

## The complaint

Mr C complains that Portal Financial Services LLP (Portal) gave him unsuitable advice to transfer two of his Personal Pensions (PP) to a Self-Invested Personal Pension (SIPP).

Mr C is being represented by a third party, but for ease I'll refer to all representations as being made by him.

## What happened

In 2014, after first speaking to Mr C, Portal advised him to transfer two PPs to a SIPP. At the time Mr C was aged 55 and living with his wife. And the fact-find, dated 17 January 2014, indicated he was employed earning £45,000 per year, with just under £20,000 in savings. He told Portal he lived in a property he owned worth around £220,000, with an outstanding mortgage of £138,000. It said he had outstanding credit card balance totalling around £2,000, that he was repaying at £150 per month. And that he had a household disposable income of around £1,134 per month. The suitability report notes Mr C had two PPs with transfer values of £3,776 and £15,716. And a pension that pays him an income of around £395 per month after tax, as well as a pension with his current employer.

Portal carried out a risk-profiling exercise and determined Mr C had a 'moderately adventurous' attitude to risk (ATR). It wrote to Mr C on 21 January 2014 recommending he transfer his PPs into a SIPP. And it recommended he invest some of it in the following:

- Lakeview – 13.29%
- Real Estate USA – 18.45%
- Strategic Residential – 13.29%
- Tambaba – 13.29%

Shortly after, the SIPP was established, and the value of Mr C's PPs was transferred. And, in 2015, Mr C approached Portal again to discuss taking his entire fund.

In 2020, Mr C complained to Portal that the advice was unsuitable, as advising him to invest in high risk funds was inconsistent with his experience. And that he was given insufficient information about the ongoing charges and their effect on investment growth.

In response, Portal said Mr C had made his complaint too late for our Service to consider it. Unhappy with this, Mr C brought his complaint to us. And we decided we could consider his complaint, as it had been made in time.

One of our Investigators looked into Mr C's complaint and said she didn't think the pension switch was suitable in light of the likely higher charges and because Mr C didn't need to raise capital due to the amount of disposable income he had. She also didn't think that advising Mr C to invest in high risk funds was appropriate in light of his circumstances and because she felt his attitude to risk was cautious, with him only wanting to take a small risk. She also said Portal should pay Mr C £300 for the distress and inconvenience caused.

Portal didn't agree. It said, in summary, that Mr C wanted to access tax free cash (TFC) and that he wasn't reliant on these two PPs in retirement. It said the SIPP was low cost and competitive at the time, giving Mr C flexibility.

So Mr C's complaint's been referred to me for a decision. I let the parties know I was minded to uphold Mr C's complaint, but for different reasons to our Investigator. I said that while I don't think Portal's pension switching advice was unsuitable in light of Mr C's objective of accessing TFC, I think the advice it gave him to make high risk investments was unsuitable.

While Portal didn't respond, Mr C responded saying, in summary, that Portal should have recommended a Personal Pension Drawdown instead of a SIPP. He said this would have allowed him to invest in line with his risk profile, but for lower management and running charges. And that Portal would have received a commission from the investments it recommended, which it wasn't required to disclose due to the unregulated nature of these.

### **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.

Portal said Mr C's complaint was brought to our Service too late for us to consider it. I don't intend to revisit that, given an Ombudsman has already given a decision explaining why he's satisfied Mr C brought this complaint in time and that it's one I can consider. And, having considered all the information, I think Mr C's complaint should be upheld.

I've 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 a personal recommendation was suitable for Mr C. It had to obtain information as to Mr C'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 C to ensure the recommendation met his objectives, that he could bear the risks involved and had the necessary experience and knowledge to understand the risks involved in the transaction. And COBS 2.1.1R required Portal to act, "honestly, fairly and professionally in accordance with the best interests of its client."

In 2009 the regulator, the Financial Services Authority (FSA), also published a checklist for pension switching. And one of the key issues it thought should be focussed on was whether the consumer had been switched to a pension that's more expensive than their existing one(s) or a stakeholder pension, without good reason.

I recognise Mr C's SIPP wasn't particularly expensive – it had an initial AMC of 0.5%. And that it's possible this was lower than his existing schemes. But, as well as the 5% initial fee charged by Portal, there would also be other product or fund charges. Some of these could offset the charges of the existing plans. But it's clear there would be a cost to switching, which Portal recognised in the suitability report when it said:

*“Overall, this strategy may 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.”*

While switching his PPs might have been more costly to Mr C overall, I don't think the advice to do so was unsuitable in light his objective of accessing TFC. The fact find notes this was his main objective, so that he could go on holiday and repay some finance.

I recognise Mr C had around £20,000 in savings and over £1,000 disposable income per month, but I think it's likely Portal had a conversation with him about using this instead of switching his PPs to access TFC. This is because the fact find says Mr C acknowledged he had savings and a healthy disposable income but still wanted TFC for the above reasons. And that he wanted to keep his savings separate and for emergencies.

So I think Mr C knew he had alternative means to fund his holiday and repay his finance, but still wanted to switch to access TFC to do so. This is seemingly because, as also set out in the fact find, Mr C wasn't dependent on these PPs for an income in retirement. Mr C hasn't disputed that he has other pensions which are his main retirement provision, including a workplace pension his employer was still contributing to at the time, as well as a pension that's already paying him a monthly income.

In light of this, I think Mr C's objective of switching his two PPs to access TFC was a genuine one. And I don't think it would have been possible for him to get this through his current PP at the time, without also taking his retirement income.

While Portal's recommendation to switch might not have been unsuitable in that case, that doesn't mean its advice was suitable overall. And I don't currently think it was given the investments it recommended Mr C invest in within his SIPP.

I think Mr C was a cautious, rather than a moderately adventurous risk, investor. While these PPs weren't his main retirement provision and he had 11 years until his intended retirement age, I still don't think he was willing to take more than a small risk with his fund. I say this because it appears he was a standard retail investor, with no investment experience. And while the risk questionnaire said, for example, that he was willing to take substantial risk to earn similar rewards, it also said he'd be described as a 'cautious' person, who looks for safer investments even if this means lower returns and who prefers bank deposits to riskier investments. In light of this, I don't think Portal's assessment was correct – I think a fairer assessment of Mr C's attitude to risk in the circumstances was 'cautious'.

Yet based on Portal's advice, a significant part of the funds in Mr C's SIPP was invested in UCIS. I think the regulator's 2010 UCIS findings are relevant here, when it said that as well as these only being eligible for promotion to certain customers (generally sophisticated, high net worth investors), for 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. I don't think UCIS was suitable for Mr C at all, and certainly not in the proportion invested, given there's nothing to indicate he had the requisite knowledge or experience to accept or understand the risks associated with these types of investments.

While I can see Mr C was made aware some of the investments were illiquid at the time of the advice, I think he went ahead because he trusted Portal's advice. And had it recommended he invest in mainstream, regulated funds, which I think would have been suitable advice, I think he'd have done so for that same reason.

In summary, I currently think the investments Portal recommended were unsuitable, given these were likely to lead to Mr C being exposed to far more risk than appropriate in the circumstances. Instead, I think suitable advice would have been for him to invest in regulated mainstream funds. Had Portal given suitable advice, I think Mr C's likely to have invested in that way.

Therefore, I think a fair and reasonable way to compensate Mr C for the unsuitable advice is to use a benchmark based on an investment strategy in line with his circumstances and attitude to risk.

Mr C says Portal should have recommended a personal pension drawdown product to him instead of a SIPP, as he could have invested in line with his risk profile and experienced lower charges that way. But I don't think the SIPP recommended here was expensive – the AMC was lower than the average AMC for a product with these features. And in any event, I think the redress I'm recommending fairly compensates Mr C, as it gives him the return he ought to have achieved when bearing in mind his circumstances and risk profile, while also taking into account that he would have paid a certain level of ongoing charges.

This matter will also have caused Mr C distress, so Portal should pay him £300 compensation. I think this is a fair amount to make up for this in the circumstances.

### **Putting things right**

My aim in awarding fair compensation is to put Mr C back into the position he would likely have been in, had it not been for Portal's unsuitable advice.

I think Mr C would have invested differently. It isn't possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

- Compare the performance of Mr C's investment with the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value, there is a loss and compensation is payable.
- Portal should add interest as set out below.
- Portal should pay into Mr C'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 C'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 C won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr C 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 C would

have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr C £300 for the distress and inconvenience caused by the unsuitable advice, which has led to a loss.

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

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	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 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 C provides an undertaking to pay Portal any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Portal will need to meet any costs in drawing up the undertaking.

### Fair value

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

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

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

Any withdrawal, income or other distribution out of the investment 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, I'll accept if Portal totals all those payments and deducts that figure at the end instead of deducting periodically.

Given there's evidence Mr C would have withdrawn his whole pension in 2015 if he could have, the SIPP only exists because of illiquid investments. In order for the SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Portal taking over the investment, or this is something that Mr C can discuss with the SIPP 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 investment, to provide certainty to all parties I think it's fair that it pays Mr C an upfront lump sum equivalent to five years' worth of SIPP 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 chosen this method of compensation because:

- Mr C wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr C'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 C into that position. It does not mean that Mr C 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 C could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

For the reasons I've given, I uphold Mr C's complaint. My decision is that Portal Financial Service LLP should pay the amount calculated as set out above. It should provide details of its calculation to Mr C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 November 2022.

Holly Jackson  
**Ombudsman**