DRN-3489803

Financial Ombudsman Service

The complaint

Mrs L complains about the advice she received from Portal Financial Services LLP to switch her Personal Pensions into a Self-Invested Personal Pension (SIPP).

What happened

Mrs L held two Personal Pensions with a provider. Both pensions were invested in With-Profits funds, each with a guaranteed investment return of 3.5%.

Mrs L had concerns about the stability and future viability of her provider and so considered moving her pensions somewhere safer. Portal Financial got in touch with Mrs L and arranged for her to switch both her Personal Pensions into a SIPP.

The transfer took place on 21 February 2014 with £34,528.69 being transferred. The funds were invested across several unregulated bonds, unit trusts/open-ended investment companies, and cash.

In 2021, Mrs L complained to Portal Financial about the advice it had given her to transfer into the SIPP. Portal Financial did not respond to the complaint, and so Mrs L brought her concerns to this service.

Our investigator upheld the complaint. She thought the investments recommended were unsuitable for Mrs L, and concluded Portal Financial ought to have advised Mrs L to remain where she was. She recommended that Portal Financial calculate whether Mrs L had suffered a loss, and if so, compensate her for this. She also recommended that Portal Financial pay Mrs L £200 compensation for the inconvenience she had been caused by its advice.

Portal Financial did not agree with our investigator's recommendations. It said the SIPP met Mrs L's needs because it was low-cost, and it allowed her the option to release tax-free cash without committing to receiving an annual income. Portal Financial said its adviser thought the performance of Mrs L's Personal Pensions could be improved upon, when considering her attitude to risk and term to retirement.

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 Financial has not provided this service with its business file, and so my decision has been based upon the limited information we hold, and Mrs L's explanation about her situation and requirements at the time.

At the time of the advice, Mrs L was 51 years old and says she wanted the potential of accessing her pension at the age of 55. She lived in a mortgaged property, and was working part-time with annual earnings of between £7,000 and £8,000. She had no savings or previous investment experience, other than a cash ISA, and says she wanted to keep her pension funds safe.

Given that Mrs L had no personal investment experience and wanted to keep her pension funds safe, I think it's clear that Mrs L was a low-risk investor. Portal Financial has not provided any evidence which would suggest otherwise.

Despite this, Portal Financial recommended that Mrs L transfer around half of her pension funds into illiquid bonds. The bonds invested in various projects, including property development in the UK and abroad. They aimed to provide returns of 7-11%. As our investigator has said, these returns alone would indicate the investments were high risk.

The FCA has provided guidance on Unregulated Collective Investment Schemes (UCIS), which share similar characteristics to the unregulated bonds. The FCA guidance gives examples of good practice in relation to these investments - one such example says that a firm set up a maximum portfolio proportion for UCIS investments within their customers' portfolio and monitored it on an on-going basis. This level was between 3% and 5% and was backed-up by the firms' robust and on-going due diligence and monitoring. Therefore, unregulated investments are not normally suitable for the ordinary investor and only a small proportion of a suitable investor's portfolio should be invested in unregulated investments.

The bonds recommended to Mrs L were unregulated and were each dependent upon the success of a single business. Their lack of diversity and regulatory control meant they carried higher risks than mainstream regulated investments. A number of the bonds defaulted which further demonstrates the high level of risk to which Mrs L was exposed. I find that the bonds were completely unsuitable for Mrs L.

Also, around 40% of Mrs L's pension was invested across funds that invested mainly in a mix of equities and fixed interest securities. As Portal Financial has not provided this service with information relating to any discussions it had with Mrs L around risk, I cannot safely say that Mrs L would have understood, or been willing to accept the risks that these funds presented. Particularly with regards to the higher risk equities, some of which were invested overseas. These funds would have only been suitable for an investor willing to take a risk with their money, yet Mrs L says she wanted security for her pension. So I also find that these investments were unsuitable for Mrs L.

I appreciate that Mrs L was concerned about the financial stability of her pension provider. However, I agree with our investigator that the most appropriate course of action would have been for her to remain where she was. She was invested in With-Profits funds which were suitable for lower risk investors, and she had a guaranteed investment return of 3.5%. Although the provider was no longer accepting new business in 2014, its existing policies continued to remain in force and be administered.

As I've said, I haven't seen any evidence of the discussions that took place between Portal Financial and Mrs L at the time. Though even if Mrs L were adamant that she wanted to move away from her existing provider, given her cautious attitude to risk, I would have expected Portal Financial to recommend appropriate investments which matched this. But in the circumstances, I think the most appropriate way to calculate any compensation due would be to compare the performance of Mrs L's current investments with the value of her investments had she remained with her previous provider.

I agree with our investigator that Mrs L was caused unnecessary worry and inconvenience as a result of the unsuitable advice she received from Portal Financial. A number of the high-risk bonds defaulted, and she would have been understandably worried about the impact of this on her pension fund. I think the unnecessary transfer of her pension fund into a SIPP has caused disruption to Mrs L’s pension planning.

what should Portal Financial do?

To compensate Mrs L fairly, Portal Financial must:

- Compare the performance of the actual value of Mrs L’s investments with the notional value if her pensions had remained with her previous pension provider. It should pay the difference between the notional value and the actual value of the investments. If the actual value is greater than the notional value, no compensation is payable.

  Portal Financial should also pay interest set out below.

  If there is a loss, Portal Financial should pay such amount as may be required into Mrs L's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest. The compensation shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance.

  If Portal Financial is unable to pay the total amount into Mrs L'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.

  The notional allowance should be calculated using Mrs L's marginal rate of tax at retirement.

  For example, if Mrs L is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mrs L would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

- Pay Mrs L £200 for the trouble caused to her and the disruption to her retirement planning.

Interest

If Portal Financial considers that it’s required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mrs L how much it has taken off. Portal Financial should also give Mrs L a tax deduction certificate if she 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	Notional value from previous provider	Date of investment	Date of my decision	8% simple per annum from date of decision to date of settlement (if compensation

					not paid within 28 days of the business being notified of acceptance)

Actual value

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

My aim is to return Mrs L to the position she would have been in but for the unsuitable advice. This is complicated where an investment within the portfolio is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the actual value of the investment. In such a case the actual value should be assumed to be nil to arrive at fair compensation. Portal Financial should take ownership of the illiquid investments by paying a commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Mrs L and the balance be paid as I set out above.

If Portal Financial is unable to purchase the investments the actual value should be assumed to be nil for the purpose of calculation. Portal Financial may wish to require that Mrs L provides an undertaking to pay Portal Financial any amount she may receive from the investment in the future.

Notional Value

This is the value of Mrs L's investment had it remained with the previous provider until the end date. Portal Financial 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 Financial total all those payments and deduct that figure at the end to determine the notional value instead of deducting periodically.

In order for the SIPP to be closed and further fees that are charged to be prevented, the investments need to be removed. But if Portal Financial can't buy the investments, then Mrs L is faced with future SIPP fees. I think it is fair to assume five years' of future SIPP fees. So, if Portal Financial can't buy the investments, it should pay an amount equal to five years of SIPP fees based on the current tariff. This is in addition to the compensation calculated using a nil value for the investment.

My final decision

My final decision is that I uphold this complaint. I require Portal Financial Services LLP to pay the amount calculated as set out above. Portal Financial Services LLP should provide details of its calculation to Mrs L in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 17 January 2023.

Chantelle Hurn-Ryan

Ombudsman