

## The complaint

Mr W has complained that Portal Financial Services LLP (previously known as Portafina LLP) 'ruined' his retirement plans by advising him to make inappropriate investments within a Transact self-invested personal pension (SIPP).

## What happened

Portal advised Mr M to transfer his Scottish Widows personal pension containing both protected and non-protected rights, and a similar Standard Life pension to Transact in 2012. A number of funds were selected at outset, which Mr W confirmed to this service did not subsequently change. They were:

Hypa Rathwaite LP Exempt Property UT	£19,038
Cool Blue Samui Fund - Kudos Asia Investments Ltd	£4,237
EOS Solar Investments Limited	£5,651
Venture Oil Investments Ltd	£8,966

At the time of advice, Mr W was aged 57. He has told us that:

- He was divorced without any dependants
- He was in good health
- Employed on a salary of £18,000
- He did not have any other occupational pensions than the above
- He had no other assets, but £33,000 in liabilities including his mortgage
- He was looking to obtain a pension income of £18,000pa from age 66

Portal took 5% initial commission and 1%pa renewal commission on the sale, all of which would have been funded by explicit deduction from the SIPP. Transact has only provided partial information to this service, but my understanding is that Mr W may have accessed the tax-free cash he was entitled to from his new SIPP at that time for two reasons:

- Later on in 2017, he was referred to as being in capped drawdown, which would be the result of taking tax-free cash.
- This was, essentially, part of Portal's business model – it promoted its services to assist clients with, amongst other things, accessing tax-free cash.

My understanding is that Mr M also subsequently invested in two 'Dimensional' funds with the remaining funds in his SIPP (Global Short and World Equity), and EOS Solar Investments – and that again this was at Portal's instigation. The funds other than the 'Dimensional' funds subsequently became illiquid. The following is a snapshot of what he held on 5 October 2016:

Investment	Original Cost	Units/Shares	Price	Value
Cash				£1,966.60
Cool Blue Samui Fund - Kudos Asia Investments Ltd (5k)	£4,252.38	4,238.0000	£1.0000	£4,238.00
Dimensional Global Short Dated Bond GROSS (Acc) GB00B735N017	£2,206.77	200.9510	£11.3900	£2,288.83
Dimensional World Equity Fund GBP (Acc) IRE IE00B3Z8MM50	£3,038.72	186.4820	£19.5700	£3,649.45
EOS Solar Investments Limited EUR B-26 (5k)	£5,663.00	6,735.4060	£0.8384	£5,646.96
Hypa Raithwaite Exempt Prop UT(Min10k) Round 1k	£19,038.00	19.0000	£1,000.0000	£19,000.00
SSGA GBP Liquidity Fund Inst Stable NAV (Inc) IE0003410440	£6.41	6.4100	£1.0000	£6.41
Venture Oil Investments Ltd Com Shs USD March12 Syn B9	£8,966.33	14,210.0000	£0.6684	£9,497.96
<b>Total</b>				<b>£46,294.21</b>
<b>Total Portfolio Value</b>				<b>£46,294.21</b>

Following a phone call with Portal in February 2017, and subsequent advice letter, Mr W accessed the Dimensional funds in order to pay for his daughter's wedding. The total fund value at that time was £46,331, which he moved from capped drawdown into flexi-access drawdown in order to take a taxable lump sum of £5,596.

In June 2017 Mr W was able to liquidate the EOS Solar fund – but at a complete loss. I can see that as at January 2019, his remaining three funds were valued at nil, and he was still unable to access them in October 2020. Subsequently, the Venture Oil investment was sold (written off) for nil value in August 2021 – leaving only the Cool Blue Samui and Hypa Raithwaite funds remaining.

In December 2019, Mr M reached the age at which benefits were due to be taken from his SIPP. From March 2020 onwards, Portal has offered Mr W an annual income payment itself of £2,731pa in lieu of his ability to access the funds. Mr W has been accepting these payments from Portal.

In an undated letter which Portal says was in August 2020, Mr M then complained - on the advice of a friend of a friend. In his letter he said that:

- He was on a modest salary of £21,000 per year and not financially experienced.
- He was assured that the funds Portal proposed were '*an excellent investment with little risk*'.
- Portal had, in fact, wrongly promoted unregulated collective investment schemes (UCIS) to him and given him unsuitable advice which was also in breach of the Financial Conduct Authority's Principles for Businesses (PRIN).
- His remaining pension looked likely to be worthless.

A number of other points were made in the letter that confused Portal's role with that of Transact, which I'm not considering in this decision.

In response Portal agreed that Mr W was entitled to complain about the advice he received. But if he did this, its income offer would have to be withdrawn (and the payments made would be taken into account in any wider compensation payment required following the complaint). Notwithstanding this I gather Portal may have made a subsequent payment of £2,731 to Mr W in 2021.

In any event, Portal also said that Mr W was too late to bring a wider complaint about the advice he received because he had known of challenging conditions for the funds he'd invested in since at least May 2016. It referred to his phone call with its agent in February 2021 (when he was making a withdrawal) as being a point at which he should have had cause for concern. So, Mr W referred his complaint to the Financial Ombudsman Service.

Portal has only provided us with a file on the complaint which relates to its dealings with Mr W from 2016 onwards.

Eventually, Portal's time limits objection reached another ombudsman for a decision. My colleague noted that Portal had begun reassuring Mr W that his investments would produce the expected returns before any significant drop in values began showing on the statements he received from Transact.

Yet, because Mr W was trying to access funds from his pension earlier than planned in January 2017, his phone call to Portal of that month became particularly relevant. My colleague noted that during this call, Mr W had made it clear he felt he hadn't consented to having investments tied up until his retirement age, and that he was disappointed to find his withdrawal options were limited. Towards the end of the call, when discussing some of the specific investments, Mr W said, "*So, what we are saying is I can't touch any of that at all until I'm 65...which is not right really*".

My colleague considered Mr W's comments in this call met the regulator's definition of a complaint, which is in essence an expression of dissatisfaction about a financial service Portal has provided which alleges that he has suffered (or may suffer) financial loss and which relates to an activity under the Financial Ombudsman Service's jurisdiction. Under DISP 2.8.2R(2) in the regulator's handbook, Mr W has at least six years from the date of investment to bring a complaint - and as he brought his complaint within that period it was clearly within time.

Having listened to the call, I agree with my colleague's reasoning on this point. So, that is enough to say that Mr W's complaint was raised within time. A decision that a complaint is in jurisdiction isn't our final word on the matter and Portal has been able to raise any further points it has regarding this - but I note it has not done so. I'll therefore be moving on to discuss the merits of the complaint in the rest of this decision.

Our email to Portal enclosing this decision on 29 September 2022 also said, '*In the meantime - if you haven't already - please make sure you've sent us all the information you think is relevant to [Mr W's] complaint.*' The investigator chased Portal for the part of its file which related to its dealings with Mr W before 2016 on 10 October 2022, and no further information was provided.

The investigator issued his view that the complaint should be upheld on 24 November 2022. Again, Portal has not responded to this. I have largely reproduced the content of that view in my findings which follow. I make no apology for this as I am largely in agreement with what the investigator has said.

### **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.

Portal's final response to the complaint agrees that it advised Mr W in 2012. But it has provided no rationale for why Mr W was advised to switch his pensions, or why the adviser felt the particular funds selected were appropriate for him. It may well be the case, given what I know of Portal's business model, that he was looking to take tax-free cash from his pension. Mr W has also not retained any paperwork. However, that does not automatically mean he needed a SIPP - from which he would be charged 5% at the outset and 1% per year in addition to Transact's own charges - or the non-mainstream funds that have been chosen in this case, in order to do so.

Mr W has detailed his circumstances in 2012 to us above – to his best recollection. The investigator also noted that when Portal later carried out a fact find before he made a further withdrawal in 2017, he fell into the lowest risk ‘cautious’ band on its attitude to risk scale. Given that Mr W’s recollection is he had no assets outside his two existing pensions, I have little reason to come to a different assessment.

I also can’t see that he had any experience of taking investment risk outside the insured funds he had invested in within the Standard Life and Scottish Widows plans. In particular, he had no experience of the type of funds which seem to have formed the majority of the investment recommendations Portal made. These appear to have the characteristics of unregulated collective investment schemes (UCIS) but if I am wrong on that, they do fall within the broader category of non-mainstream pooled investments for which the risks and target investors for suitability are substantially the same.

The then regulator, the Financial Services Authority, issued a report into good and poor practice in recommending UCIS investments in 2010, which I consider is relevant here. It highlighted as good practice where unregulated investments, where they were suitable at all, were restricted to between 3% and 5% of a portfolio with ongoing monitoring.

It is clear that the recommendation made to Mr W was far in excess of this figure and, more to the point, as a cautious and inexperienced investor who would have been incapable of understanding the multiple risks involved, I don’t think any of these funds should have been recommended to him at all.

As the investigator said, non-mainstream pooled investments, by their very nature, have multiple significant risk factors associated with them – including that they are generally unregulated, there is counterparty and currency risk, they are typically tied up without access to cash for long periods, and they are highly focused on particular market areas.

There is also the prospect, as the investigator said, that Portal was in breach of the general prohibition in promoting these investments to Mr W at all, if they were UCIS and if it was not supported by a valid exemption set out under statute or in the COBS rulebook. As the investments seem far from suitable for Mr W, and he was not a high net worth or sophisticated investor, I don’t think the investments (if they were UCIS) could ever have been lawfully promoted to him either – but my findings don’t turn solely on this point as they were also unsuitable for him.

Suitable advice, if Mr W did need to take benefits, should have involved exploring whether his pensions could be consolidated within a low-cost arrangement such as one of the existing plans if this was appropriate or, if they were too expensive or offered insufficient options – such as the ability to take tax-free cash – a new arrangement with stakeholder-level charges.

Stakeholder arrangements had been introduced in 2001 to bring down the cost of pensions. But for funds the size of Mr W’s, even some SIPP’s by 2012 offered an overall proposition which, including the cost of funds selected, would remain within the stakeholder ‘cap’ of 1.5%pa. Portal has provided no evidence to show that it considered this option, so I think it most likely that on suitable advice Mr W would have been advised, and agreed, to invest differently than with Transact and not in the non-mainstream funds used.

## **Putting things right**

In assessing what would be fair compensation, my aim is to put Mr W as close as possible to the position he would probably now be in if he had been given suitable advice.

I think Mr W would have remained with his previous providers, or consolidated his funds into a low-cost alternative to the Transact SIPP. Even if he had remained with his previous providers, it may not be possible to obtain a value for what those previous policies would have been worth. That is now particularly the case given that Mr W has gone on to access funds from his pension that may always have necessitated a switch to a different plan.

The investigator suggested that in this event, a benchmark for investment growth could be used instead – and I think in the circumstances that will inevitably need to be the option Portal uses. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr W's circumstances and objectives when he invested. Portal Financial Services LLP must therefore:

- Compare the performance of Mr W's investment with the benchmark shown below. 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.
- It must also pay any interest set out below.
- If there is a loss, it should make a payment into Mr W's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Portal shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Portal is unable to pay the compensation into Mr W'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 W won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. If Mr W has already taken his full tax free lump sum entitlement, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Portal must also pay Mr W £300 for the distress and inconvenience as a result of the significant collapse in value of his pension, which he should not have been exposed to by its advice.
- Provide the details of the calculation to Mr W in a clear, simple format.

Income tax may be payable on any interest paid. If Portal considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction

certificate in respect of interest if Mr W 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
Transact 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 settlement	8% per annum simple from date of this decision if not settled within 28 days of receipt of Mr W's acceptance

### **Actual value**

This means the actual amount payable from the investment at the end date.

If, at the end date, the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, the actual value should be assumed to be nil to arrive at fair compensation. Portal should take ownership of the illiquid portfolio by paying a commercial value acceptable to the pension provider. This amount it 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 wish to require that Mr W provides an undertaking to pay it any amount he may receive from the portfolio 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 W's investment, had it performed in line with the benchmark shown until the end date.

The gross amount of any withdrawal from the Transact 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. Any payments Portal has already paid Mr W itself in lieu of his expected income may be treated as a notional withdrawal for the purposes of this calculation. 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.

The Transact SIPP only still exists because of illiquid assets preventing Mr W from moving to a simpler arrangement. In order for the Transact 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 portfolio, or this is something that Mr W 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 portfolio, to provide certainty to all parties I think it's fair that it pays Mr W an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the

fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the Transact SIPP to be closed.

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

I've chosen this method of compensation because:

- Mr W wanted Capital 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 W'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 W into that position. It does not mean that Mr W 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 W could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

I uphold Mr W's complaint and require Portal Financial Services LLP to pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 January 2023.

Gideon Moore  
**Ombudsman**