DRN-3191730

The complaint

Mrs K complains that Portal Financial Services LLP (Portal) gave her unsuitable advice to transfer her personal pensions into a Self-Invested Personal Pension (SIPP) and invest in Unregulated Collective Investment Schemes (UCIS).

What happened

In August 2010, Mrs K contacted Portal as she wanted to take tax-free cash from her pension. Mrs K wanted tax-free cash so she would have an emergency fund to cover three months of lost earnings due to an operation her husband was due to have. At the time of the advice a Pension Release Report was completed, and it said the following:

- Mrs K was 56 years old
- Her attitude to risk (ATR) was moderately cautious
- She wanted a three-month emergency fund to cover loss of earnings due to her husband's upcoming operation
- She wanted to take some of her pension benefits while leaving it invested
- Mrs K had an interest only mortgage with an outstanding balance of £60,000
- She had an endowment policy that had a potential shortfall of between £5,000 and £8,000
- She was employed earning approximately £10,700 per year and she had an outstanding credit card balance of £4,000 with no other assets or liabilities. To meet her needs Mrs K was advised to transfer her pension into a SIPP and invest it in UCIS's and retain a small amount in cash - as set out below:
- 55% Hypa Fund Raithwaites
- 20% Hypa Fund Asia
- 5% Olive Tree Koroni Fund
- 10% Hypa Finance
- 10% Cash Deposit

Mrs K's pensions were valued at around £30,000. To transfer the pensions, she would be charged 5% of the total transfer value. The 5% charge would be deducted after the tax-free cash had been taken. There would also be an annual management fee of 1% per year, an initial set-up fee of £200, an annual administration fee of £250 per annum, a payment of tax-free cash would cost £100 and an income drawdown calculation £125. Portal made Mrs K aware that by taking tax-free cash she was moving to a pension plan with higher charges.

Subsequently the investments have failed and/or became illiquid.

Our investigator looked into matters and upheld the complaint, he said that the recommended SIPP was more expensive than Mrs K's existing plans and the investments recommended were unsuitable for her.

Portal responded to say Mrs K required tax-free cash and her existing plans didn't allow her to do this without taking an annuity.

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.

And having done so, I think the advice given was wholly unsuitable. I say this because:

- Mrs K had very little in the way of retirement funds and was less than 10 years away from retirement. She was an inexperienced investor and yet nearly all of her funds were invested in high risk specialist investments – that shouldn't have been promoted to her and didn't match her attitude to risk.

- The advice meant that the charges taken from her 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.

- Mrs K didn't have many years left until her likely retirement and therefore even if the investment advice had been suitable for her – it's unlikely this would've outperformed the additional charges to an extent that Mrs K would see a benefit from the advice to transfer to the SIPP. Prior to the advice, the regulator had provided guidance 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 Mrs K. Mrs K didn't have the necessary experience or knowledge for this to have been suitable for her. 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 approximately 90% of Mrs K's funds were invested in UCIS.

Portal's defence is based on the fact that Mrs K required some income to fill a gap in the household income as her husband was off work due to an operation. But it hasn't addressed the fact the investments it recommended were unsuitable and the product selected expensive. Even if I felt the advice to take tax-free cash was suitable, the investments and the product recommended have to be considered as part of the advice.

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

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

Based on what I have seen of Mrs K's circumstances, I can't see that she had the capacity for loss that investments like this carry. As the recommended investments were inconsistent with Mrs Ks circumstances, I consider that the investment recommendations made were unsuitable – it put Mrs K's entire retirement funds at risk. Portal didn't give Mrs K appropriate information about the risks involved in this investment strategy either, so she was unable to make an informed choice.

Furthermore, alternatives to the expensive SIPP product put forward weren't explored. I accept Mrs K wished to take tax-free cash and there appears to have been a genuine need for some additional household income. But this doesn't make the recommendations Portal made suitable.

It's difficult to say what Mrs K would've done had she been properly informed as the advice process was lacking and alternatives not researched. And the need for income was due to her husband's circumstances and a purported lack of household income, yet his financial circumstances and provision wasn't recorded. But I don't think it was necessarily unsuitable to transfer at least one of her pensions to access tax-free case without taking income. I don't think it would've been possible to do so in the existing products. Therefore, I think a fair and reasonable way to compensate Mrs K for the unsuitable advice is to use a benchmark based on an investment strategy in line with her circumstances and attitude to risk.

The loss of Mrs K's entire pension fund will also have caused distress and so Portal should pay Mrs K £300 in compensation for this.

Putting things right

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

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

What must Portal do?

To compensate Mrs K fairly, Portal must:

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

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

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

- It's reasonable to assume that Mrs K is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs K 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 Mrs K £300 for the distress caused from the loss of her retirement funds.

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

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

Actual value

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

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

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

Fair value

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

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

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

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Portal totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The SIPP only exists because of illiquid assets. In order for the SIPP to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Portal taking over the illiquid assets, or this is something that Mrs K 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 Mrs K 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:

- Mrs K wanted Capital growth with a small risk to her capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mrs K's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs K into that position. It does not mean that Mrs K would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs K could have obtained from investments suited to her objective and risk attitude.

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs K to accept or reject my decision before 29 April 2022.

Simon Hollingshead
Ombudsman