DRN-3171361

The complaint

Mr B has complained about the advice he received from Portal Financial Services LLP ('Portal') to switch a group personal pension plan ('GPP') to a Self-Invested Personal Pension ('SIPP'). The funds within the SIPP were then used to invest in several unregulated collective investment schemes ('UCIS').

Mr B is being represented by a third party but for ease of reading the decision I'll refer to all representations as being made by Mr B.

What happened

Mr B was introduced to Portal in 2014 after he'd been in contact with another business, from 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 switch or transfer advice. Portal had an established business arrangement with Firm C, whereby Portal would provide the pension switch and/or transfer advice before referring the client back to Firm C for investment advice, and this arrangement was followed for Mr B.

Portal carried out a review with Mr B. It noted he was 41 years old, employed and was earning approximately £44,000 a year. He was married and owned his home valued at around £137,500 with an outstanding repayment mortgage of £60,000. It noted Mr B had a loan which he paid £300 per month towards, and monthly disposable income of £695. Mr B didn't have any other assets other than his GPP.

Portal noted Mr B's GPP had a transfer value of £57,331 at the time of the advice which was invested in a mixed life fund weighted in favour of equities. The pension had an annual management charge ('AMC') of 0.90% and the average annual performance of the fund over the last five years was 9.62%.

Portal stated Mr B's objectives were to switch to a cheaper scheme with improved servicing; to have more flexibility and control; to improve performance and have a greater investment fund choice; to improve on his death benefits and to access his benefits before his retirement date.

The risk assessment Portal carried out suggested he was a "balanced" investor. Portal recommended that Mr B switch his GPP to a SIPP to meet his objectives. Portal said it wouldn't be providing any advice in relation to where Mr B's funds would be invested after the switch, as this would be given by Firm C.

Portal's suitability report noted that it would charge an initial advice fee of 5%, of which 2% would be paid to Firm C as part of its introducer agreement. The AMC for the recommended SIPP would be 0.5%, plus fund charges. Once the transfer was completed Firm C would provide their investment advice and discuss the cost of their ongoing advice service.

The SIPP was established in November 2014 and £57,946.21 was transferred into it. Portal took its 5% initial charge, Firm C were then appointed as servicing agent and in January 2015, £30,100 was invested by Firm C in the following UCIS funds:

- Strategic Residential – £4,400
- Motion Picture Global – £4,400
- Lakeview UK – £4,900
- Brisa Investments – £3,300
- Biomass Investments – £4,900
- Real Estate Invest USA – £4,900
- Tambaba Investments - £3,300

The remainder of the funds were allocated to regulated investment funds.

In November 2019, with the assistance of a CMC, Mr B complained to Portal about the advice he received to switch his existing pension to the SIPP. He said the advice was negligent and unsuitable for someone with no investment experience, a medium attitude to risk ('ATR') and low capacity for loss. He also argued that Portal couldn't make its switch recommendation without taking responsibility for assessing the underlying SIPP investments.

Portal rejected his complaint, saying Firm C was responsible for the investment advice. Unhappy with Portal's response, Mr B referred the matter to our service.

An investigator considered the matter and concluded that Mr B's complaint should be upheld. The investigator didn't think the advice to switch Mr B's GPP to the SIPP was suitable; this was because Mr B's existing arrangements already met his needs and the costs were already low, if not factoring in the SIPP charges, investment charges and adviser fees. The investigator thought that an internal fund switch ought to have been considered instead. The investigator thought Portal was fully responsible for Mr B's loss because it should have considered the suitability of the investments to be made through the SIPP and the UCIS were not suitable for Mr B. He thought Portal should compensate Mr B for his loss and pay an additional £350 for trouble and upset caused.

Portal disagreed with the investigator's findings, saying its advice was suitable and in line with Mr B's circumstances, needs and objectives. It said it had set out the charges and fees to Mr B and believed that the new arrangement was cheaper. It added that it would have charged Mr B the same fee even if it had recommended an internal fund switch instead.

Portal maintained Firm C was responsible for any investment advice. It said it had carried out due diligence on Firm C and it had made its recommendation knowing the type of invest strategy Firm C would employ for Mr B. Portal said Firm C told it that it didn't invest clients' funds in UCIS and it shouldn't be held responsible if Firm C diverted from this strategy.

The investigator didn't change his mind so the complaint was referred to an ombudsman for a final decision.

Mr B has since advised that he made a successful claim to the Financial Services Compensation Scheme ('FSCS') in respect of the UCIS investments made by Firm C, and he received some compensation.

I reviewed the complaint and contacted Portal as I didn't think the investigator was as clear as he could've been about what he believed Portal should've advised Mr B to do, which has an impact on the redress payable. I also wanted to set out how I intended to deal with the compensation Mr B had received from the FSCS in the redress calculation.

I explained that I thought Mr B's existing GPP was already meeting his immediate needs; it was invested in line with his balanced attitude to risk and had achieved an average return of 9.62% over the last five years. I said the total fee Mr B was paying was only 0.9% - so switching his pension would have resulted in increased costs (particularly when taking into account the investment fund charges and adviser fees). I also explained that I thought Mr B's remaining objectives, such as flexibility, could've been explored closer to retirement. Ultimately, I said I thought Mr B should have been advised to retain his existing GPP and stay invested in the same fund. So, I explained compensation should be based on the notional value of the GPP had Mr B not switched out of it.

I also explained that I intended to require Portal to compensate Mr B for his full loss, despite the compensation he had received from the FSCS. This was because Mr B had agreed to repay the compensation he received from the FSCS if he received compensation from a third party relating to the same claim. So, I was satisfied that Mr B would not be compensated twice for the same loss.

Portal didn't provide any comments in response, so I'm now providing my final decision.

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 think Mr B's complaint should be upheld. I'll explain why.

Portal advised Mr B to switch his GPP 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 Mr B's best interest. I believe that as Mr B'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 Mr B. It had to obtain information as to Mr B'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 Mr B to ensure the recommendation met his objectives, that he could bear the risks involved and that he 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 Mr B's GPP to a SIPP was suitable for him. 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 Mr B'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 Mr B'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 Mr B 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 Mr B'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 Mr B 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 Mr B 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 Mr B's funds would be invested. I don't think there was any ambiguity regarding the regulator's position on the matter.

As part of the fact-finding process Portal had to understand Mr B's objectives – two of which were recorded as to have greater fund choice and improved investment performance – and the related risks. It wasn't free to ignore how Mr B'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 Mr B 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, Mr B's transferred funds would ultimately be invested. And it didn't set out in its suitability report what it thought would be a suitable portfolio of investments for Mr B. As 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 this.

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 Mr B, it couldn't provide him with suitable advice to switch his 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 Mr B's appointed financial adviser, it had a significant responsibility to provide suitable advice and act in Mr B's best interests. And as I've said, this had to include an awareness of where Mr B's funds would be invested.

Portal says that its advisers carried out extensive due diligence on Firm C and Firm S, including background checks on key individuals, assessing the scope of their permissions and information about previous complaints. It also said it requested details of the investment strategy Firm C was likely to deploy for clients such as Mr B. As evidence of this, Portal provided a copy of the 'Compliance Health Check' for Firm S completed by a third party on 12 May 2012. Notwithstanding the statement on page five that Firm S did not intend to promote UCIS funds in the future, this document was over two years old by the time the switch actually took place. So, I don't think it should have been relied on in perpetuity.

Furthermore, Portal chose to rely on a general statement, given over two years previously, that said recommendations of broad categories of investments, with potentially broad gradings of risk, might or might not be made in any given case and that UCIS would not be recommended. I don't think that was a reasonable basis on which Portal should have assessed the suitability of the pension transfer for Mr B. In my opinion, Portal needed to understand the nature of the investments envisaged for Mr B specifically, rather than rely on a general statement about Firm C's investment philosophy.

Apart from the Compliance Health Check, I haven't seen anything to suggest that Portal, at any point, checked to see how Firm C broadly proposed to invest Mr B'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 Mr B, 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 Mr B 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 advice, a significant part of Mr B's SIPP was invested in UCIS. I think the regulator's 2010 UCIS findings are relevant 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 Mr B's case, after initial advice charges and fees were deducted, around 55% of his remaining SIPP funds were invested in UCIS. I don't think UCIS was suitable for Mr B at all, and certainly not the proportion invested. There's nothing to indicate Mr B had the requisite knowledge or experience to accept or understand the risks associated with these types of investments.

Portal says it can't be held responsible for Firm C investing in financial instruments representing a different investment strategy to what it anticipated. But as I've said above, Portal didn't say what it considered would be a suitable investment strategy for Mr B, or obtain details from Firm C about the investments it proposed for Mr B before making its recommendation. In my view, had Portal requested information about the proposed investments and been advised that Firm C intended to invest that proportion of Mr B's pension in UCIS, it could've queried this, given that it had only determined that he 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 Mr B 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 Mr B. 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 Mr B that it couldn't recommend he switch his GPP 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 Mr B's SIPP was invested. And if Portal had warned Mr B against investing in line with Firm C's proposal, I think it's more likely than not that Mr B 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 Mr B's funds were ultimately invested. Portal's recommendation that he 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 Mr B would've ultimately gone on to invest as he did.

The advice to switch

I've considered whether the advice to switch Mr B's existing GPP was suitable, but I don't think it was.

At the time of Portal's advice Mr B was 41 years old, employed and in good health. He was a standard retail investor and he didn't intend to retire until age 65. According to the information gathered by Portal, the GPP being switched contained all of his retirement provisions. Other than his pension there was no record of Mr B having any investments or savings. Although he was a homeowner, he had an outstanding amount of £60,000 on his mortgage and he also had another loan.

Mr B's objectives were to move to a cheaper scheme with improved servicing, greater investment choice and performance, to pass on death benefits to his dependents and flexibility to access his 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 his existing pension into a SIPP.

Mr B's ATR was established as balanced. Although Mr B wasn't an experienced investor, having considered his overall circumstances I think this was reasonable, particularly as he didn't intend to retire for over 20 years and so he had time to build further retirement provisions and recoup any losses.

Portal noted that Mr B wanted a cheaper scheme and I acknowledge that the SIPP recommended was not particularly expensive – it had an AMC of 0.5%, which was lower than the charge applicable to the GPP. But there was a clear cost to switching his existing pension into a SIPP. Portal charged him an 5% initial fee and 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. 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 where it said:

"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."

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 Mr B's pension, as he 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 despite the increased costs.

Portal said that Mr B wanted improved servicing of his pension. But it hasn't said why Mr B wanted this or what he was unhappy with about the way his existing pension provider serviced his GPP. In any event, I'm not persuaded that Mr B needed to switch his pension to obtain better servicing, he simply could've signed up to an ongoing advice agreement with Portal or any other business to enjoy improved servicing and monitoring of his pension.

Higher investment performance may or may not have been achieved by switching, but this was purely speculative, especially when Portal did not know how the funds were to be invested. Any improved investment performance was entirely dependent upon how the funds performed over the term to Mr B's retirement. And in any event, Mr B's GPP was already invested in line with his attitude to risk and performing well – it had grown on average by 9.62% over the last five years. So, it's difficult to see how Mr B could improve on this without taking on additional risk that he couldn't bear.

I have also seen nothing to persuade me that Mr B was seeking a sophisticated investment proposition or why he wanted access to a wide range of investments. On the contrary, I think he preferred simplicity. I think that greater investment fund choice was of limited benefit when Mr B had little experience of investing in stocks and shares. There wasn't any explanation as to why he wanted a greater fund choice, or what investments he wanted to make that were not available with his existing providers. And I don't think the adviser could reasonably conclude that Mr B wanted or needed access to non-standard or unregulated investments, which the SIPP would provide.

Portal noted that Mr B wanted flexibility and to be able to access his pension benefits before he retired, but I think it was far too early to say what Mr B actually needed in retirement. Mr B had over 10 years before he could access his pension, so I think it was too early to say whether he would actually want or need to take TFC earlier than he intended to retire. I also think it was also too early to say Mr B would've definitely wanted income flexibility. So, in my view, there wasn't any need to address this objective at that time.

The suitability report also noted Mr B wanted improved death benefits. But improved death benefits couldn't be guaranteed – it would depend on the performance of the underlying investments and their liquidity when claimed. Given the small overall value of the pension fund, I think the adviser ought to have explored life assurance instead. This would've been a cheap alternative means of meeting this objective, without taking on the extra charges associated with the SIPP and subsequent investments.

For the reasons set out above, I think the advice to switch the GPP to the SIPP was unsuitable because Mr B was not an experienced investor and so did not 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 Mr B should've been advised to retain his GPP and stay invested in the same fund. I think the GPP met his immediate objectives and Mr B's need for flexibility (if indeed he required it in future) could've been addressed nearer to him reaching age 55.

I've thought about whether, if he'd been correctly advised by Portal not to switch, Mr B would have gone ahead with it anyway. Having carefully considered all the circumstances in this case, I don't believe he would have. There's nothing to suggest that Mr B was seriously considering moving his existing plan prior to being referred to Portal for a pension review, particularly as he couldn't access his benefits for at least another 13 years. Mr B's existing GPP was performing well and he didn't have any pressing objectives that could've only been addressed by switching. So, I think he would've listened to Portal's advice and kept his existing arrangements as they were.

Is Portal wholly responsible for Mr B's loss?

I recognise it can be argued Firm C is also liable to Mr B 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 Mr B for the whole of his 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 or switch advice and investment. Because Firm C wasn't authorised to provide pension transfer or switch advice, it referred Mr B to Portal. Portal advised Mr B to switch his benefits to a SIPP, it set up the SIPP and arranged for his existing pension benefits to be switched to this. I acknowledge Firm C advised Mr B to invest a significant share of his SIPP funds in UCIS. But, as I will explain in my final decision, 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 Mr B on them. It was only as a result of Portal's involvement that Mr B switched the funds held in his 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, he couldn't have invested as he 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 Mr B's loss.

Portal argues that Firm C is responsible for the investment advice and so Mr B should avail himself of any compensation he 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 Mr B some compensation before the determination of his complaint with this service. In those circumstances, I'm aware that as a condition of accepting compensation from the FSCS, Mr B was asked to give to the FSCS an assignment of his 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 Mr B to make a complaint to this service about Portal, he needed to ask the FSCS for a reassignment of those rights. I can see Mr B 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 Mr B has already recovered some of his funds from the FSCS, it should not have to account to him for that portion of his loss. However, as per the reassignment of rights agreement Mr B entered into with the FSCS, I can see he has agreed to repay the compensation he received from the FSCS if he receives compensation from a third party relating to the same claim.

From this, I think that:

1. There is no real risk of Mr B benefiting from double recovery, as he's contractually required to pay back to FSCS the full amount of the compensation it paid to him; and
2. I have seen nothing to suggest Mr B 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 Mr B for the full amount of his loss (in circumstances where I have determined it is responsible for 100% of that loss), he would nonetheless still be required to account to FSCS from the compensation he 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 Mr B compensation for the full amount of his loss.

Putting things right

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

What must Portal do?

To compensate Mr B fairly, Portal must:

- Compare the performance of Mr B's investment with the notional value if it had remained with the previous provider. 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 B'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 B'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 B won't be able to reclaim any of the reduction after compensation is paid.

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

- For example, if Mr B 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 Mr B 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 £350 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 Mr B how much has been taken off. Portal should give Mr B a tax deduction certificate in respect of interest if Mr B 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	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 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 B 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 B'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 B's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. 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 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 B 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 B 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 B wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr B's circumstances and risk attitude.

My final decision

I uphold the 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 Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 11 July 2022.

Hannah Wise
Ombudsman