DRN-3285143

Financial Ombudsman Service

The complaint

In summary, Mrs H has complained that Portal Financial Services LLP, provided her with unsuitable advice in respect of the transfer of her pensions and the reinvestment of the proceeds of transfer, into high risk investments.

In bringing her complaint, Mrs H is represented by a claims management company (CMC).

What happened

In October 2014, Portal produced a suitability report which recommended Mrs H transfer three pension policies and redirect ongoing contributions into a self-invested personal pension plan (SIPP). The basis of the recommendation set out in Portal's report, was in summary; to improve investment performance, switch to a cheaper scheme and have greater fund choice.

The suitability report records that Mrs H was 48 and out of work. She was in receipt of jobseeker's allowance, housing benefit, council tax benefit and child tax credits. She had £5,000 in savings and no disposable income each month. She had three pension policies with one provider, the total value of which was recorded as being £46,524.

Mrs H was recorded as having a "balanced" attitude to risk (ATR). The letter also recorded a discussion about her capacity to take risk and the implications of any investment losses. The recommendation was to transfer the proceeds of transfer approximately 75% into an equity fund,14% into bond funds with 11% remaining in cash.

The transfers weren't made until April 2015. Approximately £40,000 was invested into the recommended equity fund, £7,000 into bond funds, with the balance remaining in cash. The ongoing contributions were invested into the recommended equity fund.

In 2016, Mrs H transferred the money that had been invested in the equity fund and in cash to another pension plan. The monies invested into the bonds couldn't be sold as the funds were illiquid.

In November 2020 the CMC complained to Portal about the advice provided to Mrs H. It submitted that the advice had been unsuitable, including that Portal promoted non-standard investments. In its response, Portal said it didn't think the CMC had authority to act for Mrs H.

Mrs H's complaint was looked into by one of our investigators. Portal was asked to provide its file. No response or documents were received from Portal. So, the case was assessed on the information the investigator did have.

Our investigator asked the SIPP provider recommended by Portal, for information about the status of the remaining investments in that plan. The SIPP provider explained that the Lakeview UK fund had a five-year term and defaulted on interest payments in February 2019. The borrowing company for the bond issuers were placed into administration in March 2020.

It said that Real Estate Investment USA had a five-year investment term. It had defaulted on interest payments since 2016. The company was due to be wound up and closed. This was due to the borrowing company no longer servicing loan payments.

Strategic Residential Development had a five-year investment term and had defaulted on interest payments since October 2017.

Hypa management was illiquid from the outset and designed to be held until maturity. It wasn't transferable and ceased regulated activities in 2018. It went on to say the company was dissolved in June 2018.

In relation to the merits of her complaint, the investigator said that the recommended investment into bonds was unsuitable. As the SIPP was marginally cheaper than Mrs H's existing pensions, he thought compensation should be limited to the bond investments alone. And he set out how Portal should compensate Mrs H.

Portal responded to the complaint. It set out in summary its two principle concerns.

- It refuted the CMCs authorisation and permission to submit complaints.
- In relation to the merits of the complaint it referred to the investigator saying that the non-mainstream pooled investments within the SIPP were unsuitable. It didn't accept the investigators assessment.

It went onto explain why it didn't accept the CMC's authority to act on behalf of Mrs H, or recognise it as an authorised body regarding complaints submitted to our service.

In relation to the merits of the complaint, it said that the bond investments made up just over 14% of the original portfolio. And the proportion of the portfolio invested in the bonds had fallen significantly due to the growth of the liquid element of the plan. It believed the portfolio was suitable due to Mrs H's term to retirement and that the investments hadn't reached maturity yet. It believed the investment advice was suitable.

In response the investigator explained he hadn't said the CMC was regulated by the solicitor's regulation authority (SRA) to bring complaints. He said that he had said:

"Portafina has said that ………. cannot represent consumers in complaints. Our understanding is that it can. Regardless of whether Portafina took that position, it could have responded to Mrs H direct."

In relation to the merits argument in respect of the investment into the bonds, the investigator didn't agree with what Portal had said. He didn't think Portal had commented on the restrictions applying to the promotion of such non-mainstream investments. And he didn't think Mrs H fell within any of the categories of investor to whom they could be promoted. He also thought the investments were unsuitable. Although accepting they represented a relatively small proportion of the portfolio, he thought they carried significant risk of loss of capital. He didn't think Mrs H had the capacity to accept such loss bearing in mind the size of her pension, her savings and that she was unemployed at the time of the advice.

As no agreement could be reached the complaint has been passed to me for review.

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.

The CMC's authority to submit Mrs H's complaint

Portal doesn't think the CMC representing Mrs H, is authorised to represent her. In the context of the complaint made on Mrs H's behalf, I believe Portal could still have communicated with her directly.

Our service has written to Portal explaining why we believe Mrs H's CMC is able to represent complainants such as Mrs H – and that our service expects it to cooperate with us in respect of complaints brought by this CMC. This issue doesn't have any bearing on the merits of Mrs H's complaint, so I don't intend to say anything further on this point.

Suitability of the advice

There is limited information available from the time of the advice. Disappointingly Portal didn't provide its business file as requested by our service. But Mrs H has been able to provide a copy of the suitability report prepared by Portal. Information about the SIPP Mrs H was advised to transfer into, has been obtained from the SIPP provider. And information about the policies transferred was also obtained from that pension provider. So, I'm satisfied that I have sufficient information to be able to consider the suitability of the recommendation made to Mrs H.

In its response to the investigators view, Portal appears to accept that the bonds it recommended were non-mainstream investments. And it has argued that the proportion of those investments has and will continue to reduce as a proportion of the overall portfolio over time. And it thinks the risk will fully diminish once the funds mature in a few years' time.

I'm not persuaded by the rationale for the original recommendation for investing into the bonds or Portal's arguments in response to the investigator's findings. I'll explain why.

As Portal appears to accept from its response to the investigator's assessment, that the bond funds were non-mainstream investments, I'm surprised that it hasn't commented on the restrictions that applied to promoting such investments. Also, from what I've seen of Mrs H's circumstances, I don't think she fell into the categories of investor who those investments could be promoted to. Considering the specialised nature of the funds, I think they fell within the restrictions set out in COBS 4.12.

In addition, I don't think the investment into the bonds was a suitable recommendation for Mrs H. I say this because the majority of bond funds were it seems, set up to raise funds for speculative property development. Although the advertised rates of return were high on these bonds, I think given the nature of the investments these were very high-risk investments that carried a significant risk of capital loss. And that appears to have been proven to be the case having regard to the information provided by the SIPP provider. This indicates that they have defaulted on interest payment and are in severe financial difficulties. So, it seems unlikely to me that there will be any distributions from those funds.

Portal has argued that as they formed a relatively small percentage of Mrs H's overall portfolio, they weren't an unsuitable recommendation. And it thinks that as the rest of the liquid portfolio grows over time together with income generated over time; this will reduce the overall risk over time.

I don't agree with Portal's argument. Whilst I accept that the percentage of the investment into the bonds was about 14% of the overall portfolio, I don't agree that means the bond investments was appropriate. I say this because looking at Mrs H's financial circumstances at the time Portal assessed her financial position that was set out its suitability report, I don't think Mrs H had the capacity to accept the investment loss that might occur with investing in such investments.

The pensions that were transferred appear to have been Mrs H’s sole pension provision other than her state pension. She was recorded as being unemployed at that time and only had £5,000 in savings. It seems evident to me that Mrs H was going to be heavily reliant on the income generated from the monies transferred. And as such, I don’t think she had the capacity to accept the high risk of investment losses on even the relatively small percentage of the proceeds of transfer that were invested into the bonds.

In addition, I don’t think she had the requisite ATR for the bonds to be an appropriate investment for her. Portal assessed Mrs H as being a balanced investor. But she seems to me to be someone with limited investment experience. The pensions transferred had been invested in a single equity fund, and Mrs H appears to have had no investment experience outside of her pensions. And given her circumstances and apparent limited investment experience, objectively I don’t believe she had the requisite ATR for the bonds to have been an appropriate recommendation and investment.

I’ve also thought about the advice to transfer from Mrs H’s pensions into the SIPP. From the information I do have, it seems the SIPP was marginally cheaper than the pensions that were transferred. So, the advice to transfer doesn’t necessarily seem inappropriate from a charges perspective.

Mrs H was invested in a global equity fund prior to the transfer into the SIPP. And the pension provider for the pensions that were transferred, said that the pensions didn’t contain any guarantees. The equity fund within the SIPP appears to have been a global equity fund. So, it seems that Mrs H was invested in a similar type of fund after the transfer as she was prior her pensions being transferred.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mrs H as close as possible into the position she would probably have been in now if she had been given suitable advice.

I think Mrs H would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs H’s circumstances and objectives when she invested.

What should Portal do?

To compensate Mrs H fairly Portal should:

Compare the performance of Mrs H’s bond investments with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

Portal should also pay any interest set out below.

If there is a loss, Portal should pay into Mrs H's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Portal shouldn’t pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Portal is unable to pay the compensation into Mrs H's pension plan, it should pay that amount directly to her. But had it been possible to pay the compensation into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

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

Taking into account her financial circumstances, Mrs H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal the current basic rate of tax. I think Mrs H would have been able to take a tax-free lump sum, so the reduction should be applied to 75% of the compensation.

In addition, Portal should pay Mrs H £200 for the distress and inconvenience she has been caused as a result of the advice it provided to her. Portal should provide the details of the calculation to Mrs H in a clear, simple format.

Income tax may be payable on any interest paid. If Portal considers it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it has taken off. It should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	Benchmark	from (“start date”)	to (“end date”)	additional interest
Bonds	still exists	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 settlement	not applicable

Actual value

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

If, at the end date, any bond investment is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Portal should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If Portal is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Portal may wish to require that Mrs H provides an undertaking to pay Portal any amount she may receive from the investment 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 bond investments would have been worth at the end date had they achieved a return in line with 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. Apply those rates to the investment on an annually compounded basis.

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

Any withdrawal, income or other distribution out of the investments should be deducted from the *fair value* 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, Portal may total all those payments and deduct that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

Mrs H wanted growth with a small risk to her capital in respect of this element of her portfolio.

- The average rate for 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 H'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 H into the correct position. It does not mean that Mrs H 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 H could have obtained from investments suited to her objective and attitude to risk.

Further information

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financialombudsman.org.uk/businesses/resolving-

complaint/understanding-compensation/compensation-investment-complaints.
Alternatively, just type ‘compensation for investment on our website:
www.financial-ombudsman.org.uk

My final decision

For the reasons I’ve set out above, my decision is to uphold Mrs H’s complaint about Portal Financial Services LLP in part. If Mrs H accepts my decision, it needs to calculate and pay Mrs H compensation using the methodology I’ve set out in this decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 28 October 2022.

Simon Dibble
Ombudsman