

The complaint

Mr D complains that he was given unsuitable advice by Portal Financial Services LLP (formerly Portafina LLP) to transfer his existing personal pension to a Self-Invested Personal Pension (SIPP) and invest into funds which have since failed.

What happened

Mr D was advised by Portal in October 2009 to transfer benefits from an occupational pension to a personal pension with Aegon. He wanted to access tax-free cash. This advice forms not part of this complaint and so won't be addressed further in this decision.

A fact find showed that at the time of the advice he was 55, married and earning £21,500 per year. He had an unencumbered home, minimal savings and around £13,000 loan and credit card debts. He wanted to retire at 60.

In April 2010 Portal wrote to Mr D to say his pension should be reviewed and they had identified funds which may be suitable for him. There's no evidence a new fact find was completed. Portal advised him in September 2010 to transfer his Aegon plan worth around £66,800 to a SIPP and invest it as follows:

- 30% Hypa Raithwaite fund
- 50% Hypa Asia fund
- 15% Koroni fund
- 5% Cash fund

In November 2020, Mr D received correspondence from the SIPP provider explaining the SIPP had no cash balance or realisable assets. He was also told he might be able to claim compensation.

In January 2021 Mr D complained to Portal. They said Mr D had complained outside the regulator's time limits.

One of our investigators considered Portal's objections and found Mr D's complaint was made in time and could be considered by our service. He then considered the merits of Mr D's complaint. He thought Portal had given Mr D unsuitable advice and they should compensate him for his losses.

Portal disagreed that the complaint was made in time. Despite being asked to do so, they didn't provide further comments with regards to the merits, but they previously did provide their business file which was considered.

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.

Jurisdiction

The regulator has set rules for this service about when we can and can't consider complaints, the Dispute Resolution (DISP) rules. With regards to time limits, DISP 2.8.2R sets out that:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(2) more than:

(a) six years after the event complained of: or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint:

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received.

Mr D complained clearly outside the six-year time limit. So the key issue here to consider is whether Mr D ought to have reasonably been aware more than three years before he complained in January 2021 (i.e. before January 2018) that he had cause for complaint.

Portal referred to several events that they say should have triggered Mr D's awareness. They provided a letter they sent to Mr D in February 2014 which explained that the Koroni fund was being wound up which meant the funds would be encashed and proceeds paid to Mr D's pension account. The SIPP provider had also given the holding a nominal value of £1. However, Portal's letter assured Mr D that one payment representing of 40% of his asset shares had already been paid and the fund administrators would soon make another announcement. And they told Mr D that the SIPP value did not represent the true value of his fund.

In 2016, Mr D was sent a SIPP statement showing the value of his funds at around £34,000. I considered that this was a large difference to his initial investment and it seems Mr D did contact Portal and raised concerns about the drop in value. But I've seen an undated letter from Portal to Mr D which looks like it was sent in response to this. It offered reassurances that the underlying security would likely be sold soon and values would likely be greater than the unaudited values given. And the letter from the SIPP provider did say that it was the investment provider's full intention to repay any interest due and release invested capital back to investors.

I think the information Mr D received would have reassured him that he would still receive his capital and interest and there were measures in place to manage the investments appropriately.

Portal say the Hypa Raithwaite investment was given a nil value in November 2017. However, Portal sent Mr D a letter in December 2017 telling him this didn't mean his investments were worthless, that he still owned the assets, that work was ongoing to liquidate his investments and that he should not worry. He was also told that if his funds were still illiquid if he reached retirement age Portal would cover the income payments from their own funds.

Overall, based on the information I have, I can't see that Mr D ought to have reasonably been aware he had cause for complaint before January 2018. He said he was reassured by Portal throughout which is supported by the written communications to him I've seen. I find it

persuasive that he only realised there was an issue when he was informed in November 2020 that his SIPP didn't have any value.

I'm satisfied that Mr D complained within the given time limits and that I can consider the merits of his complaint which I've done below.

Was Mr D given suitable advice?

Mr D was advised to switch to a SIPP and invest in non-standard, specialist investments. The suitability report said he was an adventurous investor. Portal's description of investors with this risk attitude was that up to 50% may be medium risk equity and property investments or a broad selection of UK equities and up to 50% could be invested in higher risk overseas property or emerging markets equity funds.

I've seen a risk profiler which was completed when Portal gave Mr D advice in 2009 which indicates that he did want to take some risk with his pension, so this assessment of his risk attitude doesn't seem unreasonable.

However, I can't see any good reason for Mr D to switch his pension. He had only been advised a year previously by Portal to invest 75% of his funds into balanced funds and 25% in a dynamic fund (which was categorised by Aegon as above average risk). This investment strategy seems in line with Mr D's attitude to risk and the SIPP recommended instead was a more expensive arrangement. The suitability report said he could get better returns in the SIPP, however I think the risks of the recommended investments which were described as low risk, low-medium risk and medium to high risk were in my view underplayed. These were high risk unregulated and specialist investments.

Based on the fact find in 2009 I can't see that Mr D had a particular high capacity for loss and no significant investment experience, so I don't think he had the necessary knowledge and experience to fully understand the risks of these investments. Advising him to invest his entire pension fund this way was unsuitable in my view.

Putting things right

My aim is to put Mr D in the position he likely would have been without Portal's unsuitable advice in 2010. I think if Portal hadn't advised Mr D to switch his pension to a SIPP, Mr D would have likely remained invested in his Aegon pension.

Portal should:

- Request a notional value from Aegon. Portal should calculate compensation by comparing the value that Mr D's pension would have been at the date of my final decision if it had remained invested as it was before the switch (Value A) with the value of his SIPP (Value B) on the same date. If Value A is higher than B, then the difference between A and B is the loss.
- When calculating Value A, any additional sum paid into the SIPP should be added to the notional value calculations from the point in time when they were paid in.
- Any withdrawal, income or other distribution out of the SIPP should be deducted from the point it was actually paid so it ceases to accrue any return in the notional value calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if they are totalled and all those payments deducted at the end instead of deducting periodically.

- Mr D says Portal promised to pay him an annual income from their own funds whilst his funds were illiquid which they started paying him but this stopped again after the first payment. Portal can deduct any payments they paid to Mr D from the loss amount.
- I understand Mr D's investments are illiquid, meaning it can't be readily sold on the open market. This means it can be complicated to establish Value B. Portal should take ownership of the illiquid investment by paying a commercial value acceptable to the SIPP provider. This amount should be deducted from the compensation and the balance paid as I set out above.
- If Portal is unable to purchase the investment the actual value should be assumed to be nil for the purpose of the calculation. Portal may require that Mr D provides an undertaking to pay Portal any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Portal will need to meet any costs in drawing up the undertaking.
- The SIPP only exists because of the illiquid investment. In order for the SIPP to be closed, the investment needs to be removed from the SIPP. I've set out above how this might be achieved by Portal taking over the investment, or this is something that Mr D can discuss with the SIPP 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.
- The SIPP provider wrote to Mr D in November 2020 telling him they would remove all remaining fees whilst the future value of the investments was uncertain. But they reserved the right to charge fees if compensation from this service or FSCS was received. Any fees the SIPP charges Mr D retrospectively should be covered by Portal. If the SIPP provider starts charging fees again after compensation has been received, I think it's fair that Portal pay Mr D an upfront lump sum equivalent to five years' worth of SIPP fees (based on what the SIPP provider is intending to charge in line with their terms and conditions). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.
- The compensation amount should if possible be paid into Mr D's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr D as a lump sum. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid, assumed to be 20%.
- In addition, Portal should pay Mr D £300 for the distress and worry he suffered when he realised he had lost significant parts of his pension and he couldn't access it when he wanted to.
- Portal should pay interest at the rate of 8% simple per annum on the compensation calculated as at the date of decision if it's not paid to Mr D within 28 days of us notifying them that Mr D has accepted my final decision.

- Income tax may be payable on any interest paid. If Portal considers it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.
- Details of the calculations should be provided to Mr D in a clear and simple format.

My final decision

I uphold this complaint and require Portal Financial Services LLP to pay Mr D compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 December 2022. I've given an extended period as Mr D has recently moved abroad and might be difficult to contact.

Nina Walter
Ombudsman