

The complaint

Mr N complains that Portal Financial Services LLP (Portal) provided unsuitable advice to transfer his personal pension to a SIPP, causing him a loss in pension benefits.

What happened

Mr N received advice from Portal in November 2013 regarding a personal pension with a fund value around £31,000.

Portal documented Mr N's objectives as being:

- Potentially higher investment performance
- Access to greater investment fund choice
- Cheaper pension product
- Ability to pass benefits to his family

Portal considered Mr N to have a balanced attitude to risk (ATR) for this pension product. Portal recommended that Mr N switch his existing pension to a self-invested personal pension (SIPP) and make monthly contributions to the new plan.

Portal recommended the following investment strategy for Mr N's SIPP:

6.5% - Lakeview UK Investments PLC
12% - Marbella Resort and Spa PLC
13% - Real Estate Investments USA PLC
6% - Motion Picture Global Investments PLC
12.5% - Strategic Residential Developments PLC
40% - Split evenly across four regulated investment funds
10% - cash

Mr N followed Portal's recommendation. Mr N subsequently became concerned that the advice he'd received from Portal wasn't suitable for him. His complaint was made to Portal via a representative. But for simplicity, I will simply refer to Mr N through this decision.

Portal explained to Mr N that it didn't think that Mr N had made his complaint within the time limits set out in the dispute handling rules in the regulators handbook (DISP). So didn't consider the merits of the complaint.

Mr N brought his complaint to our service. And the question of jurisdiction was considered by an ombudsman who explained why Mr N's complaint had been made in time. He decided that the case was something we could investigate.

Our investigator then issued her opinion on the merits of Mr N's complaint. She explained why she didn't think Portal's advice had been suitable for Mr N. And proposed a way to put things right.

Portal didn't agree and asked for an ombudsman to consider the matter. I looked into what happened and issued a provisional decision explaining that I also thought that Mr N's complaint should be upheld. But I suggested a slightly different way for Portal to put things right. I allowed both parties time to consider my provisional finding and submit further evidence or comment that may change my mind.

Mr N has responded to say that he agreed with my provisional finding. Portal offered no additional comment and have introduced no additional evidence for me to consider.

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.

Having considered everything again, I'm still satisfied that the view I reached previously was fair and reasonable. I've seen no arguments to change my mind. I've decided to uphold Mr N's complaint for the following reasons, that were previously explained to both parties in my provisional decision.

Portal conducted a fact-find that established that Mr N didn't intend to access benefits in his pension until age 65. Which was still around fourteen years off. So he had a long term for investing his pension. And he wasn't in a position to have any firm ideas about how he might want to take those benefits in the future.

Portal assessed Mr N's ATR as being balanced. It based this assessment on a questionnaire it completed with Mr N. I've looked at the responses on that questionnaire and note that there were a number of answers that ought to have indicated that Mr N may not have had much appetite for risk. For example, the questionnaire indicated that Mr N:

- Was comfortable investing in the stock market;
- Generally looked for safer investments even if that meant lower returns;
- Preferred bank deposits to riskier deposits;
- Tended to be anxious about investment decisions;
- Would prefer to increase the amount being saved rather than take chances with high risk investments;
- Wasn't concerned about the volatility of stock market.

These things would indicate Mr N had little investment experience and preferred safer investments. Although it did indicate he was actually comfortable with his pension being invested in the stock market. As is sometimes the case, the responses on the questionnaire provided conflicting information. In this instance, Mr N also indicated that he:

- Was willing to take substantial investment risks to earn substantial returns;
- Preferred alternative investments that are less volatile even if it reduced liquidity.

The use of tools like this questionnaire aren't uncommon. It wasn't wrong to use a questionnaire. It could be useful to assist in determining ATR. But Portal should have been considering this in the overall context of Mr N's circumstances and knowledge. Mr N had no evidence of investment experience. And where conflicts arise in questionnaire responses, as was the case here, advisers should probe this with the customer in order to come to an agreed understanding of the customer's ATR. I can't see that Portal did this.

As a consequence, I'm not certain that Portal were correct in assuming that Mr N had a balanced ATR. As I've indicated, I think his lack of financial awareness, coupled with the responses he gave, most likely placed his ATR lower than that.

I also disagree with Portal's assessment that Mr N had a sufficient capacity for loss on this pension. Portal offered little commentary in its suitability report. It simply provided generic comments regarding factors that influence capacity for loss. Then concluded "*I believe you have a suitable level of capacity for loss for the recommendation we have made for you*". I accept that Mr N intended to continue making contributions to his pension. So had time to make up some losses. And he had equity in his property. So he did have some capacity for loss. But he had no other investments, so the security of this pension fund was very important to his retirement. So, whilst he had some capacity for loss, I think it was low. He couldn't really afford, for example, to be exposed to high risk or unproven investments, with the chance that they could default.

Portal recommended that Mr N transfer his pension to a SIPP. It did this because it said that delivered Mr N's objectives – outlined above in the background. So I'll give my thoughts on those objectives in turn.

I will consider the objective of *improved investment performance* first. Most investors are likely to want the best performance from their pension. Within the limits of the risk that they're prepared to accept. Portal identified that Mr N's previous pension averaged 8.31% growth a year over the previous 5 years. At that time industry projections for low / medium / high investment growth were 5% / 7% / 9% respectively. So it isn't clear that his pension was performing poorly given Mr N's ATR. Or that Mr N was unhappy with those returns. However, Mr N may well have been interested in moving his pension if the likelihood of better returns was high enough. But Portal weren't able to offer guarantees of that.

Portal's recommendation concluded with the statement "*by investing in the personal pension you will benefit from a wide selection of funds to ensure that your pension will achieve the best possible growth in the most effective funds*". Which was likely to be persuasive for Mr N, coming from a trusted financial adviser. But I don't think that the suitability report gave sufficient explanation to support that finding. It provided no comparative performance projections to indicate to what extent Mr N's pension performance might have been improved. Overall I'm not convinced that a switch was really justified on the basis of improving performance.

The suitability report recommended investments – listed above in the background. Some of these recommendations related to investments that Portal were describing as *secured bonds*. It explained that they were fixed term investments and that they were illiquid – not easily bought or sold. Portal explained that the investments were secured against assets such as land or property. Which I think gave the impression that they were quite safe. It explained the target returns on each of the *secured bonds*. These varied from 7% to 11%. But Portal's recommendation failed to adequately explain the unregulated nature of these investments. And the potential for the loss of the entire investment in the event that the fund defaulted.

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

- Lakeview UK Investments plc
- Marbella Resort and Spa plc
- Real Estate Investments USA plc
- Motion Picture Global Investments 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 N, 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, and even where suitable for the right type of customer, only considered for a small part of an investment portfolio. Instead, Portal recommended that Mr N invest 50% of his entire savings into these unsuitable product types.

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 schemes defaulted. Having looked at these investments, for the reasons I've explained, I don't think they were suitable for Mr N's ATR or his capacity for loss.

I'll now consider the objective of *access to greater fund choice*. A SIPP most likely offered that. It certainly meant that these UCIS only became available to Mr N because of the recommendation to transfer to the SIPP. Having a greater range of options might have been a reason to recommend a transfer, if the existing pension didn't already have suitable options. But Portal haven't shown that it considered the existing fund choices in his previous personal pension. And I consider it highly likely that there was little wrong with either his existing investment or an alternative with the same provider.

There's little compelling evidence to suggest that Mr N expressed an interest in unconventional or unregulated investments. He had no investment experience and showed no indication that he wanted to have any control or regular input over the way his pension fund was invested. The sums available to invest were quite modest. So I don't think he needed the range of fund options that warranted a SIPP.

And I can't see that there were any other convincing reasons to justify the transfer either. The SIPP had an annual platform charge of 0.5% which was lower than the 0.9% charge on his existing personal pension. But the more complex nature of the investment choices meant it was more likely that Mr N would need ongoing reviews. Which he agreed to with Portal costing another 1% a year. This introduced a further cost that might not have been necessary if he'd remained in his existing scheme.

It was also likely that the funds that would be held in the SIPP wrapper would also have charges that Portal didn't adequately explain or take into consideration. The suitability report merely said "*a fee may also be charged by the investments that your pension funds invest in. Such fees will be made clear to you in your provider quotations but may for example represent 0.5% of the value of the amount invested in the investment*". Having recommended specific funds, Portal ought also to have established the costs of those funds and the impact of all of the charges on Mr N's pension. Overall, I think that Portal recommended a more expensive option for Mr N than his existing pension.

It follows that, for the reasons I've given, Portal's recommendation, that Mr N transfer from his existing scheme to a SIPP, was unsuitable. The scheme that he had, appeared to meet his objectives. Portal made no reference to the type of investments he held in that scheme, or whether they matched his ATR or not. I don't think it gave much consideration to the idea that it may have been in Mr N's interests to leave his pension where it was. But for Portal's

unsuitable recommendation, I think it's more likely than not that Mr N would have remained in his previous personal pension.

Putting things right

Fair compensation

My aim is that Mr N 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 N would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I'm satisfied that what I've set out below is fair and reasonable, taking this into account and given Mr N's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr N fairly, Portal must:

- Compare the performance of Mr N's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional 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 N'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 N'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 N won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr N's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr N is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr N 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%.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest, it should tell Mr N how much has been taken off. Portal should give Mr N a tax deduction certificate in respect of interest if Mr N 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	Notional value from previous provider	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)
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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 is likely to be the case here.

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 illiquid assets the *actual value* should be assumed to be nil for the purpose of calculation. Portal may require that Mr N 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.

Notional Value

This is the value of Mr N's investment had it remained with the previous provider until the end date. Portal should request that the previous provider calculate this value.

Any additional sum paid into the Novia SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Novia SIPP should be deducted from the notional 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 notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Portal will need to determine a fair value for Mr N's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

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 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 N 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 N 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 the above benchmark suitable?

I've chosen this method of compensation because:

- Mr N wanted Capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- 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 N'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 N into that position. It does not mean that Mr N 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 N could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My final decision is that Portal Financial Services LLP should pay the amount calculated as set out in '**putting things right**' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 30 November 2022.

Gary Lane
Ombudsman