DRN-3171140

The complaint

Mr H complains that Portal Financial Services LLP (Portal) gave him unsuitable advice to switch his personal pensions into a self-invested personal pension (SIPP) and in underlying investments that didn't match his attitude to risk. He says he's suffered a financial loss as a result.

Mr H is represented in bringing this complaint. But for ease of reference, all actions and comments will be noted as Mr H's.

What happened

Mr H was contacted by an introducer via a cold call and asked if he would like a free pension review. He was then put in touch with Portal.

Portal carried out a fact find and produced a suitability report dated 29 September 2011. It said the purpose of the report was to review Mr H's pension policies in terms of charges and performance to assist him in making an informed decision whether it was in his best interests to switch his policies to an alternative provider, whilst freeing up a tax-free cash lump sum to assist his current needs.

It noted the following about Mr H:

- he was 56 years old;
- he was separated;
- he was working and earning around £55,000 a year. He was looking to retire at age 68;
- he lived in rented accommodation paying £1,000 a month;
- he had an outstanding loan balance of about £25,000 and was paying around £600 a month towards that;
- once his everyday expenditure had been taken into account, Mr H had a net disposable income of about £200 a month. He had no other assets or liabilities;
- Mr H was expecting an inheritance of about £10,000;
- He had 'death in service' benefits worth about 4 times his salary;

Mr H indicated he'd like to take the maximum tax-free cash available to start his own business, which would provide an income in retirement. He wanted to continue investing the remainder of his funds and didn't want to take an income. He was unsure how much income he'd need in retirement.

At the time of the advice Mr H had four personal pension policies:

- two with a company I'll refer to as S with a combined switch value of £77,395 (£32,927 and £44,468)
- one with a company I'll refer to as Z with a switch value of £443;
- one with a company I'll refer to as P with a switch value of £1,277;

Portal noted that Mr H's other objectives were to:

- consolidate his investments, as far as reasonable, to facilitate "*clearer and simpler reporting on investment performance";*
- ensure he had a good awareness of the investment opportunities available;
- ensure his portfolio reflected his current risk and reward profile;
- have access to a system that would monitor the performance of his investments;
- be kept informed of the performance of his portfolio;
- have his portfolio rebalanced in line with his risk and reward profile;

Portal said "w*e normally only give advice when we have obtained a full picture of your financial and personal circumstances, on this occasion you have requested that we limit our advice to your retirement planning only. We have therefore not considered the suitability of our recommendations in relation to your full financial circumstances".*

It set out a number of risk warnings which included:

- releasing his pension benefits early could reduce Mr H's income in retirement. It said it was only suitable for a limited number of people and circumstances;
- by taking his tax-free cash now, Mr H would not be entitled to any further tax-free cash;
- by taking pension release, Mr H's state benefits may be adversely affected;
- any income Mr H took from his pension would be subject to income tax.

Portal noted various income options available to Mr H including a pension fund drawdown. It thought drawdown was the most suitable option as it would release tax-free cash and leave the residual amount of Mr H's fund invested.

Portal deemed Mr H to have an adventurous attitude to investment risk.

Portal said "*I would normally recommend that you leave your pension benefits where they are as this will be most beneficial to you in retirement. However, during our telephone conversation you advised me that you are aware of the downfalls in taking your benefits now but due to your current circumstances you would like to take your benefits immediately.*

Portal recommended that Mr H switch his existing pensions into a SIPP with a company I'll refer to as T and that:

- he take his full 25% tax-free cash entitlement (£19,778)
- he leave the residual fund invested until he required an income;

It said that would enable him to start his own business; restructure his portfolio to match his current risk/reward profile and have greater long-term flexibility to maintain his pension in line with his risk/reward profile.

It recommended the following investments:

37.5% Raithwaites Hypa Fund – unregulated collective investment scheme (UCIS)
17.5% Hypa Asia Fund (UCIS)
17.5% Venture Oil International
17.5% EOS Solar Energy
10% Cash Deposit

Portal told Mr H that such investments were restricted under Section 238 of the Financial Services and Markets Act 2000 (FSMA), which meant they were only available to certain types of investors. And that was largely on the grounds that they carried more risks than regulated collective investment schemes. Whilst Mr H wasn't exempt or a sophisticated investor, Portal felt 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 collective investment scheme(s) is suitable following a full KYC (Know Your Customer Investigation) and ATR (Attitude to Risk Assessment), this therefore provides an exemption under COBS (Conduct of Business) regulations 4.12."*

It added that while the funds invested in his pension could be considered relatively illiquid investments, they did produce returns that could be used to meet Mr H's income requirements. And, as such, Portal considered them suitable. Especially as Mr H was not looking to withdraw an income for some years to come.

Portal felt that T offered a competitive charging structure. It said its own charges included an initial 5% of the total of the switch value which would be deducted from the residual fund and an ongoing charge of 1% per year to manage his investments. It pointed out that by taking the tax-free cash from his pension, Mr H was moving to a contract with higher charges in order to access the required funds. It also explained that there were other charges associated with the personal pension, including an initial setup fee and annual administration fees. On top of that there were individual fund charges.

Portal told Mr H this strategy would cost him more than his existing arrangement, but would offer potential growth that was not available to him at present. It also pointed out that by taking a tax-free cash lump sum at that point, Mr H would have a reduced amount of money available to him when he retired and there was no option to release another tax-free lump sum.

It also said that it had discussed other ways in which Mr H could potentially raise additional funds, such as securing further borrowing. But Mr H apparently discounted that as he didn't want to pay further interest. He also couldn't re-mortgage, as he didn't own a property.

In conclusion Portal felt that the best course of action was for Mr H to switch his current pensions into a SIPP with T. It said that the plan would be owned by Mr H and that he'd have full control over the company his pension was invested with and the funds it was invested in. Mr H followed Portal's advice.

Portal sent Mr H an investment update in September 2015. Amongst other things it said that the Raithwaite scheme had expected to return Mr H's capital to him in 2018 or 2023. But so far, it *"has actually only made a single interest payment at a lower rate than 8%, and no interest was paid in 2014. Clearly this is not what was expected and we have been putting constant pressure on Hypa Raithwaite to resolve the situation. Whilst occupancy rates have been high, the hotel has not traded sufficiently profitably to enable the interest to be paid to the lenders when expected".*

In other updates it outlined the challenges associated with some of the schemes Mr H was invested in. And it explained the knock-on effect in terms of the value of his investments.

Mr H later complained to Portal about the advice he'd received. Portal initially felt the complaint had been made too late. However, amongst other things it said that if the issues regarding interest payments from Mr H's funds hadn't been resolved by his state retirement age, it would personally pay him a retirement income based on the original expectations about fund performance and current annuity rates. It added that Mr H wouldn't be expected to reimburse any payments made. It said such an offer was made without any admission of liability on its part.

Mr H complained to our service and an ombudsman here determined that the complaint had been made in time. So, we went on to consider the merits of the complaint.

One of our investigators looked into things and upheld the complaint. Amongst other things, he didn't think Portal had explored enough viable alternatives for Mr H to fund his new business, nor did he think there was a pressing need for Mr H to take his tax-free cash when he did. Especially as Mr H wasn't even sure what type of business he wanted to set up, nor were there enough details about when it would realistically get started. Therefore, the investigator didn't think Portal had fully explored the feasibility of Mr H's objective. He also didn't think the reasons given for the pension switch justified Mr H incurring such significant charges. And whilst he felt that, with the right advice, Mr H might have done something differently with his pension funds, the investigator thought his existing pension schemes were fit for purpose (so he'd probably have stayed in them). He also didn't think that Mr H was an adventurous investor as Portal indicated he was. Overall, the investigator didn't think that Mr H would have gone ahead with the switch had Portal not given him the advice it had.

Portal didn't agree and asked to 'appeal' the investigator's assessment. Amongst its comments it said that whilst Mr H might have been able to release his tax-free cash within his existing pension policies, he'd have been required to take an income via an annuity, which Mr H didn't want to do. Nor did he want to take on additional borrowing to fund his new business. Portal said that it relied on the accuracy of Mr H's answers to help determine his attitude to risk and felt it complied with COBS when doing so. And as he was about to receive an inheritance, Portal felt that increased Mr H's capacity for loss and meant he could bear some investment risk. It felt it had clearly demonstrated why the advice was suitable in Mr H's case.

Our investigator didn't agree with Portal's position. And, as Portal didn't accept the investigator's assessment, the matter's been passed to me to decide.

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 appreciate that Portal is adamant it gave suitable advice in Mr H's case. And it's made a number of detailed points, which it feels supports its position.

What was Portal required to do?

My starting point in a case like this is to think about what Portal was required to do in order to fulfil the requirements set by the regulator.

Apart from the overarching principles for businesses, which include:
Principle 1 – Integrity; Principle 2 - skill, care and diligence; Principle 6 - customers interests; Principle 9 - reasonable care; COBS sets out other obligations. In particular, COBS 9.2.1 R required Portal to take reasonable steps to make sure any personal recommendations were suitable for Mr H. That meant it was required to find out about Mr H's knowledge and experience (relevant to the specific type of investment) his financial situation and investment objectives.

COBS 9.2.2 R says that businesses should gather enough information to ensure the recommendation met the customer's objectives; the customer could bear the risks involved; and had the necessary experience and knowledge to understand the risks.

Under the heading of "*Income withdrawals, short-term annuities",* COBS 9.3.3 said
When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*, it should consider all the relevant circumstances including:

(1) the *client*'s *investment* objectives, need for tax-free cash and state of health;

(2) current and future income requirements, existing pension assets and the relative importance of the plan, given the *client's* financial circumstances;

(3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his attitude to an *income withdrawal* or purchase of a *short-term annuity* and other *investments*.

So, it's against that backdrop that I've considered whether Portal acted fairly and reasonably in Mr H's case.

Was Portal's advice for Mr H to switch suitable?

Mr H was 'cold called' by an introducer who offered him a free pension review. And he was then put in touch with Portal. I've seen nothing to suggest Mr H was intent on switching his pensions before he was introduced to Portal. So, it needed to ensure it fully understood his needs and whether they were reasonable or warranted. I say that because part and parcel of making sure it gave suitable advice was as much about balancing Mr H's circumstances at the time of the advice with his needs in retirement.

Portal noted that it would normally seek full financial information before advising a client. But, "*on this occasion you have requested that we limit our advice to your retirement planning only. We have therefore not considered the suitability of our recommendations in relation to your full financial circumstances".*

Mr H's pensions were savings for his retirement. And these appear to have been his sole pension provision. So, it's difficult to see how Portal could really help him make an *"informed decision on whether or not it would be in your best interest to switch these pension policies to an alternative provider*" without having access to all of the information that might have been helpful when making such a decision.

One of Mr H's objectives was to free up a tax-free lump sum to help start a business. I can certainly see that being able to take around £20,000 from a pension pot was probably an attractive proposition for him – particularly as he had no other savings to fall back on. But, as Portal pointed out, releasing his pension benefits early was likely to reduce the amount of income available in retirement - the main purpose of having pension savings.

And, bearing in mind that his existing pension arrangements didn't allow Mr H to take a tax-free lump sum and leave the remainder invested as he wanted, Portal needed to think about this very carefully and explore all viable options. According to its suitability report, Mr H didn't want to take on additional borrowing and pay more interest. Whilst I can certainly appreciate that position, it's possible there may have been options to consolidate Mr H's existing loan with additional borrowing and, potentially give him access to a more favourable interest rate. But it's not clear to what extent, if at all, Portal explored that. And, I'm also inclined to agree with our investigator, as Mr H indicated he wanted the tax-free cash to start up a new business, there may have been grants or other suitable loans available to him. Again, it doesn't seem that this was explored as a potential option.

But on top of all of this, I think Portal also needed to think about whether Mr H's objective of taking tax-free cash to start a business was a legitimate personal objective for him. And if it was, whether it was a current or future objective. If it didn't think it was, it needed to say so. I say that because Mr H was only 56 years old when he took advice and it seems he was intending to stay in full time employment until his normal retirement age. And whilst I can see why he might have started to turn his attention to what happened after retirement and how he might supplement his pension income, I've seen nothing that persuades me starting a new business was a pressing objective at that point.

That's largely because Mr H apparently wasn't even sure what type of business he might open. So, I think that, in itself, shows it was probably a longer-term goal. Even allowing for the fact that he'd probably need to get things up and running in advance of his retirement, it's difficult to understand the sense of urgency here. Nor is it clear based on the evidence I've seen, whether the tax-free cash would even have covered the costs that Mr H might incur. And whilst there's brief reference to the fact that Mr H soon expected to receive an inheritance of about £10,000, it's not really clear to what extent Portal thought about whether that would go some way at least, to helping Mr H achieve his aim without the need for him to take his full tax-free cash. These are the sorts of things I'd have expected Portal to explore.

Bearing in mind that Portal ended up recommending that Mr H switch to a scheme, which by its own admission, was far more expensive to run, it needed to give fairly compelling reasons why it was in Mr H's best interests to take his tax-free cash and switch at the point he did. In the specific circumstances of this case and for the reasons I've outlined, I don't think Portal has done enough to show that. And I think a more appropriate response would have been to say that Mr H would have been better continuing to invest in his existing pensions. Especially, as I've said, there's nothing to suggest he wasn't happy with them. Assuming Mr H still needed to take a tax-free lump sum later on (which in itself was likely to have grown in value), Portal could have reassessed the situation then.

The only other likely reasons for switching would have been so Mr H could consolidate his investments to achieve "*clearer and simpler reporting on investment performance".* He also hoped to realign his investments to his attitude to risk and, in turn, achieve the growth that Portal said would otherwise not have been available to him. For reasons that I'll go on to explain however, I'm also not persuaded that Portal has done enough to show that those objectives were best achieved by Mr H switching his pensions.

From what Portal noted, it seems Mr H was probably looking for simplicity and being able to see at a glance how his investments were doing. Given that, I'm not necessarily persuaded investing in a SIPP was the right way to achieve that aim. As Portal explained, "*a SIPP can combine the traditional elements of a personal pension with a self-investment option, giving you the opportunity to invest outside conventional insured funds. The plan can be split into two parts – the insured part and the self-invested part".* And whilst it's true to say that Mr H's investments sat within one overall 'wrapper' as opposed to across a number of different pension plans, the underlying investments sat within a range of different funds. Each of those would have had its own performance update and charging structure.

So, it seems to me that Mr H's investments possibly became a little more complicated to understand, not less. I say that in particular because the evidence doesn't show that Mr H was an experienced investor. And whilst he may have indicated he was comfortable investing in the stock market, that's not the same as having the experience to understand the investments. Portal said it recommended Mr H invest in a SIPP because it gave him the opportunity to invest in funds outside of conventional ones. For similar reasons to those I've already given, I don't think Mr H needed access to the range of investment choices that Portal thought he did. And the upshot is that I think what Mr H ended up with was a far more expensive and complicated plan and fee structure than he'd otherwise been used to or needed.

I think it might have been easier to argue that Portal had compelling reasons for recommending Mr H invest in a SIPP if it could demonstrate it would likely give him a better return on his investments. After all, it specifically said a factor in its recommendations was that Mr H's investments would likely achieve growth that would otherwise have been unavailable from his previous investments. And Mr H's representative has suggested he was probably also looking for performance growth (albeit in line with his attitude to risk). But, bearing in mind that his residual fund would have been reduced by taking out the tax-free cash (and he's unlikely to have had the financial means to instantly make up the difference) I think it was important for Mr H to understand the potential growth that his investments might achieve. So as to make an informed decision. But other than a general statement, I haven't seen any evidence to suggest that Portal gave Mr H a reasonable comparison to show him whether the SIPP might provide a greater return at retirement. So, I can't really see how Mr H could have made a fully informed decision and formed the view that he'd be better off at retirement by investing in the SIPP.

But, there are other reasons that lead me to conclude Portal's advice wasn't suitable. I accept that Portal made it pretty clear that Mr H's new pension arrangements would be more expensive. That's also supported by the evidence I've seen relating to Mr H's previous plans. And, as I've indicated, as the value of Mr H's fund instantly reduced by 5% before any other administrative or fund charges were added, the performance of the SIPP had to be much better to offset the effect of the higher charges. Otherwise, it's difficult to see how Mr H's investments would have achieved the growth that Portal alluded to. But, I also need to keep in mind that Mr H was seeking to rebalance his investments with his attitude to risk. And as I'll go on to explain, I don't think Portal accurately assessed Mr H's attitude to risk. That meant he invested in funds that were too high risk for him.

So, for those reasons too, overall, I'm not persuaded that Portal's recommendation for Mr H to switch his existing pension funds into a SIPP was the right advice for him. And, had Portal more thoroughly explored his aims, I think it and Mr H would have determined he'd be better staying in his existing pension arrangements. And, at the very least, it could have explored the fund switches that were available to him within his existing schemes without incurring the same level of fees associated with the SIPP.

Were the underlying investments suitable?

In short, as I indicated earlier, I don't think they were. As I said, Portal had a duty to make sure any investment advice was suited to Mr H's attitude to risk and his experience of investments.

Portal deemed Mr H to be an adventurous investor, which it said was typically someone with high levels of financial knowledge who keeps up to date on financial issues. "*They will usually be experienced investors who have used a range of investment products in the past and who may take an active approach to managing their investments. They will readily take gambles where they see the potential rewards as being attractive".*

Portal's since argued (in response to our investigator's assessment) that just because Mr H didn't have any investments at the time of the advice, doesn't mean he's never had experience of investments at all. Had there been enough evidence to support Portal's position, I might be inclined to agree. But there isn't. And I don't agree that the evidence shows Mr H to be an adventurous investor. I say that because whilst he indicated he was comfortable investing in the stock market, he also said he had little experience of doing so. And as I've already indicated, being comfortable with certain types of investments isn't the same as having the knowledge and experience needed to understand the risks. And Portal ought to have known that.

I also think there were apparent contradictions in some of Mr H's answers to the risk questionnaire he completed. For instance, he said usually it takes him a long time to make his mind up on financial matters and when it comes to investing. But he said he had no strong opinion about whether he'd rather be 'safe than sorry'. Those don't strike me as the kinds of responses an adventurous investor would give. But they were also at odds with other statements, such as Mr H being willing to take substantial financial risks to earn substantial returns.

And in these circumstances, I think Portal needed to do more to ensure Mr H understood the risks or, if necessary, agree a more appropriate risk rating for him. And had it done so, it's possible Portal may have determined that Mr H had a more balanced approach to investment as his previous investments indicated. And, in itself, investing in a more balanced way may not have given Mr H's investments the scope to achieve the extent of the growth that Portal mentioned.

Portal's argued that it used a "*reputable and industry recognised third party risk profiling system*" into which it input Mr H's answers. But where those answers are at odds with the risk rating Portal is intending to use, it has a duty to check the customer's attitude and experience relevant to the type of investments being considered. Also, whilst the regulator didn't set out exactly how attitude to risk should be established, it warns firms against the use of risk questionnaires without a robust mechanism in place to assess the answers given and question any conflicting answers. I can't see that Portal did any of this in Mr H's case, so I don't agree that it complied with the requirements set out.

It's also argued that as Mr H was about to receive an inheritance, that increased his capacity for loss. It's fair to say that having access to extra funds may have given Mr H more capacity to make up investment losses. But it's not enough to make potentially unsuitable investments suitable. And, that alone wouldn't, in my opinion, have altered Mr H's attitude to risk.

In any event, looking at the funds that were recommended to Mr H, I think they were largely unsuitable for his attitude to risk and capacity for loss. A report issued by the regulator around 2010 said that as well as UCIS only being eligible for promotion to certain customers (usually sophisticated, high net worth investors) even when a customer was deemed eligible for the promotion of UCIS, suitable advice involved limiting their exposure to these investments to about 3% to 5% of their portfolio. I've seen nothing to suggest that Mr H was the type of investor who might be deemed suitable to invest in such funds. And, contrary to what the regulator said, the two UCIS funds alone accounted for 55% of Mr H's pension provision. Other than his state pension, that was his sole pension provision in retirement. And whilst not UCIS, some of the other funds that Mr H was invested in were still considered specialised unregulated investments that would be more suited to a much more experienced investor. Again, I can't see any good reason why these would have been deemed suitable for Mr H.

Mr H's representative says he had a medium attitude to risk and capacity for loss. Based on how Mr H invested in his previous pension funds (those which made up the majority of his pension fund were balanced, with others being lower risk investments) and his limited capacity for loss, I think that is probably a more accurate assessment. And I'm certainly persuaded that Mr H didn't have the appetite or the experience to match the types of investments that Portal recommended for him. So, it seems unlikely he'd have fully understood the nature of the investments he entered into. And whilst I accept that Portal set out various risk warnings, that alone isn't enough to suddenly make an unsuitable investment become suitable. Overall, I'm not persuaded that the recommendation to invest Mr H's sole pension provision in this way can be reasonably justified. And I think Portal is responsible for any losses Mr H may have suffered.

Would Mr H have gone ahead anyway?

I thought carefully about whether Mr H would likely have gone ahead even if Portal hadn't advised him as it did. And I don't think he would have done. As I indicated earlier, until he was approached by a cold caller and introduced to Portal, there's nothing to suggest Mr H wasn't happy with his existing pension arrangements. Or that he was looking to do something different. So, I think he'd have left things as they were. And, having been introduced to Portal, I think Mr H was entitled to rely on it to give him the right advice for his particular circumstances. And for all of the reasons I've set out, I don't think Portal did give Mr H suitable advice to switch his pensions or in relation to the underlying investments.

I therefore uphold this complaint.

Putting things right

Fair compensation

My aim is that Mr H 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 H would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policies would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr H's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr H fairly, Portal Financial Services LLP must:

- Compare the performance of Mr H's investment with the notional value if it had remained with the previous providers. If the actual value is greater than the notional value, no compensation is payable. If the notional 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 H'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 H'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 H won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H 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 H £350 compensation as the handling of this matter has clearly been a source of worry for him, given that he's seen his sole source of pension income (other than his state pension) dramatically fall and some of his investments are illiquid. So, Portal should recognise the impact of its unsuitable advice.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest it should tell Mr H how much has been taken off. Portal should give Mr H a tax deduction certificate in respect of interest if Mr H 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 with T	Some liquid/some illiquid	Notional value from previous provider	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 Mr H’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 H 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.

Notional Value

This is the value of Mr H's investment had it remained with the previous provider until the end date. Portal should request that the previous provider calculate this value.

Any withdrawal from the SIPP should be deducted from the notional 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 notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Portal will need to determine a fair value for Mr H's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The SIPP only exists because of illiquid assets. In order for it 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 H 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 H 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 H wanted capital growth with a medium risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- 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 H'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 H into that position. It does not mean that Mr H 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 H could have obtained from investments suited to his objective and risk attitude.
- Portal Financial Services LLP should provide details of its calculation to Mr H in a clear, simple format.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Portal Financial Services LLP should pay Mr H the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Portal Financial Services LLP pays Mr H the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Portal Financial Services LLP. It is unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept this decision.

If Portal Financial Services LLP does not pay the recommended amount, then any portfolio currently illiquid should be retained by Mr H. This is until any future benefit that he may receive from the portfolio together with the compensation paid by Portal Financial Services LLP (excluding any interest) equates to the full fair compensation as set out above.

Portal Financial Services LLP may request an undertaking from Mr H that either he repays to Portal Financial Services LLP any amount Mr H may receive from the portfolio thereafter or if possible, transfers the portfolio to Portal at that point.

Mr H should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

My final decision

I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2022.

Amanda Scott
Ombudsman