DRN-3662706

The complaint

Mr C has complained that Portal Financial Services LLP (Portal) recommended he invest in unsuitable funds that weren't within the risk he was willing to take.

What happened

Mr C has told us that his first contact with Portal was in late 2013, and that this contact was initiated by Portal. At the time Mr C held a personal pension with Zurich, was aged 55 and was living with his partner.

Portal took steps to ascertain Mr C's financial position and aspirations prior to giving him advice. During this process, a number of documents were completed, including a fact-find, an income and expenditure statement, and an attitude to risk questionnaire.

The fact-find, completed on 17 December 2013, recorded that Mr C was employed full time earning £17,000 each year (around £1,200 each month net), lived in rented accommodation, and had no savings or assets. This document also recorded that Mr C was £2,000 in arrears for water rates and had a payday loan of between £600-700 which he paid off and renewed each month. It also stated that he had a personal pension valued at £20,778, with a transfer value of £20,194 due to a market value reduction (MVR) of £584, and no other pension plans. The selected retirement age was listed as 67 years old.

In answer to fact-finding questions regarding Mr C's plans and funding for retirement, the document records that he could take no more than 25% tax free cash, and that he was prepared to leave the fund alone until retirement. It was also noted that Mr C was concerned about stock and equity volatility, but not liquidity.

Mr C's income and expenditure statement was recorded jointly with his partner. Their joint net income each month was £2,100 and their expenditure totalled £2,012, leaving a disposable income of £88. This recorded expenditure included the £600-700 to repay Mr C's recurring payday loans.

The findings from the attitude to risk questionnaire were that Mr C was a balanced investor.

In January 2014 Portal advised Mr C to transfer his personal pension into a Novia self-invested personal pension (SIPP). This allowed Mr C to access a tax-free cash sum. Portal advised that the remaining funds be invested in nine different investment strategies (including cash). Four of these investments, just under 50% of the overall funds, were noted to be 'Secured Bonds'. The bonds had investment terms between five and seven years. It seems the remaining funds were invested in liquid regulated investments and cash.

Portal's suitability report dated 2 January 2014 confirmed that Mr C's personal pension had a transfer value of £20,194 after an MVR was applied, and that Mr C could take tax free cash of up £5,048. The suitability report also explained the recommended Secured Bonds were fixed term investments, meaning they could not be bought and sold daily and, as such, they would be considered illiquid.

Various charges were also listed, including an initial adviser fee of 5% for the advice, a 1% annual review fee, and other pension provider charges, including a 0.5% annual management charge. In relation to this, the report stated, "*Overall, this strategy may cost more than your existing arrangement. Whilst the intention is that this will be more than compensated for by the increased growth of your pension fund this cannot be guaranteed*".

Portal's advice was accepted, and the SIPP was established in January 2014. Mr C accessed his full amount of tax-free cash, which was £5,048.

In 2015 Mr C applied to withdraw a taxable lump sum from his SIPP, although records provided to us are not conclusive on this point. We do know that the annual pension review report of 20 September 2016 confirmed that the total taxable sum withdrawn since the plan's inception was £8,491.61. This left a fund value of £7,213.97 as of 8 September 2016.

At this time, the percentage of the SIPP invested in the four recommended Secured Bonds was just under 96%, with only 4.35% remaining, in cash. The 2016 report also made reference to a recommendation to switch a proportion of the invested funds into new funds on the basis it would perform better. However, it isn't clear exactly what was recommended or actioned, as later in the same report it is stated that Portal weren't recommending any changes.

The 17 March 2017 annual pension review report noted the fund was valued at £7,181.93 on 27 February 2017. It said this represented a growth of 3.06% after charges. The percentage of the SIPP invested in the four Secured Bonds was now just over 96%. No changes to the funds were recommended. The cash value had reduced to 3.92%.

Mr C's complaint about the suitability of the advice he was given was made on 22 September 2020. Mr C said his complaint to Portal was prompted by his realisation that his investments were high risk, whereas he recalled a lengthy conversation with Portal in which he said he wasn't a high-risk taker. After speaking with Portal on various occasions, and receiving what he deemed to be conflicting information, Mr C engaged in further research and came across online reviews that made him concerned.

Portal provided a final response letter saying that the complaint had been made too late. Mr C was unhappy with this and brought his complaint to this Service. A jurisdiction view and subsequent jurisdiction decision were issued finding that the complaint was brought in time and that this Service could consider it.

Our investigator then considered the merits of Mr C's complaint. He found that Mr C's attitude to risk should've been deemed cautious, rather than balanced, and that the advice to invest in high-risk funds was unsuitable in any case. So, our investigator said that Portal should compensate Mr C by putting him back into the position he should've been in, and should also pay Mr C £300 for the distress and inconvenience caused.

Portal didn't accept our investigator's view or provide any response. As such, Mr C's complaint has been passed to me for a decision on the merits.

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 set out in my previous jurisdiction decision on this case, I've not seen anything to make me think Mr C ought reasonably to have been aware he had cause for complaint prior to

September 2017. As Mr C brought his complaint within 3 years of this date, I'm satisfied Mr C brought this complaint in time and that it's one I can consider.

Moving on to the merits of this complaint, I will first consider the advice to transfer Mr C's personal pension to a SIPP, before going on to consider the specific investment strategies that were recommended to him.

In accordance with the regulations, standards and industry practice at the time, Portal had to take reasonable steps to understand Mr C's financial situation and investment objectives in order to ensure recommendations were suitable, as well as acting in accordance with Mr C's best interests.

Furthermore, in 2009 the regulator published considerations for pension switching. One of the key issues the FCA identified was that consumers shouldn't be advised to switch to a more expensive pension than their existing one(s) without good reason.

Mr C's recommended SIPP had an annual management charge of 0.5% which wasn't an unreasonable amount. However, Portal also charged an initial fee of 5% which had a significant impact on the value of the fund, as well as an ongoing advice charge of 1%.

We have not been provided with the underlying fund or product charges for the various investments, or a clear comparison between the ceding personal pension scheme and the recommended SIPP and investment strategy. The warning in the suitability report that the strategy "may cost more" than Mr C's "existing arrangement" is insufficient.

Unfortunately, Portal are no longer responding to requests for information about this case, and so I must make my findings on the limited information available. Overall, I think it's likely the total charges associated with the SIPP would've been higher than the personal pension Mr C was transferring from, especially when taking into consideration Portal's initial charge of 5%, their ongoing advice charge of 1%, and the MVR which was applied to the pension switch, further reducing its fund value by £584.

However, I've weighed this likely higher cost against Mr C's financial situation at the time. Mr C has told us that, when the advice was given, he had a strong and clear need to access tax-free cash from his pension, as he was trapped in a cycle of pay day loan debt. The tax-free cash enabled him to break this cycle and, in his own words, "get back on his feet". Also, he has told us that he was self-employed at the time, and the tax-free cash was required to support his finances.

Although it doesn't appear Portal made any attempt to establish whether Mr C had any other means to reduce his debts or raise these funds, Mr C himself has made it clear he didn't. So, despite the costs described above, it's likely the recommendation to transfer his personal pension to a SIPP and access the tax-free cash sum was suitable for Mr C.

I'll now turn my attention to the specific investment advice, which is the primary focus of Mr C's complaint.

Portal's review of Mr C's attitude to risk included a profiling questionnaire in which Mr C had to answer fifteen questions. This resulted in Mr C being deemed a 'balanced risk investor'.

However, Mr C's answers to the questionnaire suggested otherwise. Mr C agreed with statements that indicated he had little experience of investing in stocks and shares, and that he generally looked for safer investments, even if it meant lower returns. He also agreed with statements that said he was concerned about the volatility of stock market investments and generally preferred bank deposits to riskier investments.

Furthermore, Mr C disagreed that he found investment matters easy to understand or that he felt comfortable investing in the stock market. He also indicated he was unwilling to take substantial financial risk to earn substantial returns, or that he'd rather take a chance with high-risk investments than increase his amount of savings. These answers suggest Mr C's attitude to risk could be better described as 'cautious' than 'balanced'.

I also note that the risk profile questionnaire Portal used appears to have been based on one used by a different product provider. The original seemed to have 12 questions, and so it appears that Portal added a further three relating to property investments. Mr C's answers to these three questions depart from the pattern that can be seen in his other answers, in as much as he agreed he felt comfortable investing in property, and disagreed that he had little experience of such investments.

Mr C was a retail investor, with no investment experience or savings. Furthermore, this was his only pension, and he had no other provision for retirement, which suggests his capacity for loss was low. Given this, and given his generally cautious responses regarding his attitude to risk elsewhere in the questionnaire, Portal should've taken steps to probe and clarify his answers to these three questions, especially as there is nothing to suggest that Mr C had any experience of investing in property. Instead, these answers appear to have been used as the basis for recommending high-risk unregulated bonds.

The suitability report refers to funds from these unregulated bonds being used to finance the building of new holiday villas, and the completion of a hotel, and being secured on US residential property, and other holiday resorts. Despite the funds recommended having little or no previous investment history, they were predicted to provide an income between 11-15%. Most of the bonds also carried exchange rate risk. And, as Portal pointed out, they were illiquid as soon as the funds were invested.

A lot can go wrong with this type of investment, and the potential for significant losses is greater than investing in pooled funds in a wide range of quoted securities and asset classes. In summary, they carried significant risk and - as unregulated high-risk investments - they were unsuitable for investors with a cautious (or even a balanced) attitude to risk.

Furthermore, the high proportion of Mr C's pension fund invested in these unregulated Secured Bonds at the outset (just under 50%) would've been unsuitable for a customer in Mr C's financial situation, even if he had a high tolerance for risk.

I also note the regulator's comments on unregulated investments from July 2010, which warned about investment schemes that share many of the same characteristics as the bonds recommended to Mr C (for example, illiquidity, foreign currency risk and valuation difficulties). In such cases, the regulator indicated that it was good practice to limit client exposure to unregulated funds to 5% or less of their portfolios.

In summary, the investments Portal recommended were unsuitable, and exposed Mr C to far more risk than appropriate. These bonds were unregulated and certainly weren't secure. He didn't have the capacity for loss these investments carried. Instead, suitable advice would have been for him to invest in regulated mainstream funds. Had Portal given suitable advice, I think it's likely Mr C would have followed it.

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

This matter has also caused Mr C worry and concern, and so Portal should pay Mr C £300 compensate his for this.

Putting things right

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

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

What must Portal do?

To compensate Mr C fairly, Portal must:

- Compare the performance of Mr 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 Mr 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 Mr C'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 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 Mr C won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr 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 Mr C £300 for concern and worry caused by the loss of his pension fund.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest it should tell Mr C how much has been taken off. Portal should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio	Status	Benchmark	From ("start	To ("end	Additional

name			date")	date")	interest
Novia SIPP	Still exists but illiquid	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 Mr C provides an undertaking to pay Portal any amount he 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 Novia SIPP 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 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 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 Mr C 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 Mr C 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 Novia SIPP to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr C wanted to achieve a reasonable return without risking any of his capital.

- The average rate for the fixed rate bonds would be a fair measure given Mr C's circumstances and objectives. It doesn't mean that Mr C would have invested only in a fixed rate bond. It's the sort of investment return a consumer could have obtained with little risk to the capital.

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 Mr C in a clear, simple format.

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

Ellie Clare
Ombudsman