DRN-3122381

The complaint

Mr G is unhappy with the advice he received from Portal Financial Services LLP (Portal) to transfer two personal pensions to a Self-Invested Personal Pension (SIPP) and invest in Unregulated Collective Investment Schemes (UCIS).

What happened

Mr G had two personal pensions that he wanted to convert into a single pension. He searched on the internet to see how he could do this and came across Portal. After an initial phone conversation, a representative from Portal met with Mr G to discuss his options. In June 2012, a fact find was completed and it found the following:

- Mr G was aged 56 with a retirement age of 65
- His attitude to risk (ATR) was Moderately Adventurous
- Mr G had two pensions that he wanted to combine into one pension plan
- He had outstanding credit card debt that he wanted to pay off
- He didn't have any other investments

Mr G was advised to transfer his pension into a SIPP and invest it in the following investments:

- 45% Raithwaites Hypa Fund
- 15% Cool Blue Fractional Plus Fund (also known as the Cool Blue Samui Fund)
- 20% Venture Oil International
- 7.5% EOS Solar Energy
- 12.5% Cash Deposit

Portal recognised that all the investments were Unregulated Collective Investment Schemes (UCIS). And Promotion and/or advice on these types of scheme are restricted under Section 238 of the Financial Services and Markets Act (FSMA) 2000 on the grounds that:

- They may carry greater risks than a regulated collective investment scheme
- You may not be protected under the Investor Compensation Scheme
- You may not have rights of redress under the Financial Ombudsman Service
- They usually require a sophisticated understanding of investments

Mr G's combined pensions were valued at £19,000 and to transfer the pensions he would be charged 5% of the total transfer value. The 5% charge was to be deducted after the tax-free cash had been taken. There would also be an annual management fee of 1% per year. The pension provider would also charge an initial set-up fee of 0.5% of fund after tax-free cash, and an annual administration fee of 0.5% plus £80 per annum. Portal made Mr G aware that by taking tax-free cash he was moving to a pension plan with higher charges.

In February 2019 Mr G's investments were worth 64p.

Our investigator looked into matters and upheld the complaint. He said the investment in

UCIS was unsuitable for Mr G.

Portal disagreed it argued that an article on Vanguard discussed the importance of having an emergency fund. And by clearing Mr G's credit card debt by taking his tax-free cash, he'd given himself the opportunity to have more disposable income and could save this for his retirement. And these funds could be re-invested in the drawdown account until he wished to retire. It also said it stood by its attitude to risk process that resulted in Mr G being considered as moderately adventurous.

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.

Having done so I agree with the conclusions reached by the investigator and for broadly the same reasons.

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

- Mr G had very little in the way of retirement provision and was less than 10 years away from retirement. He was an inexperienced investor. I don't think he should've been advised to put his funds in investments where his entire capital was at risk. I also don't agree with his classification as a moderately adventurous investor. But this is largely a moot point given the investments he was put into would've been unsuitable for a moderately adventurous investor in any event.

- The advice meant that the charges taken from his pension 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 type of investment. 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 nearly 90% of Mr G's funds were invested in UCIS.

Portal's defence is based on the fact that Mr G had some debt and taking his tax-free cash gave him the opportunity to clear this and build up an emergency fund. But it hasn't addressed the fact the investments it recommended were wholly unsuitable. Even if I felt the advice to take his tax-free cash was suitable, the investments recommended have to be considered as part of the advice.

It also stuck by its recording of Mr G as a moderately adventurous investor. This was categorised in its Pension Report and said for example:

'Moderately Adventurous:

- *Moderately Adventurous investors typically have moderate to high levels of financial knowledge and will usually keep up to date on financial issues. They will usually be fairly experienced investors, who have used a range of investment products in the past.'*

This does not in any way describe Mr G's circumstances. Portal have based its attitude risk categorisation purely on the way he filled in its questionnaire. But had it taken the time to properly assess Mr G's circumstances and discuss his answers with him, as you'd expect of a skilled adviser, I think he would only have been prepared to take a small amount of risk.

The investments were specialised, non-mainstream and some were unregulated. They represented a level of risk that Mr G could not reasonably be said to be prepared to take. 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 – which was something that was introduced by the Portal adviser in any event.

Portal did confirm in its Pensions Report that Mr G did not meet the categories of people whom the regulator said could have UCIS promoted to them. But it confirmed he was '*a person for whom we as an Independent Advisory Firm qualified to advise on UCIS investments have taken reasonable steps to ensure that the investment in the particular investments scheme(s) is suitable following a full KYC (Know Your Customer Investigation) and ATR (Attitude to Risk Assessment), this therefore provides and exemption under COBS (Conduct of Business) Regulations 4.12'*.

I don't share Portal's view that the investments were suitable for him based on his circumstances, as I've set out above. As well as being unsuitable investments, I think the Pensions Report also contained misleading information. It said '*This portfolio is designed to provide growth, and gradually reduce your risk exposure as you come to the age of retirement at which you expect to take an income (which you have stated is 65)'.*

It's not evident from the investment strategy selected that there was a clear proposal for switching into low risk investments, such as bonds, (which carry less investment risk) when Mr G got closer to his intended retirement age, which was less than 10 years away. His residual fund was except for the cash fund, invested in fixed term, property and loan based investments. So, I think that Portal has done something wrong here, it has given him unsuitable investment advice and the information it has provided was insufficiently clear to enable him to make an informed choice about his options. Based on the limited information available to me, I think it unlikely that Mr G would've transferred his pension into the SIPP and invested as he did if given suitable advice.

In conclusion the advice to transfer Mr G's existing personal pensions 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 complaint. Whilst Mr G was categorised as moderately adventurous investor by Portal, I don't think this accurately represents his attitude to risk.
The loss of Mr G's entire pension fund will also have caused significant distress and so Portal should pay Mr G £400 in compensation for this.

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 £400 for the distress caused by the complete loss of his fund.

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
Transact SIPP	Still exists but illiquid	For half the investment: FTSE UK Private Investors	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled

		Income Total Return Index; for the other half: average rate from fixed rate bonds			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 Transact 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 Transact SIPP only exists because of illiquid assets. In order for the Transact 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 Transact SIPP to be closed.

Why is this remedy suitable?

I’ve decided on this method of compensation because:

- Mr G wanted Capital 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.

Portal Financial Services LLP should provide details of its calculation to Mr G in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 21 March 2022.

Simon Hollingshead
Ombudsman