

The complaint

Mr S says the advice given and the arrangements made by Portal Financial Services LLP (Portal), to switch his personal pensions into a Novia Self-invested Personal Pension (SIPP) and the investments recommended was unsuitable.

What happened

In 2014 Mr S was introduced to Portal for it to conduct a pension review. He accepted and in January information was gathered about his circumstances, objectives and matters such as his attitude to risk.

Portal issued a suitability report dated 21 January 2014 in which it identified Mr S's objectives, were:

- Consolidation
- Improved performance
- Specific investment (move away from equity backed funds)
- Greater fund choice
- To be able to leave your benefits to family
- Continue making regular contributions into a new Aviva pension plan

Ultimately Mr S was persuaded to switch two of his personal pensions into a SIPP with Novia. His Legal & General (L&G) and his Phoenix Life (PL) plans. The transfer value of each pension was reduced to account for initial unit reductions and transfer charges.

On 19 February 2014 his Novia SIPP received £2,769 from PL. And on 21 February £22,435 was received from L&G. Portal's initial advice charges of £1,260 were deducted. And by 31 March 2014 the investments recommended had been made into 10 separate funds plus a cash account. Around 48.5% of his pension pot was placed in non-standard bonds.

Mr S, through his representative, complained to Portal in February 2021. He had several concerns, including about the cost of the new arrangement and the risks he'd been exposed to. He didn't think Portal had adhered to the regulations it was supposed to when providing him with advice. He said the recommendations had been unsuitable.

Portal was unresponsive. It challenged the status of Mr S's representative and didn't provide him with a final response letter. When he brought his complaint to this Service, it also failed to provide its case file.

The Investigator recommended that Mr S's complaint should be upheld. He didn't think Mr S had the knowledge or experience to fully understand the switch of his pension or the recommended investments. Portal disagreed and provided its case file for consideration. The Investigator considered the evidence and said it hadn't changed his findings and conclusions. He also dealt with the matter concerning Mr S's representative.

Portal failed to respond to the Investigator's view. So, Mr S's complaint has been passed to me to consider afresh and for a decision.

I should note that before proceeding to decide the merits of a case, an ombudsman will always keep matters of jurisdiction – this Service's authority to review complaints – under review. Having done so, I've concluded Mr S's case is one we can consider.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr S's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr S's case?

The first thing I've considered is the extensive regulation around transactions like those performed by Portal for Mr S. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Portal. As such, I need to have regard to them in deciding Mr S's complaint.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

When I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch?

Each case is different, but I'd expect the switch to be in Mr S's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between his former pensions and the recommended new arrangement.

In 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching that I think is still helpful today. It highlighted four key issues it thought should be focussed on:

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

In July 2010 the FCA issued guidance about unregulated investments in a 'Good and Poor Practice report'.

The report contained examples of good practice in relation to unregulated investments, for example where a firm had robust controls in place and limited client exposure to 3% to 5% of their portfolios, where those clients had been assessed as being suitable for unregulated investments. An example of bad practice given by the FCA was where up to 100% of a client's holdings were invested in a single UCIS (unregulated collective investment scheme).

Even if the non-standard funds Mr S was invested in weren't technically UCIS's, they share similar characteristics including the high-risk nature of the investment, being illiquid, subject to counter-party risk and uncertain valuation. And I think these matters are relevant to my consideration.

Did Portal adhere to the regulatory requirements placed on it?

In short, I don't think Portal met the regulatory requirements placed on it. I'll explain why.

There are several documents recently supplied by Portal relating to its transaction with Mr S that are important to my consideration, these include the Pension Options Personal Financial Questionnaire and its suitability report.

Portal had to obtain information from Mr S in order to understand essential facts about him. In order to advise him to switch his pension funds into the SIPP with Novia and facilitate investments in the funds it recommended it had to believe that:

- The service or recommended transaction met Mr S's investment objectives (including his attitude to risk, the purpose of investing and how long he wanted to invest for).
- Mr S was able to financially withstand the investment risks.
- Mr S had the necessary experience or knowledge to understand the risks involved.

Portal hasn't met these obligations.

Mr S was 54 at the time of the advice. It's recorded he was the registered carer for his mother, and that he received jobseekers and carers allowance, totalling £412 per month. A detailed household income and expenditure analysis wasn't gathered. But the adviser summarised the position as Mr S having a small monthly net disposable income.

Mr S owned his home with his mother. There was no outstanding mortgage. He also had £7,000 in savings. No other assets or liabilities were noted.

Mr S was said to have a chosen retirement age of 66. He had a small defined benefit pension through a previous employment, as well as his PL and L&G personal pensions. The former wasn't part of the switch recommended by Portal. The two personal pensions were worth around £25,400. He wasn't planning on taking tax-free cash (TFC) at the time.

Portal's suitability report said Mr S wanted to consolidate his pensions, achieve improved performance, make specific investments, secure greater fund choice, ensure death benefits could be passed to his relatives and continue making pension contributions.

I don't find the objectives captured by Portal for Mr S to be a compelling set of reasons for switching. For example, he was only bringing together two small personal pensions which required little or no input to manage. Portal hasn't provided documentation showing what his L&G and PL pensions provided in terms of death benefits. And he wasn't planning to take tax-free cash or an income from his benefits any time soon.

Portal was in a good position to have analysed, tested, challenged and advised Mr S about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for retirement. Switching a pension is a significant decision.

It was Portal's role to discern what Mr S's wants and needs were and why. Its role wasn't simply to facilitate what he wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in his best interests. It hasn't demonstrated that it did these things.

Risk appetite assessment

I don't believe either party would dispute that Mr S wasn't an investment professional. He wasn't a sophisticated investor. Indeed, from the information gathered by Portal it seems he had little knowledge or experience of investing. This is important context when I consider what happened to him.

Portal conducted a risk appetite assessment for Mr S. It concluded he had a balanced attitude to risk. This was defined in the following terms:

"Balanced investors typically have moderate levels of knowledge about financial matters and will pay some attention to keeping up to date with financial matters. They may have some experience of investment, including investing in products containing risky assets such as equities and bonds."

"In general, balanced investors understand that they have to take investment risk in order to be able to meet their long-term goals. They are likely to be willing to take risk with at least part of their available assets."

"Balanced investors will usually be prepared to give up a certain outcome for a gamble provided that the potential rewards from the gamble are high enough. They will usually be

able to make up their minds on financial matters relatively quickly, but do still suffer from some feelings of regret when their decisions turn out badly.”

Portal has shared a blank risk appetite questionnaire as part of its file for Mr S. This isn't the questionnaire he completed, that's clear because in its cover letter to the Investigator Portal cut & paste 6 responses to questions from the risk assessment it said it had conducted – but these don't marry up with the template.

I've concerns about Portal's approach. Not only has it provided the wrong questionnaire template, more significant it shared a small selection of Mr S's responses to the form that was actually completed with him. That implies it has the full responses which it's chosen not to provide this Service. And I note the bits it has shared represent around a third of the complete form. So, I find its assertions about the validity of its risk assessment exercise seriously compromised.

I think it's more likely than not Mr S's responses to the questionnaire would've revealed contradictions and tensions. In my experience that's normal, and it would've been Portal's responsibility to tease these matters out to understand what his risk outlook really was. But I can't find a proper exploration of what underpinned its categorisation. Rather, it seems his answers were fed into a system and dealt with in a mechanical manner without enquiry.

Further, I don't think the risks of switching Mr S's pension funds into a SIPP enabling the recommended investments were adequately weighed.

Portal recommended Mr S invest nearly 50% of his pension funds into non-standard bonds. These were described in the following terms:

“Lakeview UK Investments PLC - Secured on a successfully trading UK Holiday village in Cornwall, England. The proceeds of this bond are being used by the developer to build new holiday villas and an apart hotel to satisfy the increasing tourist demand. The Bond term is five years with 11% interest paid annually in arrears and then every 3 months from year 2. 70% of all sales will be held in escrow to pay back the loan interest and the loan.”

“Real Estate Investments USA PLC - Secured on US residential property (mainly in Florida, Chicago and Detroit) which is being bought back from banks, refurbished and sold to onward pre-determined investors. The Bond pays 15% per annum, paid annually in arrears and has a term of 5 years. All interest and capital is lent denominated in sterling so there is no direct currency risk.”

“Marbella Resort and Spa PLC - Secured on a site in the hills just above Marbella, where the Banyan Tree Hotel Group have signed a 25 year agreement to manage the hotel, their first in Europe. The funds are being used by the developer to complete the development of the hotel. The Bond term is 7 years with interest payments deferred for the first 2 years. Interest is paid from 36 months to year 7 at a rate of 7%. The loan is made in sterling so there is no direct currency risk.”

“Motion Picture Global Investments PLC - The Bond term is 10 years with interest payments deferred until year 3. Interest is paid at 30% in year 3 and 10% per annum thereafter. Security is provided by pre-sold film rights to distributors such as Sony and each film is protected by completion insurance. Directors and actors of such calibre as Ridley Scott and Nicole Kidman will be involved in each film commissioned. Loan is made in sterling and paid back in sterling.”

“Strategic Residential Developments PLC - The Bond term is for 5 years, with 11% paid annually in arrears. Loaned monies are used to source and purchase existing houses in the South of England with potential development plots within their grounds, using a sophisticated

software programme, plots which will then be sold separately and developed. Security will be taken over these houses once purchased and released when sold.”

“Tambaba Developments PLC - The Bond term is 7 years with 11% interest paid annually deferred initially until year 2. Loaned monies will be used to develop the site completing infrastructure works and building villas and bungalows for mostly local purchasers at the Tambaba Country Club Resort in the state of Paraiba, North East Brazil. Security is taken over the Tambaba development site (minimum value of 150% of any loan) with all capital lent and paid back into sterling.”

I'm surprised that specific warnings such as those around counterparties, development and valuation uncertainty were not more clearly brought to Mr S's attention.

As well as creating a serious lack of diversification in how Mr S's pension funds were being invested, Portal hasn't done enough to satisfy me that he was a sufficiently experienced or sophisticated investor to appreciate the risks he was taking on. And he had no experience of the specialist bond instrument.

I'm also concerned that Mr S's capacity for loss doesn't appear to have been thought through properly. Although Portal did consider this important aspect of Mr S's circumstances in the suitability report, all I've seen is a list of questions it said it asked him. But I haven't seen the responses he gave. It simply states it thought he had reasonable capacity for loss.

From the fact-find exercise we know enough to conclude Mr S actually had little capacity for loss. He was reliant on benefits at the time and was caring for his mother. He had little by way of disposable income. He partly owned his home and had limited savings to fall back on. Although he had a small defined benefit pension, his retirement provisions were modest.

It's arguable Portal seemed more concerned with facilitating its recommendations rather than providing effective advice about what was in Mr S's best interests concerning his valuable pension funds. Like the Investigator, based on what I've seen, I think a more realistic assessment of his risk outlook was somewhere between cautious and balanced.

Penalties for switching, and fees and charges of the new arrangements

Firstly, I'd note that after the switch, taking into account any unit reductions and transfer charges from Mr S's ceding pension providers, together with the 5% initial adviser charge levied by Portal, he was left with a fund of around £23,000. These upfront costs represented a significant erosion of the pension pot being switched of about 9%.

Portal said the running costs of the Novia SIPP were significantly cheaper than those of his ceding schemes. According to the suitability report, he'd have paid approximately:

- L&G: $£22,493 \times 0.95\% + £3$ per month = £249 per annum
- Phoenix: $£2,860 \times 1.25\% + £1.67$ per month = £55.75 per annum

Mr S was advised to proceed with ongoing advice, at 1% per annum, so the annual costs of his new arrangements would be approximately:

Novia SIPP: $£23,039 \times 1.5\% = £345$ per annum

These calculations are rough and ready, and they don't factor in any fund costs. But it seems clear that Mr S's new arrangements would be more costly than what he had before. Portal should've been more transparent about this.

Further weaknesses with Portal's advice

Portal hasn't done enough to satisfy me that it effectively explored the options available to Mr S. It hasn't supplied a copy of the policy documents for his L&G and PL policies. So, I don't know what flexibilities his existing plans provided, in terms of switching between funds if he'd wanted to take on more risk. If that wasn't possible, whether his pension provider at the time would've allowed him to switch to a more suitable product with no or reduced charges. And, as I've already mentioned, I don't know what the death benefit provisions were with the ceding providers.

Portal was making a case to Mr S that the returns from his new arrangements would be such they would more than make up for the additional charges. I haven't seen a copy of any illustrations showing the effect of the charges in his new pension arrangements on potential returns. Neither have I seen a comparison between his L&G and P&L pensions and his Novia SIPP portfolio, showing historic performance and potential net returns.

Further, Portal's approach was weak in terms of helping Mr S to plan for his retirement. The fact-find indicated he was unsure whether he'd have sufficient income to meet his retirement goals. But there's no evidence it sought to assist him in getting to the bottom of this fundamental question.

Overall, I don't think Portal should've recommended Mr S switch his L&G and PL pension plans into a relatively expensive arrangement providing him with ongoing advice, with a Novia SIPP and the investment funds it recommended, the bulk of which were above his risk appetite. I say this because of the flaws I've found in its advice process; what it knew about his attitude to risk and capacity for loss; his lack of experience of the sort of investments it was recommending; and its lack of exploration of his income needs in retirement.

Portal was aware Mr S was being exposed to significant risks in the investments it was facilitating. It knew these funds could be illiquid, meaning Mr S might have difficulty getting access to his pension funds.

I think if Portal had given Mr S effective advice, he wouldn't have gone ahead with the switch from his personal pensions into the SIPP and the medium-high-risk portfolio it recommended. It's unusual for a lay person to seek professional advice and then go against the recommendations received. I think it's more likely than not Mr S would've opted to retain his L&G and PL policies.

To conclude I don't think the switch of Mr S's personal pension funds into the Novia SIPP and the recommended portfolio of investments could sensibly be regarded as fair to him. As such I think Portal failed to meet the regulatory requirements when providing him with advice and making the arrangements.

So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against Portal and for it to put things right.

Putting things right

I'm upholding Mr S's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Portal Financial Services LLP responsible for.

If Portal had done everything it should've, I don't think Mr S would've switched personal pension funds into the Novia SIPP, and so he wouldn't have suffered the financial loss he's potentially facing. I think it's most likely he would've left his pension where it was.

So Portal Financial Services LLP needs to do the following.

1. Calculate a notional loss Mr S has suffered as a result of making the switch of his pension funds from L&G and PL

Portal Financial Services LLP should obtain the notional value of Mr S's previous personal pension plans with L&G and PL, as at the date of calculation. So, as if they hadn't been transferred to the Novia SIPP. It will need to obtain the value of the plans as previously invested.

If there are any difficulties in obtaining a notional valuation then it should use a hybrid benchmark, using a 50/50 split of (i) the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) and (ii) the average rate from fixed rate bonds. I'm satisfied this is a reasonable proxy for the type of return that could've been achieved if Mr S's pension had remained invested in his previous plans.

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. It should apply those rates to the investment on an annually compounded basis.

Portal should then find the current value of his SIPP, including investments and any cash held. Concerning the valuation here – the approach to be taken is set out in step 2.

I'm not aware of the detailed position regarding any additional contributions Mr S made to his SIPP. Similarly, I think he may've withdrawn some benefits. After confirming the detailed position, then the value Portal obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

The adjusted, as appropriate, like for like difference between the notional value of Mr S's former personal pensions and the equivalent current value of his SIPP will be his basic financial loss that Portal needs to redress.

2. Pay a commercial value to buy any investments which cannot currently be redeemed

To close Mr S's SIPP and avoid ongoing fees, the investments need to be crystallised. To do this Portal Financial Services LLP should ask the SIPP provider to determine an amount it's willing to accept as a commercial value for the investments and Portal can then pay this to take ownership of them.

If Portal is unwilling or unable to purchase the investments, the value should be assumed to be nil for the purposes of the loss calculation. In this instance, where Portal has compensated Mr S fully in line with my assessment, then it may ask him to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investments.

Any undertaking should allow for the effect of any tax and charges on the amount Mr S may receive from the investment and any eventual sums he would be able to access from the SIPP. Portal will need to meet any costs in drawing up this undertaking.

3. Pay an amount into Mr S's SIPP so that the value is increased by the loss calculated (resulting from 1 and 2) or pay him an equivalent cash sum notionally adjusted for tax.

If compensation is paid into Mr S's SIPP, payment should allow for the effect of charges and any available tax relief, so that he is in the same position as if he'd stayed in his original personal pension plan.

If paying compensation into Mr S's SIPP would conflict with any existing protection or allowance and/or the plan is closed and Portal Financial Services LLP takes on his investment, then it should pay him compensation as a cash sum. In doing so it should make a notional deduction to allow for income tax that would otherwise have been paid.

The *notional* deduction should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr S would've been able to take TFC, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Portal should also pay interest on any loss calculated from the date of calculation to the date of payment at 8% simple. Income tax may be payable on any interest paid. If Portal considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax, it should tell Mr S how much has been taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

4. SIPP fees

If the investments aren't removed from Mr S's SIPP, and it remains open after compensation has been paid, Portal Financial Services LLP should pay him an amount equivalent to five years of future fees. This should allow enough time for the issues with the investments to be dealt with, and for them to be removed from the SIPP.

If, after five years, Portal wants to keep the SIPP open, and to maintain an undertaking for any future payments under the investment, it must agree to pay any further future SIPP fees. If Portal fails to pay the SIPP fees, Mr S should then have the option of trying to cancel the investments to allow the plan to be closed.

Portal should also provide details of its calculations to Mr S in a clear format.

Distress and inconvenience

I also think Mr S has been caused trouble and upset because of Portal Financial Services LLP's failings. His retirement planning has been disrupted. In recognition of this it should pay him a further £250.

My final decision

I'm upholding Mr S's complaint. As such, I require Portal Financial Services LLP to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 January 2023.

Kevin Williamson

Ombudsman