DRN-3752903

The complaint

Mr F's representative has complained, on his behalf, that Portal Financial Services LLP unsuitably advised him to transfer his pension funds from his existing Group Personal Pension (GPP) to a Self Invested Personal Pension (SIPP), within which it's said his pension funds were subsequently unsuitably invested.

What happened

Portal hasn't submitted either a response to Mr F's initial complaint, nor any file relating to the matter, and so this decision is based upon the evidence and information available to me.

But my understanding is that, in 2013, Portal contacted Mr F to offer him a review of his pension arrangements, which he accepted. At that time, he was 54 years old, earning between £25,000 and £50,000 pa as a company director. Mr F was single, and according to his representative, had no prior investment experience or knowledge of pension matters. The representative has also said that Mr F had a low capacity for loss and a low attitude to risk.

Mr F had held a GPP with Standard Life since 1994 and had last contributed to it in 1996. It also received benefits in respect of Mr F having been "contracted out" of the second state pension, and was invested entirely within a with profits fund.

In terms of charges, the plan had a 0.5% pa service charge, and at the time of the transfer in 2014, it had a value of just under £15,000.

In September 2013, Portal sought information relating to the plan, and the transfer of the pension funds completed to Novia Client Services, the SIPP administrator, in mid-January 2014 – with a value of £14,698.

An initial adviser charge of 5% of the fund value – amounting to £735 – was deducted, along with an ongoing adviser charge of 1% pa of the fund and a product charge of 0.5% pa.

The pension funds were reinvested into a range of investments as follows in April 2014:

- Marbella Resort Spa - £2,300
- Lakeview UK Invest - £1,800
- Motion Picture Global - £1,100
- Strategic Residential Development - £1,800
- Real Estate Investment USA - £2,500
- Premier MA Income and Growth Account - £698
- Invesco Managed Income - £698
- Schroder Multi Manager Portfolio Account - £698
- LF Rufer European Account - £698
- Cash – remainder

A second SIPP was established in November 2015 with funds of around £5,500 taken from the latter four investments above in the first SIPP. They were invested in the following funds:

- Dimensional World Equity Account - £4,474
- Dimensional Global Short Dated Bond Acc - £263
- Cash – remainder

In January 2020, Mr F's representative complained on his behalf, saying that Mr F had suffered a loss of around £3,200 due to the unsuitable advice given to him by Portal. But Portal responded saying that it wouldn't engage with the representative as it didn't consider that it had the correct regulatory permissions.

Dissatisfied with the response, the representative referred the complaint to this service in March 2020. Following this, Mr F received an update on his pension investments as at November 2021. The SIPP provider confirmed that the investments which remained in the first SIPP were largely illiquid as many of the underlying loans within them had defaulted. The SIPP provider also confirmed that those particular assets weren't due to mature until between 2019 and 2021, and so had effectively been illiquid from the outset.

One of our investigators considered the matter, and she thought the complaint should be upheld. She said the following in summary:

- She'd spoken to Mr F, who'd confirmed that he had no investment experience or expertise, and hadn't sought the services of Portal. Rather, it had "cold called" him to offer the review of his pension.

- Mr F had also said that he wasn't aware of any ongoing service from Portal, that he hadn't retired and didn't have an expected retirement date yet.

- Portal needed to ensure that it provided Mr F with a suitable recommendation, in line with the requirement of COBS 9.2.1 R (1) within the regulator's handbook. But Portal hadn't provided any documentation to support the position that steps had been taken to ensure the advice had been suitable.

- The regulator had issued a report in 2008 entitled "quality of advice on pension switching" and it gave examples of what it considered would constitute unsuitable advice. One of these was a more expensive replacement policy when the existing plan would have met the customer's needs. A further example was a plan which incurred extra product costs for no good reason.

- The investigator said that the replacement plan was more expensive, carrying an additional charge of at least 1% pa and an initial advice fee of 5%. The new plan therefore needed to grow by over £700 just to bring it back to parity with the old plan, and would then need to exceed the performance of the old plan by at least 1% pa to match its value.

- However, the investigator hadn't seen any indication that the replacement investments would provide that value. That the investments had been illiquid from the beginning was of further concern to the investigator, and they also lacked the diversification of the with profits fund. They further appeared to carry a substantially higher level of risk, which wasn't aligned with Mr F's investment experience or knowledge. Although Mr F was unsure of his retirement age, the normal retirement date of the GPP was five years away. However, the underlying investments in the SIPP had maturity dates which were as along as seven years hence.

- Mr F had been cold called and was heavily reliant on the advice given to him by Portal. But the new plan was more expensive, and Mr F had no need of any additional features the SIPP may have provided. There was limited potential for the replacement plan to be of benefit to Mr F, given the costs involved, the illiquid nature of much of the investments, and the size of Mr F's pension fund. And these concerns were borne out by the eventual failure of the investments.

In conclusion, the investigator said that Portal should compare the performance of Mr F's replacement pension arrangements with one of our benchmark indices, and if there was a loss this should be paid into Mr F's SIPP. If this wasn't possible, the amount should be paid directly to Mr F, but with an appropriate deduction for income tax which would be payable when accessing the pension benefits.

As it was unlikely that the SIPP could be closed due to the illiquid investments, the investigator further said that five years' SIPP fees should be paid to Mr F to allow an appropriate amount of time for the investments and SIPP to be wound up.

She also said that Portal should pay Mr F an additional sum of £200 in respect of the distress the loss of his pension funds would have caused him.

Mr F's representative agreed with the proposal, but Portal didn't, saying the following in summary:

- It reiterated its view that Mr F's representative didn't have the required permissions to represent him in the matter. It therefore strongly disapproved of its involvement in the complaint and said that it had raised issues in this regard with the regulator.

- When Mr F had a discussion with Portal in 2013 during a fact find appointment, he requested a review of his GPP – an occupational pension scheme – and his objectives were consolidation, investment flexibility and performance.

- The proposed SIPP had a more transparent 0.5% wrapper charge than the implicitly charged with profits plan.

- It was low cost and "stakeholder friendly", which meant that mainstream pooled funds could be held for 0.8% pa, representing the annual wrapper charge and the fund charges. This was very competitive at the time and well below the pricing cap for stakeholder products.

- The SIPP allowed Mr F to withdraw tax free cash without needing to take an income and the cost of this feature was just £75. This facility wouldn't have been available with a stakeholder plan.

- The SIPP in question was one of Portal's – which it described as a pension release service - "core products" at the time, which broadly met its clients "commonality of needs", and had a low base cost and a range of additional features which could be accessed as required.

- The alternative which the investigator had suggested as being more appropriate for Mr F was precisely the kind of plan represented by the SIPP. It was a competitively charged personal pension which offered drawdown and a range of funds offering diversified investments.

- The GPP with profits fund had increased by 3.3% over the previous five years and Portal's adviser thought that this could be improved upon when considering Mr F's attitude to risk and term to retirement.

- The 1% annual management fee was an optional service for Mr F and was intended to expand upon the growth of his plan with regular reviews and rebalancing where required. The charge would also include facilitating withdrawals form the plan and providing advice where required. That charge shouldn't therefore be included in any comparison with the ceding scheme charges.

Portal requested that the matter be referred to an ombudsman, and so it was passed to me for review.

I issued a provisional decision on 13 September 2022, setting out why I thought that the complaint should be upheld. My findings from that decision are set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached broadly the same conclusions as the investigator, and for similar reasons.

My first observation is that, even in response to the investigator's adjudication, Portal hasn't, to my knowledge, submitted any point of sale documentation which might support on a contemporaneous basis the stated rationale for transferring. I've noted its comments about the permissions of Mr F's representative, but irrespective of Mr F's chosen representative, the matter I'm considering here is Mr F's complaint – an eligible complainant in his own right. And so, even if Portal considers that it needs to correspond directly with Mr F, and/or needs to refer the matter of the representative's permissions to the regulator, it still needs to cooperate with our enquiries about Mr F's complaint.

Unfortunately, it hasn't done so, and it's therefore difficult to know several things here, such as Mr F's actual recorded attitude to risk at the time, along with what was recorded about his investment experience, circumstances and objectives for the future.

There's also no detail relating to other pension assets which Mr F may have had, but I've assumed, given that no reference has been made to anything beyond the GPP/SIPP, that Mr F had no other pension assets.

On that basis, a private pension fund of around £15,000 might reasonably be described as quite modest for an individual in their mid-fifties, and I can understand why Mr F might have been seeking to maximise the growth potential in the years left until retirement. And I've noted Portal's comment about the performance of the with profits fund over the previous five years. In that particular regard, due to a reassessment of the underlying assets in with profits funds following the financial crisis of 2008/09, fund managers have broadly reduced the equity content of such funds to minimise the associated volatility and facilitate the "smoothing" effect on returns within such funds.

I also acknowledge what Portal has said about the costs associated with the SIPP, and I agree that the actual ongoing cost of the plan itself, for the sake of enhanced growth beyond the approximate 0.6% pa of the with profits fund, wouldn't seem particularly untoward, meeting as it did the stakeholder standard.

But even taking into account a quite feasible desire to improve on the performance experienced by the with profits fund, care still needed to be taken with Mr F's pension funds. After all, if this was the total of Mr F's private provision, he could ill afford to see it reduce in value. And so I agree with the investigator that, on the face of it, Mr F is likely to have had a low capacity for loss.

It's therefore the chosen investments themselves where I think the advice provided by Portal *exhibits significant failings, and I also note that there's an absence of commentary relating to this in its response to the investigator's view. To recap, approximately two thirds of Mr F's pension fund was invested in non-mainstream products, with which he would have had no prior experience, would be highly prone to liquidity issues, and were based overseas, with the attendant exchange rate risks. It's difficult to be certain on this without seeing contemporaneous descriptions, but they seem to bear the hallmarks of unregulated collective investment schemes (UCIS), which shouldn't have been promoted to an individual such as Mr F in the first place.*

Those investments appear to have now failed, which is unfortunately an all too common feature of such products. And this will have had the effect of markedly reducing his available pension fund – precisely the opposite of what Mr F needed.

Alternative mainstream investments may not have had the potential to achieve the returns which are thought to be associated with the elevated risks presented by such investments, but they also don't tend to have the kind of catastrophic results which Mr F will have experienced here.

As such, my view is that, even if it could be argued that a transfer from the with profits investment environment was a suitable course of action, the bulk of the replacement investments weren't, by any fair or reasonable assessment, a suitable recommendation for someone like Mr F.

And so my current view is that Mr F needs to be compensated for that. But as I've alluded to above, determining the actual suitable course of action for Mr F isn't straightforward. The investigator suggested a comparison with one of our benchmarks, which would reflect a situation of Mr F moving away from the with profits fund. And given its historic performance, I think that's a reasonable proposition.

But it's likely that Mr F could have remained in the GPP, with its lower than average cost structure likely due to the economies of scale in administering such arrangements, and simply switched to a fund which might offer enhanced performance – a balanced managed fund seems to be a reasonable proposition, given the length of time to Mr F's normal retirement date within the GPP, but I invite any commentary on this in response to this provisional decision.

And although Portal has emphasised the stakeholder-compliant charging structure of the SIPP, as far as I can tell the GPP would still have been the more cost effective of the available options – an important aspect when bearing in mind the size of Mr F's pension fund. Furthermore, the need for any features such as flexi access drawdown, if indeed required, could have been assessed either at, or closer to, Mr F's actual retirement.

Therefore, on a fair and reasonable basis I think that a beneficial switch within the GPP was the suitable course of action here. But I also think it's fair to say that this might only have been proposed as a result of the advice process itself, and for that I think Portal could appropriately have charged its initial advice fee, if indeed it undertook the fact finding it's said occurred, and a proper advice process took place.

But as to the 1% pa which would also be charged for the ongoing servicing, Mr F has said that he recalls receiving no such ongoing service, and other than observing that this was a service which could have been provided to Mr F, Portal itself has provided no supporting evidence that such a service was in fact provided to Mr F.

Overall, therefore, my current view is that a fund switch would have been a suitable course of action, but that Mr F could have achieved this within his existing GPP at a lower overall *cost.*

Putting things right

In the event that my view on this remains the same, Portal should undertake a comparison between the value, as at the date of any final decision along these lines, of the SIPP and the notional value of the GPP had Mr F switched into a balanced managed fund offered by Standard Life within that arrangement. As I've said above, I invite commentary as to which fund available at that time within the GPP ought to have been used. Alternatively, if I receive evidence that it wasn't in fact possible to switch funds within the GPP, I may revisit my conclusions on this.

If, as at the date of the calculation, any aspect of Mr F's SIPP portfolio is illiquid, it should be apportioned a nil value. Portal may, if it wishes, take ownership of the investments if possible, or otherwise enter into an agreement, arranged at its expense, that Mr F will pay to it any distributions he receives in future from those investments.

If the notional value of Mr F's GPP would have been higher than that of the SIPP portfolio, Portal should pay into Mr F's SIPP so that it's made up to the same value, taking into account any available tax relief, charges for doing so, annual allowance issues, and any protections which Mr F may have in place.

If it's not possible to pay into the SIPP or conflicts with any allowances or protections, Portal should pay the loss amount directly to Mr F. But 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. This is an adjustment to ensure the compensation is a fair amount – it isn't an actual payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age. As with the investigator, I think it's reasonable to assume that Mr F is likely to be a basic rate taxpayer in retirement, so the reduction would equal 20%. However, Mr F would have been able to take a tax-free lump sum, and so the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Portal should also pay to Mr F five years' SIPP fees, calculated using the fee in the previous year to date, which should reasonably provide enough time for the illiquid investments, and so the SIPP, to be wound up/closed.

As also proposed by the investigator, Portal should pay to Mr F the sum of £200 in respect of the distress the marked reduction in his pension funds caused by the unsuitable investments will have caused him."

Neither party has submitted any further comments.

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.

My view remains the same as that set out in the provisional decision, and for the same reasons.

Putting things right

Portal Financial Services LLP should undertake a comparison between the value, as at the date of this final decision, of the SIPP and the notional value of the GPP had Mr F switched into a balanced managed fund offered by Standard Life within that arrangement.

If, as at the date of the calculation, any aspect of Mr F's SIPP portfolio is illiquid, it should be apportioned a nil value. Portal Financial Services LLP may, if it wishes, take ownership of the investments if possible, or otherwise enter into an agreement, arranged at its expense, that Mr F will pay to it any distributions he receives in future from those investments.

If the notional value of Mr F's GPP would have been higher than that of the SIPP portfolio, Portal Financial Services LLP should pay into Mr F's SIPP so that it's made up to the same value, taking into account a deduction for the initial advice fee which was charged, any available tax relief, charges for doing so (which Portal Financial Services LLP must meet), annual allowance issues, and any protections which Mr F may have in place.

If it's not possible to pay into the SIPP or conflicts with any allowances or protections, Portal Financial Services LLP should pay the loss amount directly to Mr F. But 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. This is an adjustment to ensure the compensation is a fair amount – it isn't an actual payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

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Portal Financial Services LLP should also pay to Mr F five years' SIPP fees, calculated using the fee in the previous year to date, which should reasonably provide enough time for the illiquid investments, and so the SIPP, to be wound up/closed.

Payment should be made within 28 days of Portal Financial Services LLP being notified of Mr F's acceptance of the final decision. If it's not, Portal Financial Services LLP should add interest to the award at 8% simple pa from the date of this decision to the date of settlement.

As also proposed by the investigator, Portal Financial Services LLP should pay to Mr F the sum of £200 in respect of the distress the marked reduction in his pension funds caused by the unsuitable investments will have caused him.

My final decision

My final decision is that I uphold the complaint and direct Portal Financial Services LLP to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 December 2022.

Philip Miller
Ombudsman