

The complaint

Mrs C complains about the advice she received from Portal Financial Services LLP, trading as Portal Financial, (Portal) to switch the benefits she held in two defined contribution personal pensions (PP) to a Self-Invested Personal Pension (SIPP).

What happened

Mrs C says she was introduced to Portal by a company that was providing her with mortgage advice. The authority form I've seen indicates this happened around July 2012.

Portal completed a fact find in January 2013. This noted that Mrs C was 44 and co-habiting with her partner. She was listed as being unemployed but was receiving an income of £1,700 per month from maintenance payments. She owned her own home, with an estimated value of £436,000 but also had an outstanding interest only mortgage in the region of £215,000. The fact find also indicated Mrs C had savings and assets of £33,000 – but this figure was not broken down. It also made reference to some assets being held in an offset mortgage, although the explanation around this wasn't entirely clear. Mrs C had a defined benefit pension from a period of previous employment but the fact find said she wasn't interested in moving that pension. It went on to say that Mrs C wanted to achieve better investment performance – in particular growth – and that she liked “alternative investments”.

A risk profiling questionnaire was also completed. Based on this Portal said Mrs C had a ‘moderately adventurous’ attitude to risk (‘ATR’).

In March 2013, Portal recommended that Mrs C transfer her two personal pensions to a SIPP and invest the majority of the value into a series of unregulated collective investment schemes (UCIS). No action was taken following this recommendation and the pensions benefits were not switched at that time.

In January 2014, Portal carried out another fact find with Mrs C. Her circumstances were listed as largely being the same although her house had increased in value to £500,000 and her mortgage was listed as having reduced to £170,000. The fact find again confirmed that Portal was only looking at the defined contribution pensions and said Mrs C wanted to improve average yearly growth and increase her range of investment choices as she preferred a medium risk spread of investments. A further risk profiling questionnaire was completed with some of the answers significantly different to the year prior. And as a result, Portal said it considered Mrs C's ATR to be ‘adventurous’.

In February 2014, Portal sent Mrs C another suitability report, summarizing its recommendation. It said that this superseded its previous advice. The report noted Mrs C had a two PP's. One had a value of approximately £8,810 and was performing at 2.1% per annum on average (based on a 5-year average). The second had a value of £6,348 and was performing at 4.78% per annum on average (based on a 5-year average).

Portal summarized Mrs C's objectives as future drawdown, investment choice, improved performance and specific investment. It went on to recommend that she transfer her two

PP's to a SIPP. Portal said the recommendation would meet her stated objectives, it had determined she had sufficient capacity for loss for the recommendation made and it said it had recommended a portfolio that would meet Mrs C's ATR.

The suitability report included a summary of how Portal recommended that the transferred funds be invested. Some of the investments it recommended were:

- Lakeview UK Investments PLC – 11.87%
- Marbella Resort and Spa PLC – 11.17%
- Real Estate Investments USA PLC – 11.87%
- Motion Picture Global Investments PLC – 11.17%
- Strategic Residential Developments PLC – 11.87%
- Tambaba Developments PLC – 11.17%

20.6% of the remainder was allocated to regulated investment funds and the remaining 10.28% to 'cash'.

The SIPP was established, and the funds invested in line with the advice given, at the end of March 2014.

In April 2020, Mrs C complained to Portal. She said her attitude to risk, capacity for loss and investment experience hadn't been accurately recorded or discussed in person. And the majority of the investments Portal had recommended had a significantly higher risk than she was aware of or would've accepted, had this been made clear.

In response, Portal said Mrs C had made her complaint too late for our service to consider it. Unhappy with this, Mrs C brought her complaint to us. Another ombudsman considered the matter of whether we have jurisdiction to look into the complaint. They decided the complaint had been made in time, so we can consider it.

One of our investigators looked into Mrs C's complaint and said he felt the complaint should be upheld. He said he felt there was significant doubt over the accuracy of the assessment of Mrs C's attitude to risk. And he felt the information available indicated she had little capacity for loss. And given this and her overall general inexperience when it came to investing, he felt the recommendation that over 69% of her portfolio be placed in unregulated investments was unsuitable. So, he thought Portal should compensate Mrs C as if her funds had been invested more appropriately and pay her £500 for the distress and inconvenience caused.

Portal didn't agree. In summary, it said the SIPP was recommended as it met Mrs C's key needs in several ways. It said the annual SIPP wrapper charge was cheaper than her existing arrangements and that it was low cost and 'stakeholder friendly' and that Mrs C's pension could be invested in mainstream funds within it. It said the switch allowed Mrs C the option of flexibly drawing funds when required. And it said its adviser felt the performance of Mrs C's existing funds could be improved upon by transferring.

Our Investigator was not minded to change their opinion. As a result, the complaint was referred to me to decide.

What I've decided – and why

As I mentioned, Portal previously said Mrs 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 they were satisfied Mrs C brought this complaint in time, other than to say having reviewed the available information I agree with the decision reached by the

previous ombudsman. So, as I'm satisfied we can look into this complaint, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken account of relevant laws and regulations; regulators' rules, guidance and standards, and what I consider to be good 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 Mrs C. It had to obtain information as to Mrs C's knowledge and experience (relevant to the specific type of designated investment), her financial situation and investment objectives.

COBS 9.2.2R required Portal to gather sufficient information from Mrs C to ensure the recommendation met her objectives, that she could bear the risks involved and that she 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.*"

As I've mentioned, Portal has provided copies of two separate risk profile questionnaires it says were completed with Mrs C. But Mrs C says her attitude to risk wasn't accurately recorded or discussed. Mrs C hasn't signed either of the documents to say she agreed with the answers. So, I can't know for certain how the information was obtained. But on balance I think it was likely at least based on information provided by Mrs C.

The questionnaires have the same questions. But the answers, given one year apart, had some quite significant differences. In the 2013 questionnaire Mrs C agreed with the statement that people who knew her would describe her as cautious. But in January 2014 she apparently disagreed with that statement. Likewise, in 2013 Mrs C disagreed with the statement she felt comfortable investing in the stock market, but the following year agreed she did feel comfortable. And in 2013 Mrs C agreed she was concerned about the volatility of stock markets, only to disagree one year later.

But despite these rather stark differences in answers, Portal hasn't provided any additional notes relating to this. I appreciate that attitudes to risk can change over time. But given the proximity of the two questionnaires being carried out and the fact that Mrs C's personal circumstances didn't appear to have changed very much at all in the intervening period, I'd have expected to see some commentary on this – particularly in the suitability report, from Portal.

Even without this though, I still think there is reason to question the classification of Mrs C as having an adventurous ATR. In both versions of the questionnaire the statement "*I am willing to take substantial financial risk to earn substantial returns*" was put to Mrs C. And on both occasions she disagreed with this statement.

In addition, Mrs C answered consistently across both questionnaires that she had little experience investing in stocks and shares. Portal's own explanation of what an adventurous investor would typically be like said;

"Adventurous investors typically have high levels of financial knowledge and keep up to date on financial issues. They will usually be experienced investors, who have used a range of investment products in the past, and who may take an active approach to managing their

investments.

In general, Adventurous investors are happy to take on investment risk and understand that this is crucial in terms of generating long-term return. They are willing to take risk with most of their available assets."

So, Mrs C's answers don't seem to fit Portal's own profile. And she has said she was an inexperienced investor with limited knowledge of investments. And I've seen nothing to dispute that in the information I've been provided. So, I think this calls into question whether Mrs C was in fact 'adventurous' as Portal claims. At best I think, her attitude to risk was more likely to be balanced. And, based on her lack of experience and capacity for loss, which I'll discuss in more detail shortly, I think she was in fact likely to be more cautious still.

But even if Mrs C did have a more adventurous attitude to risk, I still don't think that means that the recommendation Portal made was suitable.

Portal's suitability report says it had assessed that Mrs C had sufficient capacity for loss for the investments it recommended. But I don't agree. The purpose of a pension is to provide for the holder's retirement. Mrs C did have a DB scheme pension, separate to the two PP's transferred. But the transfer value of that appears to have been around £37,000. Meaning the PP's still accounted for over a quarter of her private pension arrangements. And Mrs C was not working – which the fact finds indicated was the case for over a year. So, it doesn't seem that she was contributing to or increasing her pension provisions. All of this means I think the PP's were an important part of her financial provisions for retirement. And while she did have some other assets – such as some savings – she also had ongoing liabilities – the interest only mortgage. So, I think significant losses to her PP's would have had a sizeable adverse impact on Mrs C's retirement provisions. And I don't therefore think she had much capacity for loss in respect of these policies.

To recap, Portal recommended that Mrs C invest almost 70% of her pension into six secured bonds. These bonds were high risk. I say this because the suitability report refers to funds from the bonds financing, and being secured on, the building of new holiday villas, the completion of a new hotel, rights to films not yet made and plots of land with development potential. So, the underlying assets weren't known quantities that were already generating a predictable income stream but were rather more speculative in nature. Most of the bonds related to investment overseas. The suitability report said money was lent and paid back in sterling so there was "*no direct currency risk*". But they still would've carried some exchange rate risk as the funding dealt with overseas assets. And they were largely illiquid, something the suitability report pointed out. A lot can go wrong with this type of investment and the potential for significant losses is far higher than would be the case for pooled funds investing in a wide range of quoted securities. This is the case even if (as Portal says) due diligence had been done on the bonds.

While these bonds may not have strictly been UCIS products I still think the regulator's 2010 UCIS findings are relevant here. And I say that because the bonds share many of the same characteristics as the investment schemes the regulator was warning about: illiquidity, foreign currency risk and valuation difficulties for instance. The regulator said that as well as UCIS only being eligible for promotion to certain customers (generally sophisticated, high net worth investors), as an 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.

As I've said, I don't think Mrs C was an experienced investor. I've seen nothing to suggest she had made any independent investment decisions in respect of her existing pensions. And she said in the fact finds carried out that she didn't have any experience with stocks and

shares. So, I don't think she was a sophisticated investor. Nor in my view, going by the details recorded in the fact find, could it be said she was a high net worth investor. So, I'd argue it wasn't appropriate for this type of product to be promoted to her at all. And certainly I don't think the advice to invest in the proportion Portal recommended was suitable, given there's nothing to indicate she had the requisite knowledge or experience to accept or understand the risks associated with these types of investments.

So, taking everything into account, I don't think the recommendation made by Portal was suitable.

Portal says that the SIPP was low cost and stakeholder friendly, it allowed flexibility in the future, Mrs C had the option of investing in mainstream products and it felt the performance of the existing funds could be improved on. But I don't think any of these things mean that the advice given was suitable.

The annual management charge ('AMC') by the SIPP provider was 0.5%. And this seems to be lower than the AMC's of the existing PP providers – 1% and 1.08%. But Portal charged an upfront fee of 5% of the pension fund value for its advice. And an ongoing fee of 1% per year, on top of the AMC, for providing ongoing advice. So, the overall cost to Mrs C was greater than that of her existing pensions.

While the SIPP may've given Mrs C additional flexibility in terms of how she could eventually take her benefits, given she was only 45 at the time of the advice, I don't think she needed that flexibility at the time.

And while the SIPP may've allowed Mrs C to invest differently, Portal advised her to invest in the unregulated bonds I've mentioned. And Mrs C relied on and acted on that advice. There may've been potential to improve on the growth the existing PP's were providing. And Mrs C may've been seeking an improvement in growth. But for the reasons I've already explained, that doesn't mean the advice given was appropriate or suitable for her.

Instead, I think suitable advice would have been for Mrs C to invest in regulated mainstream funds. And if Portal had given suitable advice, I think Mrs C's likely to have invested in that way.

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

Our Investigator also recommended that Portal pay Mrs C £500 for the distress and inconvenience caused – as he felt it would've been particularly upsetting for Mrs C to find out that a significant portion of her fund was illiquid and that some of the bond providers had appointed administrators. Taking everything into account, I agree that this was likely to have been upsetting for Mrs C. And that upset would not have happened if the unsuitable advice had not been provided. So, in the circumstances, I think the award for distress and inconvenience recommended by our Investigator is fair.

Putting things right

My aim is that Mrs C 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 Mrs C 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 Mrs C's circumstances and objectives when she invested.

What must Portal do?

To compensate Mrs C fairly, Portal must compare the performance of Mrs C'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 Mrs 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 Mrs C'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs C won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs C's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs C 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 to Mrs C £500 for distress caused.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest it should tell Mrs C how much has been taken off. Portal should give Mrs C a tax deduction certificate in respect of interest if Mrs C 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 recommended by Portal	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 Mrs C 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs C wanted capital growth but I think based on her circumstances and the available information only 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 Mrs C'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 Mrs C into that position. It does not mean that Mrs C 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 Mrs C 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, trading as Portal Financial, should pay the amount calculated as set out above.

Portal Financial Services LLP, trading as Portal Financial, should provide details of its calculation to Mrs C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 16 November 2022.

Ben Stoker
Ombudsman