

The complaint

Mr B complains that Portal Financial Services LLP (Portal) gave him unsuitable advice to transfer his personal pension to a self-invested personal pension (SIPP), causing him to suffer a loss in the value of his pension benefits.

What happened

In February 2014 Mr B received advice from Portal regarding his personal pension.

Mr B was 56 years of age and was medically unable to work. Portal obtained information about Mr B's overall financial circumstances, identifying that he had a personal pension with a fund value around £70,000 that its advice focussed on. Mr B also had a second pension, that Portal didn't consider in this process.

Portal documented that Mr B had the following objectives from the advice:

- To take £14,000 in tax free cash
- To use pensions to take income from age 63

Portal recommended that Mr B transfer his personal pension to a SIPP, where he should crystallise £56,000 of the fund in order to release an immediate pension commencement lump sum (PCLS) of £14,000. It then recommended investments for the residual crystallised and uncrystallised parts of the fund as follows:

13.2% Lakeview UK Investments plc (fixed term investment for 5 years)
13.2% Real Estate Investments USA plc (fixed term investment for 5 years)
13.2% Strategic Residential Developments plc (fixed term investment for 5 years)
50.33% spread across seven regulated investment funds
10.07% Cash

Mr B followed Portal's recommendation, transferring his pension on 26 February 2015, and taking a £14,000 PCLS on 27 February 2014.

In December 2020 Mr B complained to Portal, via a representative, about the advice he'd been given in 2014. He didn't think that the transfer to the SIPP had been in his best interests or that the investments that were recommended were suitable for him.

Portal wrote to Mr B's representative to acknowledge receipt of the complaint. But didn't think that it was obliged to respond, querying the representative's entitlement to represent Mr B in that way.

Our investigator looked into Mr B's complaint and was unable to resolve the dispute. Portal didn't agree with our investigators view that our service had jurisdiction to consider this case, or her view on the merits of it.

The case was referred to me to give a decision on. I issued a provisional assessment in which I gave my decision on jurisdiction. I explained to both parties why Mr B's complaint

had been made within the time limits allowed by the rules that govern our service. In my provisional assessment I explained that I would not repeat my decision on jurisdiction unless I was presented further comment or evidence that had an impact on it. I've seen no further comment or evidence in relation to that decision.

In my provisional decision, I also gave my view on the merits of Mr B's complaint. I explained why I thought it should be upheld and suggested a way to put things right for Mr B. I've had no further comment or evidence provided in response to that provisional assessment.

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.

I've received no new arguments or evidence in this case that I had not already considered in reaching my provisional assessment. And having considered the circumstances again, my final decision is unchanged from my that assessment. I will outline the reasons that I'm upholding this complaint.

Portal were only advising on one of Mr B's pensions. It conducted a fact-find with him and established that he had a second pension that was valued around £264,000 when advice was given. But it explained that it wasn't advising on that pension. Portal obtained basic information about Mr B's income and expenditure and his financial situation. Portal had no evidence that Mr B had any savings other than his personal pensions.

Portal assessed Mr B's ATR as being moderately cautious. Which, in summary, it described as being someone with low to moderate levels of knowledge of financial matters, uncomfortable taking risks, and preferring certain outcomes to gambling with their money. Portal shared the questionnaire that it used to assess Mr B's attitude to risk. It gives Mr B's responses, although doesn't share the scoring that implied he had a moderately cautious ATR. His responses indicated a lack of experience of investing, no experience of investing in property, being uncomfortable investing in the stock market, and someone clearly looking for safety in his investments. Overall, I think that Portal's assessment of Mr B as being cautious and looking for certainty was probably fair.

I've looked at Portal's reasons for recommending that Mr B transfer his pension to the SIPP. These seem to be that Mr B wanted to access his PCLS and have a drawdown facility. I think that it's more likely than not that Mr B genuinely wanted to access cash from his pension. He was 56 and no longer working. This wasn't his only pension. And I think it was a considered decision. I say that because, according to Portal's fact-find of 29 January 2014, Mr B initially wanted to raise £5,500. But, on 30 January, he called Portal to say that he instead needed £14,000. Mr B would have been aware at that stage of his potential PCLS of over £17,000. So he appears to have been seeking to access what he needed rather than the maximum that was available to him at the time. And of his own choice rather than as advised.

Mr B was entitled to access this pension as he was already over 55. And he had explained that he had a need to access a lump sum. And with a second, larger, pension untouched, it would likely have been something Mr B wanted to do. So I don't think that it was obviously unsuitable for Mr B to access his PCLS. Which means that it wasn't necessarily unsuitable for Portal to look at how Mr B might best do this.

At the time of this advice, Mr B would most likely have had to transfer from his personal pension in order to take a PCLS and leave the remainder invested in drawdown. Mr B seemed unlikely to want to take income from his pension until age 63 when his medical

insurance payments would be reviewed. I understand that he ended up taking income sooner, but I don't think that was the objective at the time the advice was provided. I don't therefore think Mr B would have wanted an annuity at that time

Mr B's complaint isn't that he shouldn't have accessed his PCLS. And based on his objectives and the options at the time, I don't think that transferring to a SIPP to achieve the objective of accessing his PCLS, was unsuitable. But Portal also gave Mr B specific advice on how to invest the residual fund. And I agree with our investigator that the recommended investments weren't suitable for Mr B.

The following investment recommendations that Portal made were unregulated collective investment schemes (UCIS):

Lakeview UK Investments plc
Real Estate Investments USA plc
Strategic Residential Developments plc

These investments were not regulated by the Financial Conduct Authority (FCA). They were collective investments – structures where many investors pool their money to be invested in the specified way.

At the time that Portal made its recommendation to Mr B, the FCA had already published a report in 2010 about good and poor practice regarding UCIS. It highlighted its concern that UCIS were being recommended to customers for whom they weren't suitable. These types of funds can have a high degree of volatility. They didn't provide a great deal of past performance on which Portal could base its recommendation. They ought to have been treated as speculative investments, only suitable for certain types of investors and only considered for a small part of an investment portfolio. Instead, Portal recommended that Mr B invest almost 40% of this pension into these types of investments.

I think that Portal's description of these funds misrepresented them as potentially being quite safe. It should have made it clearer that these funds were unregulated and offered no protection through the Financial Services Compensation Scheme (FSCS) in the event that the investments failed.

Having looked at these investments, for the reasons I've explained, I don't think they were suitable for Mr B's moderately cautious ATR or his capacity for loss. These investments were speculative and it was unsuitable to recommend their being included in the portfolio for Mr B. And whilst Mr B had some capacity for investment loss, because of the other pension he held, I think his capacity for loss was low. He wasn't working and had told Portal he would be unable to work again. So his ability to replace losses was limited. I also think that it's worth noting that Portal gave no indication that it had considered the way in which Mr B's other pension was invested. It didn't know the extent to which that was exposed to risk. It couldn't rely too much on that other pension to offset risks with this SIPP without understanding it better. With the information it had, it should have made sure that the overall investments in this SIPP matched Mr B's ATR. And it didn't.

Putting things right

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

I think Mr B would have invested differently. And I think the likely impact is that his whole SIPP would have been invested in a way more in line with his ATR. Which includes the likelihood that the choice and balance of the regulated investment funds in his pension

would have been different, as the strategy was set as a whole. This means that it's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr B fairly, Portal must:

- Compare the performance of Mr B'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.
- If there is a loss, Portal should pay into Mr B's pension plan to increase its value by the 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 compensation into Mr B'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 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 a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B 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%.
- If either Portal or Mr B dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr B receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.
- Pay Mr B £100 for the distress caused in seeing a large proportion of his pension fund being lost, during a period when he was able to consider making drawdowns on that fund.
- Repay the adviser's fees together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fees with interest.

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

deduction certificate in respect of interest if Mr B asks for one, so he 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	Still exists but 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 the 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 the portfolio the *actual value* should be assumed to be nil for the purpose of calculation. Portal may require that Mr B 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.

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 withdrawal from the portfolio 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 now exists because of illiquid assets. In order for the Novia SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Portal taking over the investment, or this is something that Mr B 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 investment, to provide certainty to all parties I think it's fair that it pays Mr B 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 benchmark suitable?

I've chosen this method of compensation because:

- Mr B wanted Income with some growth with a small risk to his 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 his 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 Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his 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 Mr B could have obtained from investments suited to his objective and risk

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 November 2022.

Gary Lane
Ombudsman