefore even if the investment advice had been suitable for him – it's unlikely this would've outperformed the additional charges to an extent that Mr G would see benefit from the advice to transfer to the SIPP. The regulator provided guidance in 2008 around pension switching and this was one of the reasons highlighted where advice was deemed unsuitable.

- Investment in UCIS even at a small proportion was unsuitable for Mr G. Mr G didn't have the necessary experience or knowledge for this to have been suitable for him. And regulatory guidance for even those it may be suitable for, was that the investment proportion in UCIS should be restricted to between 3 to 5%. Here the majority of Mr G's funds were invested in UCIS.

Portal appears to be suggesting we should ignore the investment advice but agree the advice to transfer was suitable because Mr G required the tax-free cash. At the time the adviser made no material attempt to consider or set out alternative options of how to fund his home improvements nor alternatives to the SIPP, which was to Mr G's detriment. I think the course of action was set the moment Mr G agreed to be a client of Portal's. This paragraph from the recommendation is in itself rather telling:

'some of the partners of Portal Financial may also have business interests in some of the funds invested in through your personal pension. Portal Financial will not receive any commission through the investment that we may recommend to you….Due to the fact that if the fund grows it is mutually beneficial, we believe that there is no conflict of interest.'

Portal's defence centres on the fact it was recorded Mr G required tax-free cash for home improvements. But I don't think other avenues for generating the required funds were considered. In the fact-find there is a couple of lines about Mr G not wanting a loan or further debt and that he didn't own a house. As an aside it appears in fact Mr G did own a property. I note the investigator looked at the recorded incomings and outgoings and felt Mr G had room within his finances to pay for the home improvements over time but I'm not sure I agree. A full expenditure analysis wasn't completed but the report shows a small excess income of around £130 a month. And I also note Mr G had some debts then and latterly incurred further debts which meant he requested further withdrawals from his pension.

I accept Mr G may have wished to access his tax-free cash and it may have been difficult to pay for his home improvements in other ways. And his existing product didn't offer the ability to take tax-free cash without an annuity. But it doesn't look like the adviser spent any time considering alternative funding or whether taking tax-free cash to pay for home improvements was suitable given he'd require income in retirement. Nor was it considered whether alternatives to the transfer to the SIPP could've better facilitated Mr G's needs. Mr G's needs and retirement provision were quite complex given he relied on benefits for much of his income, would likely be retiring in the not too distant future, and additional income could affect those benefits. But it doesn't look like this was considered in any detail.

Regardless of whether Mr G required tax-free cash, the investments recommended were wholly unsuitable. And therefore Portal's justification of the advice as a whole on the basis the customer required tax-free cash falls down. As it cannot ignore the unsuitable investment advice it gave.

UCIS have multiple significant risk factors associated with them. There can be a lack of regulation, longevity, potential insolvency, offshore and currency exchange, liquidity issues and other factors which could prevent investors from accessing their funds and the fact that the funds are mostly dependant on specific market areas.

For this reason, they are only suitable for experienced or high net worth investors. Mr G was not a high net worth investor or an experienced investor and so shouldn't have been exposed to such a significant risk over such a large proportion of his portfolio.

This represented a level of risk that Mr G could not reasonably be said to be prepared to take – and put his entire pension provision at risk. The fact that some of those risks were explained to Mr G isn't a defence. Portal had a duty to give suitable advice meaning they ought to have advised investments suitable for Mr G's risk profile and circumstances. Furthermore, the investment within the SIPP with the additional charges, commission and upfront fees was a very expensive method of Mr G accessing his tax-free cash.

In conclusion the advice to transfer Mr G's existing pension into a SIPP to make high-risk investments was wholly unsuitable. Mr G needs to be compensated for this unsuitable advice. It's difficult to say what he would've done had he been given suitable advice, so compensation in line with a suitable benchmark seems the fairest solution to this issue.

Putting things right

My aim is that Mr G should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr G would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr G's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr G fairly, Portal must:

- Compare the performance of Mr G's investment with that of 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 Mr G'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 Mr G's pension plan, it should pay that amount direct to him. 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 G won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mr G £300 for the unsuitable advice and worry the loss of funds will have caused him.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists but illiquid	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 Mr G provides an undertaking to pay Portal any amount he 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 from the SIPP should be deducted from the fair value calculation 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 to determine the fair value instead of deducting periodically.

The SIPP only exists because of illiquid assets. In order for the SIPP to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Portal taking over the illiquid assets, or this is something that Mr G can discuss with the 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 illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr G an upfront lump sum equivalent to five years' worth of wrapper 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr G wanted Income with some growth with a small risk to his 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 Mr G'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 Mr G into that position. It does not mean that Mr G would have invested 50% of his 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 Mr G could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Portal Financial Services LLP should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 April 2022.

Simon Hollingshead
Ombudsman