

The complaint

Ms T complains that Portal Financial Services LLP gave her unsuitable advice to transfer her personal pension to a Self-Invested Personal Pension (SIPP).

What happened

In 2013 Ms T spoke to Portal about her pension. Portal completed a fact-find and attitude to risk questionnaire and then issued a suitability letter setting out its recommendations.

The information Portal gathered included that Ms T was a 56 year old care assistant with an income of around £18,000 per year. She had no spare income after paying her outgoings. Her pension fund value was around £17,000, with a transfer value of around £19,500. She had no other savings, and no debts.

Portal classed Ms T as a “Moderately Adventurous” investor. The documents noted some commentary and questions about capacity for loss but the answers weren’t all completed.

The suitability letter recorded Ms T’s objectives as to take some tax-free cash for a family party, emergency fund and general use, without needing to borrow to achieve this.

Portal considered using the pension to raise capital on the basis there was no other way to do so. It listed various pension options including a stakeholder pension, annuities and drawdown options. It recommended that Ms T move her pension to a SIPP, saying this would allow her to meet her objectives and she would be able to take up to 25% of her pension as a tax free cash lump sum to meet her needs. The report said she had chosen to take £4,909.

The reason given for recommending a pension transfer was *“the possibility that the benefits available at retirement with your recommended new pension will exceed the benefits that would have been available through your existing provider.”*

The letter also set out the funds to invest in. The majority (60%) was to be invested in the following:

- Lakeview UK Investments PLC
- Marbella Resort and Spa PLC
- Real Estate Investments USA Plc
- Strategic Residential Developments Plc.

Of the rest, 30% would be invested in a range of equities and funds and 10% held in cash. Portal said due diligence had been conducted on each investment and some investments were illiquid (meaning they couldn’t be bought or sold easily) but were appropriate for Ms T’s timescale, as she didn’t intend to take further benefits until age 65.

Some time later Ms T complained, with the help of a representative, that the advice was unsuitable for a number of reasons including that Portal had failed to carry out an adequate assessment of her experience and knowledge; she had no knowledge of investments, wasn’t

able to make the best financial choices for her retirement and didn't have the capital to cover any losses. She said Portal hadn't complied with the rules and guidance set by the regulator.

Portal didn't provide a response to the complaint.

When Ms T referred her complaint to this service, Portal questioned whether it had been referred within the relevant time limits. Our investigator explained why she thought it had been and Portal did not challenge this or provide further comments. So she went on to consider the merits of the complaint.

The investigator thought the complaint should be upheld. Amongst other things, she said:

- Portal hadn't considered all the options properly;
- the costs of the SIPP were likely to be higher, so the SIPP would have to perform better to balance out the costs and Portal hadn't demonstrated that Ms T would be better off;
- Ms T couldn't reasonably be considered a "*Moderately Adventurous*" investor since she had no financial knowledge and wasn't an experienced investor, and her capacity for loss had not been considered properly;
- the funds were not suitable for someone in her position.

The investigator recommended that Portal carry out a calculation to see if Ms T had suffered a loss as a result of moving her pension and said if she had, Portal should compensate her for that loss, together with compensation for the distress caused to Ms T.

Ms T has accepted the investigator's view but Portal hasn't. So I need to make a decision.

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.

As mentioned above, Portal initially questioned whether the complaint had been made in time. The investigator set out why she considered the complaint was referred within the relevant time limits and said if Portal disagreed it should let her know and provide supporting evidence in response. Portal didn't reply or provide any further evidence, but did acknowledge that we were investigating, and I'm satisfied we can consider the merits of the complaint.

The FCA's Principles set out that a firm must conduct its business with due skill, care and diligence; and pay due regard to the customer's interests and treat them fairly. The relevant rules and guidance say that when assessing suitability, the firm must, amongst other things:

- take reasonable steps to ensure a recommendation is suitable; and
- obtain the information needed about the client's knowledge and experience, their financial situation and their investment objectives.

In 2009 the Financial Services Authority (the regulator at the time) published a report about pension switching, which still applies. It highlighted four key areas where consumers had lost out:

- charges - the consumer had been switched to a more expensive pension or a stakeholder pension without good reason;
- existing benefits – they had lost benefits in the switch without good reason;
- risk – they had switched to a pension that didn't match their recorded attitude to risk and personal circumstances;

- ongoing fund management – they had switched to a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

I've taken the above rules and guidance into account when assessing how Portal dealt with Ms T's pension switch.

Portal recommended the switch on the basis it would provide Ms T with an emergency fund and to pay towards a family party; and it was possible the benefits at retirement would exceed the benefits that would have been available through her existing provider.

Alternative options were noted in the suitability letter such as taking out a loan. Based on her income and budget Ms T had no disposable income or savings to fall back on. She has said if she wasn't advised to take the tax-free cash she wouldn't have used the funds. But I haven't seen evidence of a discussion about this or about how much of the tax-free cash she intended to use towards the party, or how to build up some savings instead.

Turning to the benefits Ms T was giving up from her pension, I can't see that Portal examined this properly. The report said a terminal bonus applied, which indicates her pension was likely invested in a With-Profit fund. These funds are considered fairly low risk investments when compared to others but could be at risk to a market value adjustment. The adviser didn't mention this or say what bonuses or guarantees might apply.

The report says the adviser had considered a wide range of pension providers but Portal hasn't provided evidence of the research to show why the adviser recommended the particular provider that it chose or that it was better value than others. And there wasn't any detail about what options her existing provider could offer.

One of the reasons for switching was to achieve higher returns. But looking at the charges, the SIPP and adviser's charges were significantly higher than the existing personal pension. So the SIPP would have to work that much harder to balance out these costs.

Given the illiquid nature of some of the funds recommended, Ms T would have to rely on the cash element of her plan to pay the charges as her budget didn't allow her to pay these separately. Only 10% of the funds were held in cash so it's not clear how the charges would be paid or whether Ms T would have to use her liquid funds to cover these.

Ms T's only option to be able to take the benefits at that time was to arrange a pension that allowed her to drawdown funds. Although the report shows generic factors for consideration, it didn't provide enough detail on how this related to Ms T. I don't consider it provided meaningful reasons why she would be better off switching. And I don't consider Portal explored alternatives or examined her position as fully as it should have.

Portal described Ms T's attitude to risk as moderately adventurous, described as

"Moderately Adventurous investors typically have moderate to high levels of financial knowledge and will usually keep up to date on financial issues. They will usually be fairly experienced."

Based in the information Portal collected, this description doesn't seem to apply to Ms T. She had no financial knowledge and wasn't an experienced investor.

Ms T answered various questions about her views on risk. Based on those answers, she was considered a cautious person, felt comfortable investing in the stock-market but not property. She took time to decide things, preferred safer investment but not bank deposits. She had little investment experience but could take higher risk and was concerned about

volatility.

Looking at the questionnaires Ms T completed, her answers are contradictory and it's not at all clear that she fully understood the questions or that they were explained to her. It's difficult to see how someone in Ms T's circumstances could be considered moderately adventurous.

She was a 56 year old care assistant with an income of around £18,000 per year. Her pension had a transfer value of around £19,500 and was her only pension provision apart from the state retirement pension. It was far from clear that she could easily replace any loss in her pension funds. She didn't own a property or other assets, so the security of her pension was important. Whilst she had some capacity for loss, I think it was fairly low. She couldn't afford to be exposed to high risk or unproven investments, with the risk they might default.

Even if Ms T did have a moderately adventurous attitude to risk, Portal still had to discuss her understanding and whether this was appropriate for her, as well as considering her capacity for loss. I can't see that the adviser explored this fully. The report lists questions and comments but not her specific answers.

The adviser said, *"Upon review of your answers to these questions, I believe you have a suitable level of capacity for loss for the recommendations we have made for you"*. But she had no disposable income or savings to provide a buffer. Since the remaining funds would have given Ms T some financial security for her future, it seems to me that she could not afford to take too much risk with them. She had around nine years until her stated retirement age so I don't consider she would have taken no risk at all.

Taking into account her knowledge and experience, I think she would have taken a more cautious approach.

Portal provided a risk warning but it's not clear whether these risks were explained at the time or Ms T was simply given the form to sign, I don't think she would necessarily have questioned the advice. She was guided by the adviser and relied on the advice that the switch was suitable.

Portal invested the majority of the pension in secured property bonds with terms of between five and seven years. The report said they could be considered relatively illiquid but the returns would make them suitable. They were collective investments, where investors pool their money to be invested in the specified way. They should have been treated as more speculative investments, only considered for a small part of the pension, but Portal recommended that 60% be invested in this way.

The report describes various property funds but this seems to be generic text. There isn't a clear explanation of why these particular funds were selected. While the bonds were expected to mature within Ms T's time frame it's doubtful whether investing in illiquid assets was suitable.

If Ms T's circumstances changed, she wouldn't be able to take her benefits if she needed to; she would have to wait some years before she could access all her money and as I've said, she would have no other savings to fall back on – apart for the modest tax-free cash which she'd already taken (and some of which she intended to use).

Taking all of the above into account, I don't think the investments were suitable for Ms T. She was switched to a more expensive pension and I don't think there were convincing reasons to justify the switch; the risk involved was too great. Her representative has said the

current value of the SIPP means Ms T has suffered a loss. If this advice has led to a loss for Ms T, she should be compensated for that.

I also agree with our investigator that Ms T should be compensated for the distress caused to her. She would have been upset to find the SIPP wasn't suitable and may have led to a loss in value of the pension she is relying on for her retirement.

Putting things right

Fair compensation

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

I take the view that Ms T would have invested differently. It's not possible to say *precisely* what she would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Ms T's circumstances and objectives when she invested.

What must Portal do?

To compensate Ms T fairly, Portal must:

- Compare the performance of Ms T's investment with that of 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 Ms T'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 Ms T's pension plan, it should pay that amount directly 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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Ms T won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Ms T's actual or expected marginal rate of tax at her selected retirement age.
- For example, if Ms T 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 Ms T would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Ms T £300 for award for the stress caused to her.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest it should tell Ms T how much has been taken off. Portal should give Ms T a tax

deduction certificate in respect of interest if Ms T 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
Novia SIPP	Some liquid/some illiquid	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 Ms T provides an undertaking to pay Portal any amount she 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 from the Income drawdown personal pension should be deducted from the fair 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 fair value instead of deducting periodically.

The Income drawdown personal pension only exists because of illiquid assets. In order for the Income drawdown personal pension to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Portal taking over the illiquid assets, or this is something that Ms 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 illiquid assets, to provide certainty to all parties I think it's fair that it pays Ms 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 parties to arrange for the SIPP to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Ms T wanted Capital growth with a small risk to her 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 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 Ms T'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 Ms T into that position. It does not mean that Ms T 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 Ms T could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Portal Financial Services LLP should pay the amount calculated as set out above.

Portal Financial Services LLP should provide details of its calculation to Ms T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 18 November 2022.

Peter Whiteley
Ombudsman