

## **The complaint**

Mr N has complained to Portal Financial Services LLP ("Portal") about advice he received to transfer his personal pension to a Self-Invested Personal Pension (SIPP).

## **What happened**

In 2014 Mr N was cold called by a business offering him a review of his pensions. Mr N agreed to the review and a meeting was arranged with an adviser from Portal. The suitability report completed by the adviser at the time of advice recorded Mr N's circumstances as follows:

- He was 51 years old, married and employed earning £18,000 per year.
- He owned his own home, which was worth approximately £200,000 and he had an outstanding mortgage of £170,000.
- He had no other assets and disposable income of £200 per month.
- Mr N had been assessed as having a balanced attitude to risk (ATR).

The paperwork also confirmed that Mr N held a personal pension with a provider I'll refer to as "Firm A". This plan had a transfer value of £10,659 and over the past five years it had produced an average return of 12.36%. Mr N was being charged a 0.75% annual management charge (AMC) by Firm A and the plan had an early exit charge.

Mr N's objectives at that time were recorded as:

- Improved fund performance
- To move away from equity backed funds
- Switch to a cheaper scheme
- Greater fund choice
- Flexibility

The adviser recommended that Mr N start a Stakeholder pension plan, contributing £40 per month. It also recommended that he transfer his plan with Firm A to a SIPP with Novia. And that he invests the SIPP in the following funds:

- Lakeview UK Investments PLC 4.96%
- Marbella Resort and Spa PLC 7.94%
- Real Estate Investments USA PLC 7.94%
- Motion Picture Global Investments PLC 7.94%
- Strategic Residential Developments PLC 4.96%
- Tambaba Developments PLC 7.94%
- UK Hotel Development 4.96%
- Invesco Perpetual Distribution 10.67%
- Kames Ethical Cautious Managed 10.67%
- Premier Multi Asset Distribution 10.67%
- Standard Life Dynamic Distribution 10.67%
- Cash 10.68%

Mr N accepted the recommendation. The Stakeholder plan was set up and his Firm A personal pension was transferred. It was initially transferred to the Stakeholder plan in error but was subsequently moved to the SIPP and invested as set out above. Portal charged Mr N an initial fee of 5% of the total transfer value of the Firm A plan and an ongoing adviser charge of 1% per annum. The AMC for the Novia SIPP was 0.5%. And the Stakeholder plan had an AMC 0.55%.

In 2019, with assistance from a Claims Management Company, Mr N complained to Portal about the advice he'd received in respect of the transfer. In summary, he complained that:

- He was provided with unsuitable advice to transfer his former pension and make high risk investments
- He was unhappy with the charges and didn't think they were explained properly
- He didn't understand why the former scheme was unsuitable for his aims

Portal reviewed the complaint but it was satisfied that its recommendation was suitable so it didn't uphold the complaint. Dissatisfied with Portal's response, Mr N referred his complaint to our service for review.

#### Our investigator's view

Our investigator reviewed the complaint and thought it should be upheld. In his opinion letter, he set out his views on each of the aims and objectives stated in the suitability report. In summary he said:

- Improved performance

One of the stated aims was to improve the performance of the pension fund. Sometimes this is done if the fund is consistently underperforming. The suitability report highlights that the existing pension has been achieving around 12.36% average growth per year, over the previous 5 years.

There were a number of brief descriptions explaining the unregulated investments including the proposed return per annum. But no projections for total expected return from the new investments. Therefore, the investigator was unable to confirm why this recommended investment would be suitable to achieve that aim nor how it expected to beat the returns which had been achieved by this fund.

- Reduce the cost of the pension

Portal has suggested another reason for recommending this transfer was to reduce the cost of the pension.

The 0.5% SIPP management charge is cheaper than the Firm A management charge. But when taking into account the 1% ongoing adviser fees attributable to the SIPP, it would actually work out as more expensive than the previous arrangement. There was also a 5% transfer fee, and an early exit fee on the Firm A plan. With no explanation of how this would be recouped by the recommended products. This meant it wasn't a suitable recommendation to achieve reduced fees for the Mr N.

- Flexibility

One of the stated aims of the transfer was to create more flexibility in the pension. The recommendation to move the personal pension to a SIPP therefore is

questionable. There are often suitable investments available from the current pension provider, which do not usually incur transfer costs or early exit fees.

The new arrangement was also made less flexible as the recommendation to invest in the bonds, required Mr N to sign the below statement:

*"I fully understand that the bonds invested in via the Novia Platform are relatively illiquid. This is acceptable to me as I do not wish to annuitise or take benefits from this plan for 13 years and therefore do not need to access the funds within my pension plan until this time."*

Taking account of the above, the investigator was unsure why this would have been a suitable recommendation, when considering one of the main aims was to increase the flexibility of the pension.

- Reduction of risk

Another aim of the switch was to reduce the risk presented by the Firm A funds. Mr N was noted as having a balanced attitude to risk and therefore an investment in line with this would be sought after.

The Firm A funds were held as 17% Security fund, which invests in the money market and would be considered low risk and 83% International fund which appear to be a global equities tracker which is a high-medium risk investment. The investigator considered the overall mixture of these two previous funds as not unreasonable for a balanced risk investor.

However, in the new arrangement, there appears to have around 46.64% of the pension invested in potentially illiquid investments which rely on the underlying project being successful and put Mr N's capital at risk if the projects fail.

The investigator thought these made them higher risk investments and didn't believe Mr N was likely to understand the risk and complexity of these projects. The investigator highlighted the Marbella Resort and Spa PLC, as an example of this. This investment was behind on its funding and Novia suspended investments into this fund in September 2014.

Overall, the investigator didn't think it was in Mr N's best interests to switch his pension. So he set out in his opinion letter what Portal needed to do to put things right.

Both Mr N and Portal accepted the investigator's findings so our of file was closed on the basis that Portal would settle the matter in line with the investigator's findings.

However, Portal subsequently retracted its agreement to the investigator's findings. It said that it was concerned the investigator had said that the charges were higher with the SIPP when factoring Portal's initial and ongoing advice fees. It thought that this was unreasonable as this assumed Portal should not have charged a fee for the service provided. It said that had the advice been for Mr N to retain his personal pension or switch funds within his portfolio, then Portal would still have required a fee of some kind.

It also said that the investigator had unfairly conflated the 1% ongoing fee it charged with the provider fees. It felt that the Novia SIPP was the cheaper option when factoring Portal's initial fee. The ongoing fee wasn't factored into the analysis because this service was optional and Mr N wasn't obliged to continue ongoing management of the plan. Considering

this, Portal felt that the investigator had incorrectly concluded that the transfer was unsuitable because of the higher charges.

Mr N hadn't received his settlement from Portal, so he contacted our service and asked for his complaint to be reopened.

As both parties requested that the matter be reopened, it was agreed that the complaint would be passed to an ombudsman to reach a final decision.

### **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.

Under the Dispute Resolution rules, set out in the regulator's handbook, Portal has an obligation to settle matters promptly and it has a duty to comply with any settlement it has agreed to. I refer Portal to the following rule:

Complying with awards and settlements DISP 3.7.12R

*A respondent must comply promptly with:*

1. *any award or direction made by the Ombudsman; and*
2. ***any settlement which it agrees at an earlier stage of the procedures {my emphasis}***

As can be seen from the above rule, once a firm has agreed to a settlement, it must comply promptly. So it's extremely disappointing that Portal retracted its agreement to settle this complaint in line with our investigator's findings. This has not only delayed the resolution of this matter for Mr N but it's also not in line with the regulator's rules.

It's also disappointing that Portal has raised this point about its fees when ultimately, the SIPP was unsuitable for other reasons; even if the transfer was deemed suitable, the investments were not.

Our service would not usually reopen matters where an agreement has been reached by both parties. But in this case Mr N also requested that the matter be reopened, so we have agreed to do so on this occasion.

Firstly, I should explain that I agree with the outcome our investigator reached and for mostly the same reasons. So I don't intend to reiterate what the investigator has already said; I only intend to address the issue that Portal has said it no longer accepts, that being the issue of its ongoing fee being taken into account.

As alluded to above, the issue of whether the new arrangement was more expensive is only one of the reasons this complaint was upheld. So even if I was to determine that the new arrangement was cheaper, which I haven't, the complaint still succeeds on the other aspects.

I say this because, regardless of the cost of the SIPP, they aren't suitable for every investor. While they offer greater flexibility in terms of the types of investments that can be made into them, this flexibility isn't necessarily something that less experienced investors, like Mr N, require. And SIPPs generally tend to be suited to investors that are comfortable making their own investment decisions or who have sufficient funds to pay to have their funds managed. Mr N wasn't either of these.

It doesn't seem to be in dispute that the investments Portal recommended were unsuitable. Having considered the investments further, I agree this was the case. They were high risk and Mr N didn't have the appetite for risk or capacity for loss that these types of investments carried. Portal classed Mr N as having a balanced ATR. However, given his lack of investment experience and his capacity for loss, I think he should have been more accurately described as having a low/medium ATR.

The main reason the transfer was recommended and the SIPP was established seems to have been so Mr N could invest in a number of UCIS and other high risk investments, which were not suitable for him. So, as I've already said above, the complaint still succeeds even if the transfer was deemed suitable. As such, the remedy to put things right is the same, regardless of the findings in terms of the actual transfer.

However, for completeness, I have addressed Portal's concerns about the fees below.

Portal says that by factoring in its initial and ongoing advice fee the investigator concluded the transfer was unsuitable. But it considers this is unreasonable as it assumes Portal shouldn't have charged a fee for the service provided, even if it had recommended that Mr N retain his existing plan or switch funds within his existing arrangement.

It's my understanding that Mr N had agreed to a free pension review so had Portal not recommended Mr N take any action with his pension, it wouldn't have been able to charge a fee. However, I do accept that if it had given Mr N advice to switch investments within his current plan, then it might have decided to charge a fee for this particular advice. But that's not what happened here.

Mr N was cold called by a company working for Portal so it doesn't suggest to me that he was so unhappy with his existing arrangement that he was actively looking to move his pension fund or switch investments.

The fees represented a sizable reduction to Mr N's already modest transfer value. And the ongoing SIPP charges made the cost higher than his existing arrangement. Portal's initial fee was 5% of Mr N's transferred fund value and its ongoing advice fee was 1%. I appreciate that the ongoing servicing was an optional service that Mr N chose to have. But with so little investment experience, I can't see that Mr N would have been happy to manage the SIPP investments himself. So whilst it may have been an optional service, I think the cost needed to be included in the overall assessment.

The SIPP's AMC was 0.5% and there were additional charges for each individual investment within the SIPP. Whereas for Mr N's existing plan, the only cost he was incurring was a 0.75% AMC.

Mr N's existing arrangement was invested more in line with his ATR and the average return over the past 5 years was high at 12.925%. That meant that when taking account of the significant reduction in fund value after Portal's fees and ongoing charges were taken - and bearing in mind Mr N was, at most, a balanced investor - I don't believe there was great prospect of making up the cost of the switch via investment growth without taking significant investment risks. And as I've already said, I don't believe the investment approach Portal advised Mr N to take was suitable.

I think more appropriate advice would've been for Mr N to leave his existing pension where it was. And had Portal provided Mr N with this suitable advice when it completed its free pension review - no fees would have been payable in respect of the transfer.

I therefore uphold this complaint and direct Portal Financial Services LLP to pay redress as set out below.

## 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 take the view that 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 am satisfied what I have 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:
- Portal should pay into Mr N'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 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 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 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	Status	Benchmark	From ("start	To ("end	Additional
-----------	--------	-----------	--------------	----------	------------

name			date")	date")	interest
The SIPP	Some liquid/some 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)

### **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 N 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.

### **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 withdrawal from the 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.

### **Why is this remedy suitable?**

I've decided on 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 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 N in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 16 December 2022.

Lorna Goulding  
**Ombudsman**