DRN-3620352

Financial Ombudsman Service

The complaint

Mr T complains that some advice given to him by Portal Financial Services LLP about the transfer and investment of his pension savings was unsuitable.

What happened

In 2013 Mr T was introduced to Portal by a financial advisor. Portal provided Mr T with advice about the pension savings that he held in a personal pension plan. At that time Mr T was aged 36, single, and self-employed.

Portal recommended that Mr T should transfer his pension savings to a new self-invested personal pension ("SIPP"). And it then advised him on how those transferred pension savings should be invested. Portal advised Mr T to spread his pension investments across a range of funds, however its recommendation was for around 60% of the monies to be invested in unregulated collective investment schemes ("UCIS").

I have previously considered an objection from Portal that Mr T had made his complaint too late. However I concluded that this was a complaint we could deal with. So Portal provided our investigator with its reasons why it thought the advice it had provided had been suitable for Mr T's circumstances.

Mr T's complaint has been assessed by our investigator. He didn't think the investments that Portal had recommended had been suitable for Mr T. And our investigator wasn't persuaded that it had been necessary for Mr T to transfer his pension savings at all. So our investigator asked Portal to put things right for Mr T.

Portal didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr T accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr T and by Portal. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

The information that Portal gathered from Mr T suggested that he was someway off wanting to access his pension benefits – at that time he was only aged 36. So whilst he had a long term over which to invest his pension benefits, I don't think he was in any reasonable position to provide any firm intentions about how he might want to take his pension benefits when he retired. So I think my focus, when considering the suitability of the advice Portal provided, should be on the investment and growth phase of Mr T's pension savings, rather than any considerations for his future retirement.

The pension savings on which Portal was providing its advice were, apart from a future state pension entitlement, Mr T's only specific provision for his retirement. He was making monthly contributions to his pension savings, and Portal recommended that these should continue. I have noted that Mr T did also hold some buy to let properties. So it is possible that, as he approached his retirement he might have sold those assets to provide capital, or continued to benefit from any income they produced. But that income was far from guaranteed. So I think Portal should have taken care to ensure that its advice reflected the fact that Mr T's pension savings were a crucial part of his financial provision for his future.

Portal assessed Mr T as having a moderately adventurous attitude to risk. In its suitability report it described an investor with that attitude to risk as someone who would have moderate to high levels of financial knowledge, and usually be experienced investors who have used a range of investment products in the past. It said they are investors who are willing to take risk with a substantial proportion of their available assets.

But those characteristics appear to be contradicted by some of the answers that Mr T gave to a Risk Attitude Profiling Questionnaire that Portal asked him to complete. For example Mr T said he didn't feel comfortable about investing in the stockmarket. He said that he had little experience in investing in stocks and shares and that he was concerned by the volatility of stockmarket investments. And he said that he had no strong opinion on matters such as;

- looking for safer investments even if it means lower returns
- finding investment matters easy to understand
- taking substantial investment risk to earn substantial returns
- preferring alternative investments that are considered to be less volatile even if it reduces liquidity.

The only investment area that Mr T showed any strong confidence in was investing in property. And given what I've said about the buy to let portfolio that he held, that is unsurprising.

So I cannot agree with Portal that it fairly categorised Mr T's attitude to risk based on the answers it recorded to the risk questionnaire. I don't criticise Portal for its use of a questionnaire – that is a fairly common approach across the industry. But Portal should have been considering Mr T's responses in the overall context of its relationship with him. He was clearly uncomfortable and inexperienced in many aspects of investing. And his questionnaire answers did not match what I would expect to see from an adventurous investor.

Portal also considered Mr T's capacity for loss on his pension savings. I've explained earlier a little about why I consider those pension savings to be a vital part of Mr T's provision for his retirement. Portal stated that it believed Mr T had a suitable capacity of loss for the recommendation it had made. But it provided little, if any, analysis to support that conclusion. And I think it of concern that Mr T's capacity for loss appears to have been measured against the recommendation that Portal made, rather than the other way around. I think it would have been far more appropriate for Portal to have assessed Mr T's capacity for loss, and then formulated its investment advice to meet that assessment.

As part of its investment recommendations Portal advised Mr T to place around 60% of his pension savings into illiquid UCIS investments. Those investments were split over five separate funds. In 2010 the regulator considered investments of this nature. In summary its conclusions were that these funds should only be considered suitable for a small group of individuals – for example high net worth, or sophisticated investors. And even so, the regulator thought that investments of this nature should only comprise around 3% to 5% of a diversified portfolio.

I don't think, based on what I have said above, that UCIS investments should have been considered suitable for Mr T. And the amount of his portfolio that Mr T was advised to place in UCIS funds was significantly in excess of the regulator's guidance.

Portal described the funds as being "secured bonds". It did explain that they were fixed term investments and that they were illiquid. But it said that the assets were secured against land or property. I think that gave the impression to Mr T, who had already expressed his comfort with property investments, that they were quite safe. Portal explained that the investments provided attractive interest rates in return that would be accumulated during the first 2-3 years. But Portal failed to adequately explain the unregulated nature of these investments. And the potential for the entire investment to be lost should the fund default.

So on balance I don't think Portal did enough to explain the nature of these funds to Mr T. It should have made it clearer that they were unregulated and so didn't benefit from any protection through the Financial Services Compensation Scheme. And for the reasons I've explained I don't think they were suitable for Mr T's attitude to risk, or his capacity for loss.

But what I've said above doesn't necessarily mean that Portal was incorrect to advise Mr T to transfer his pension savings to the SIPP. So I've now gone on to consider that advice more generally, and whether the transfer was in Mr T's best interests.

Portal noted on its fact find that Mr T was looking to improve the performance of his pension investments. And it noted that Mr T was keen to explore other investments apart from property, and that he had some interest in the Asian markets. I do however note that Mr T appeared to have already had some of his pension savings invested in that market.

Mr T already held his pension savings in a personal pension plan provided by a mainstream provider that offered a range of investment opportunities. I haven't seen anything that makes me think Mr T needed to utilise the extensive range of investment funds that might have been offered by a SIPP. It is true that the headline cost of the SIPP was lower than that of his existing pension plan. But Portal's analysis failed to adequately consider the costs of the new individual funds, or that Mr T would be paying an ongoing charge for its advice and management of the transferred funds. And of course Mr T also needed to pay 5% of his pension savings to Portal for its advice. That would form a significant drag on his investment returns for an extended period of time.

So in summary, for the reasons given above, I don't think it was suitable to recommend that Mr T transfer his pension savings from his personal pension to the new SIPP. It doesn't seem to me that the existing scheme would have been unable to reasonably meet his investment objectives. I don't think the investments that Portal recommended were suitable for Mr T's circumstances. And I don't think Portal gave sufficient consideration to the fact that it might have been in Mr T's best interests to leave his pension savings where they were. But for Portal's unsuitable recommendation, I think it's more likely than not that Mr T would have remained in his previous personal pension.

Putting things right

Fair compensation

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

I think Mr T would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I'm satisfied that what I've set out below is fair and reasonable, taking this into account and given Mr T's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr T fairly, Portal must:

- Compare the performance of Mr T'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.

- If there is a loss, Portal should pay into Mr T's pension plan to increase its value by the 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 compensation into Mr T'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 compensation 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 T won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr T 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 Mr T £300 for the distress and inconvenience he would have experienced when he became aware that some of his recommended investments had run into trouble and his retirement income had potentially been compromised as a result.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest, it should tell Mr T how much has been taken off. Portal should give Mr T a tax deduction certificate in respect of interest if Mr T 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
Novia SIPP	Still exists but some illiquid assets	FTSE UK Private Investors Income Total Return	Date of transfer	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 some assets are illiquid (meaning they could not be readily sold on the open market) as is likely to be the case here. Portal should take ownership of the 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 the portfolio the actual value should be assumed to be nil for the purpose of calculation. Portal may require that Mr T provides an undertaking to pay Portal any amount he 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.

Notional Value

This is the value of Mr T's investment had it remained with the previous provider until the end date. Portal should request that the previous provider calculate this value.

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

Any withdrawal from the Novia 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 T'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 Novia SIPP only exists because of illiquid assets. In order for the Novia 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 T 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 investment, to provide certainty to all parties I think it's fair that it pays Mr T 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

Why is the above benchmark suitable?

I've chosen this method of compensation because:

- Mr T wanted Capital growth whilst accepting some limited risk to his capital.
- 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's a fair measure for someone who was prepared to take some risk to get a higher return.

My final decision

My final decision is that I uphold Mr T's complaint and direct Portal Financial Services LLP to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 March 2023.

Paul Reilly
Ombudsman