

## **The complaint**

Mr B complained about the suitability of the advice he received from Portal Financial Services LLP to transfer his two personal pension plans (PPPs) into a self-invested personal pension (SIPP).

At the time Portal gave its advice it was operating under a different name. But as it's now known as Portal, I shall only use that name in this decision.

## **What happened**

Mr B says he was originally contacted through a cold call with the offer of a pension review. He hadn't been seeking advice but when he was offered a free review, he accepted and was visited by a Portal adviser at his home. Portal went on to advise him to start a SIPP with Novia and to transfer the funds he held in two PPPs with ReAssure. Portal also advised Mr B on how his funds ought to be invested. Mr B accepted the advice he was given.

At the time of the advice (2013) Mr B was 44 years old. He was married and working as an HGV driver. Mr B had no investment or pensions expertise or experience; indeed he had only ever had one bank account.

The funds from Mr B's PPPs were transferred into his new SIPP and together their transfer value was just under £8,500. Mr B says these were his only pension arrangements.

In summary it's said Portal unsuitably advised Mr B to start the SIPP with Novia and for him to transfer his pension funds into this SIPP, where they were invested with Portal's advice. It's said Portal failed to do what they ought to have done as part of the advisory process and failed to meet the requirements they needed to meet as regulated financial advisers. And it's said this has caused Mr B a loss he can ill-afford.

An application for the transfer of Mr B's existing PPPs to the Novia SIPP was submitted online in December 2013 by a Portal adviser.

The transfer completed in January 2014 and the charges involved in the transfer included an initial adviser charge of 5% of the transfer values, (approximately £422). There was also an ongoing adviser charge of 1% per annum of the fund value deducted from the SIPP. As well as product charge applied by Novia, and a Novia Documentation charge.

The fund value was split between a range of investments including:

- Aegon Ethical Cautious Managed Fund
- Premier Miton MA Distribution
- Invesco European High-Income Fund
- Marbella Resort Spa
- Lakeview UK Invest
- Motion Picture Global
- Strategic Residential Development Feb 2014

- Cash

In April 2014 units in the Premier Miton MA Distribution Account were valued at £0.00. In August 2017 liquid assets were disinvested and just over £5,067 was transferred out of the first SIPP wrapper to a new Novia SIPP wrapper with the same charging structure, under the model name Wrapper 2 Headway Liquid.

This activity is again linked to Portal. Novia provided the names of the advisers at Portal linked to Mr B's plans. The new portfolio was split between:

- Dimensional World Equity Account 78.71%
- Dimensional Global Short Dated Bond Account 16.29%
- Cash 5%

Mr B says that after the first meeting at his home in 2013, he never saw anyone from Portal again in person. Mr B says Portal would send him documentation to return to themselves.

In February 2021 Mr B was contacted by his representatives who drew his attention and concern to the advice he had received in regard to his SIPP products and investments. A complaint was made to Portal on Mr B's behalf; however Portal didn't respond. In May 2021 Mr B's complaint was referred to this service.

Portal were asked to provide copies of their file and were written to in May and November 2021, but we received no response. In December 2021 we let Portal know we'd received confirmation Mr B was a client of Portal, he was linked to various of their advisers and trading names. We received no reply to this letter.

Mr B confirmed to us that at the time he had no investment experience. He said he relied on Portal as professionals. He told us he was and is a cautious investor who prefers to keep his finances simple. He had only recently re-joined a work pension scheme as he became more concerned about funding his approaching retirement as he had no other pension arrangements in place.

#### Investigator's view

Having informed parties this service would progress the investigation in the absence of anything from Portal, an investigator went on to issue her view. She upheld the complaint as she didn't think Portal had given suitable advice to Mr B. She didn't think there was sufficient evidence to demonstrate a transfer was necessary or in Mr B's interests, nor did she think it could have been reasonably expected to deliver a financial benefit to Mr B.

The investigator went on to set out what she thought Portal ought to do to redress any loss caused to Mr B and how, as well as an additional award for his distress and inconvenience.

#### Portal's response

Portal then contacted this service to say they disagreed with the view. We gave them the extra time they requested to submit their reasons.

Portal object to Mr B's representatives representing Mr B. They also consider the Novia SIPP met Mr B's needs. In summary they say that during their fact find meeting on 23 May 2013 Mr B set out his objectives. They consider the Novia SIPP involved reduced charges compared to the arrangement Mr B had at the time. They suggest it's a valuable benefit that Mr B could release tax-free cash without taking an annuity and say the available additional drawdown feature wasn't available with some other types of pension plan.

Portal say that at the time the Novia plan was part of their firm's core products. They consider it was a competitively charged plan offering the right type of options as well as a range of investment options.

Portal thought their adviser had been right to conclude the historic performance of Mr B's plan over the preceding five years could be improved when considering Mr B's attitude to risk and the period of time until retirement.

Portal stress their 1% annual management fee was not mandatory and was an optional service available to Mr B, which they said would enable him to expand the growth of his investments and keep them under review. They said the charge would include facilitating further withdrawals and the provision of advice where needed. So they didn't think this charge ought to be included in any charge's comparison.

Whilst Portal sent in the reasons they say the investigator's view was wrong, they did not provide any additional material.

The investigator wasn't persuaded to change her thinking and the case was referred for an ombudsman to make a decision.

It's said Mr B has suffered a loss of around £3,390, I'm not entirely clear on how this sum was reached. This has not been clarified. I understand that whilst the SIPP received just under £8,500 from the PPPs in January 2014, by January 2021 the SIPP had a value of just over £7,700; although it appears the SIPP contains some illiquid investments.

#### Provisional decision

On 13 December 2022 I issued a provisional decision on this case. I indicated I intended to uphold the complaint and I set out what I intended to say Portal must do. I didn't disagree with the general findings of the investigator, but I set out that I intended to increase the award for distress and inconvenience, and I wanted to clarify some elements of the proposed redress with additional detail.

Mr B's representatives accepted the provisional decision, Portal did not reply.

#### **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.

Based on everything I have seen I have not changed my thinking from that set out in my provisional decision. I uphold Mr B's complaint.

In reaching my provisional decision I have taken into account everything provided. I note that Portal's only contact about this complaint has been in respect of the provision of written reasons as to why they don't agree with the investigator's view. In these reasons they refer to an initial fact find meeting, and Mr B's attitude to risk in general terms, and to comparisons they say they conducted between arrangements. However Portal have not provided any information on this or from their business file. I highlighted this in my provisional decision too.

As I explained, in such circumstances, I find it difficult to attach any substantial weight to what Portal said in their submissions. In other words I didn't find them persuasive. It isn't clear to me for example how or why Portal consider they are in a position to make

submissions about their advice or Mr B's attitude to risk, without saying what they concluded, let alone how they reached such conclusion.

We did not receive copies of any contemporaneous documentation from Mr B and his representatives either. It was Novia who let us know that because Portal set up matters online there is no copy of the original application form. I've seen, as a consequence of what Novia have told us, that as recently as 2021 Portal were attached to Mr B's plans and apparently receiving limited ongoing adviser fees.

In reaching my provisional decision, I've taken into account the relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Business (PRIN) and the Conduct of Business Sourcebook (COBS). Where the evidence is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities, that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Portal's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair, and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly, and professionally in accordance with the best interests of its client (the client's best interests' rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. COBS 9.2.1R (1) says:

*"A firm must take reasonable steps to ensure that a personal recommendation is suitable for its client"*.

Portal have not provided any evidence that those steps were taken or therefore that the recommendation was suitable.

With regard to the pension advice Portal gave on changing providers, in 2008 the regulator issued a report entitled *"quality of advice on pension switching"*. The report provided examples of poor, compliant and good, examples of advice given since pensions A-day. Some examples below note what it thought would constitute unsuitable advice:

- *A pension that is more expensive than a stakeholder pension, but a stakeholder pension would have fulfilled the customer's needs*
- *A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was the flexibility of a drawdown option, but there is no evidence this option was needed)*

The regulator clearly outlined what should be considered and stated cost was a factor as well as the provision of suitable reasons for transfer. Therefore, if additional costs were involved with the advice to switch or if the client ended up paying for services, they were unlikely to utilise, this is likely to indicate that the advice was unsuitable.

Portal have not provided evidence as to why the transfer may have been suitable, beyond what they said in answer to the view. I've seen what Portal say about why the Novia product was one of their preferred options at the time. My decision isn't concerned with the Novia product per se but with the need and cost to Mr B in changing provider, in addition to what followed.

I think there were additional costs involved as a consequence of transferring to a new provider and there is nothing that persuades me that appropriate consideration was given to the cost implications, let alone consideration as to whether the SIPP was necessary and thus consideration was made of any alternatives to transfer.

Given Mr B's age and circumstances I'm not persuaded potential future access to tax-free cash or a specific drawdown option, provided Mr B with a service he needed, and not at that time or that it was of sufficient value to outweigh the costs involved in the advice, new product and transfer. I haven't seen anything to provide a persuasive or sound reason for the costs involved.

Whilst it might be the Novia's costs were competitive and might have been competitive with those charged by ReAssure. I don't know, we haven't been provided with enough information on this by either party. However, the Novia SIPP costs were not the only costs involved in Portal's advice. I remain unpersuaded Mr B was someone who would benefit from moving from his PPPs to a SIPP.

I don't accept Portal's submission that I ought to disregard their ongoing adviser's fee of 1%. I have not seen any ongoing advice evidenced (save for the activity in 2017 which appears to have also been unsuitable for Mr B). This fee was bound up it appears to me with the initial advice and has clearly been taken by Portal ever since. Portal say this fee was not mandatory, they have not evidenced this. I am not persuaded on what I have seen, Mr B was aware this fee was not mandatory.

Based on what I have seen there is nothing that makes me think Mr B was someone who would benefit from or who was seeking a wide range of investment options, an ongoing service nor that his needs could not have been met through his existing provider. I am left with the impression the transfer was completed as part of wider intended changes to Mr B's arrangements by Portal.

Given the costs associated with the new plan and transfer (including adviser's fee), I consider there was a significant impact on the fund that needed to be recouped to even allow the fund to return to the value pre-transfer. For this transfer to have been suitable I would need to be persuaded that there was likely to be a sufficient financial benefit for Mr B, I am not currently so persuaded. The sums involved here were comparatively limited and as such the advice fees had a not insignificant impact on the fund value.

Portal hasn't provided evidence of the research to show why the adviser recommended the particular provider chosen or that it was better value than others. And there wasn't any detail about what options his existing provider could offer. One of the reasons for switching was to achieve higher returns. But in looking at the charges we can compare, it appears the charges were significantly higher than the existing PPP. So the SIPP would have to perform that much better.

I find Mr B's account to be credible and as such he accurately describes himself as an unsophisticated and cautious person when it comes to financial matters. It seems to me a cautious or moderate approach to investment risk wouldn't be an inappropriate description of Portal's presentation of his attitude to risk in the circumstances, and as such I don't consider it was likely that investing in line with his attitude to risk (given also these were his only

pension arrangements) would have meant it was more likely than not, that there would be sufficient growth such as to make the transfer suitable.

Having looked in general terms at the funds recommended by Portal, these do not appear to appropriately reflect Mr B's attitude to risk. I consider they represent a higher risk to investment loss than Mr B would have accepted had he understood the products and had Portal adequately explained them, (and certainly given the proportion they represented of his portfolio). I have not needed to look in substantial detail at these investments, but I'm not persuaded Portal recommended suitable investments for Mr B based on what I have seen.

We don't have a copy of any advice report, and have not been told why Portal thought such investments were suitable for Mr B. It appears to me, they would face some challenge to persuade me they were. I think it can reasonably be said that Portal recommended some investments that could be considered relatively illiquid or involve a more complex structure. They were collective investments, where investors pool their money to be invested in a specified way. They appear to me to have included investments which should have been treated as speculative, and only considered suitable for a small portion of the pension fund. I consider it's doubtful whether investing in any relatively illiquid assets was at all suitable for Mr B.

These type of investment funds were considered by the regulator to have a higher risk than many collective investment funds and might reasonably be described as having a more specialised nature.

Considering Mr B's overall financial circumstances and experience, I'm not satisfied that the assessment of his ATR can have been an objective appraisal of the level of investment risk that Mr B was prepared to take with his pension funds, if such investments were selected.

I don't consider that Mr B had the capacity to take the level of investment risk even associated with the transfer, let alone the further advice and investments Portal recommended. I can't see Mr B might have been considered to have had any meaningful capacity for loss.

Overall, I'm not persuaded Mr B had need or want of the features or opportunities that the new SIPP or investments may have provided, nor that they were suitable. From what I've seen there was limited opportunity from outset for the transfer to be of benefit, or suitable, given the costs involved and the comparatively small fund value.

I am mindful of the fact he did not seek advice and the transaction only happened after Portal contacted him on the basis of a cold call. I accept Mr B reasonably relied on the knowledge and recommendations of the Portal advisers he dealt with, and the onus was on them to demonstrate why moving his pension arrangements was suitable advice.

Portal (nor Mr B) have not provided any information that demonstrates the transfer to have been necessary, in Mr B's best interests, or suitable, so the new SIPP and transfer should not have been recommended. I'm not satisfied there was any need for Mr B to incur the additional costs, or for him to be exposed to the increased investment risk which resulted from the advice Portal gave Mr B.

Here a second arrangement was started (again by Portal) and I cannot understand why this was considered necessary or appropriate. Such arrangements are sometimes seen when an adviser is seeking to maximise or generate further fees to be taken, but there isn't enough information on what happened in 2017 to make any further comment. Nor does it appear necessary here for me to consider events in 2017 further.

Mr B will have been caused distress as a consequence of the unsuitable advice and poor service provided by Portal. For someone with such limited future pension arrangements, the realisation he has been poorly and unsuitably advised and caused loss, will no doubt have been particularly worrying.

### **Putting things right**

For the reasons above I uphold Mr B's complaint that the advice to transfer his pensions away from Reassure was unsuitable.

### **Fair compensation**

In assessing what would be fair compensation, my aim is to put Mr B as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr B would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

### **What should Portal do?**

To compensate Mr B fairly, Portal should:

- Compare the performance of Mr B's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable as there has been no loss.

If there is a loss, Portal should pay the sum into Mr B's pension plan, to increase its value by the amount of any compensation and any interest.

Portal's 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 B's pension plan, it should pay that amount directly 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. The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr B is likely to be a basic rate taxpayer at the selected retirement age, which seems likely to be the case, the reduction would equal the current basic rate of tax. So, that is the reduction that I think should be applied. 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.

Portal should also:

- Pay to Mr B £300 for the distress and inconvenience caused.
- Provide the details of the calculation to Mr B in a clear, simple format.

Income tax may be payable on any interest awarded. If Portal considers that it is required by HM Revenue & Customs to deduct income tax from that interest, Portal should tell Mr B how much it has taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Mr B's Novia Self Invested Personal Pension Accts 538654 597008	Still exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of transfer	Date of settlement

### ***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 could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation. This is provided Mr B agrees to Portal taking ownership of the portfolio/ investment. Portal should take ownership of an illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If it is not possible for Portal to take ownership, the actual value should be assumed to be nil for the purpose of calculation. Portal may wish to 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 portfolio and/ or 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. Apply those rates to the investment on an annually compounded basis.

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

Any withdrawal from the Mr B's Novia Self Invested Personal Pension by Mr B, 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 total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

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

I have chosen this method of compensation because:

- Mr B 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 a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be 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 fund. 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 attitude.
- Whilst ideally a comparison between Mr B's previous arrangement had it not been closed and his current portfolio might also give a fair assessment of loss, we have not been provided with enough to assess how meaningful this exercise might be, there has been no suggestion of charges or fees being applied or taken (including exit fees) before the Novia SIPP was started and the fund transferred and this proposed redress was accepted by Mr B's representatives so it is reasonable to conclude it is accepted that all relevant information has been considered.

As such I consider this remedy reasonable.

## ***SIPP fees***

Mr B's Novia SIPP is continuing to cost Mr B.

My understanding is SIPP wrapper 538654 only exists because of the illiquid investments. In order for the Novia SIPP to be closed and further fees to be prevented, these investments need to be removed. But if Portal can't buy them, Mr B is faced with future SIPP fees.

Third parties are involved, and we don't have the power to tell them what to do. If Portal are unable to purchase the investment, to provide certainty to all parties I think it's fair that Portal pay 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 Mr B's Novia SIPP to be closed. This is in addition to the compensation calculated using a nil value for the investment.

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address [www.bankofengland.co.uk/boeapps/database](http://www.bankofengland.co.uk/boeapps/database),

clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints>. Alternatively, just type 'compensation for investment complaints' into the search bar on our website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

#### For completeness

I previously indicated that I'd what Portal say about Mr B's representatives and their objections. I have set out my thinking on this in my provisional decision. Here I am satisfied this service is able to look at Mr B's complaint, as referred to this service by his representatives. Our service is a free and informal alternative to the courts, and we don't require anyone to be represented. However if someone wants to be represented this doesn't need to be a professional representative. Any concerns on this aspect can be raised elsewhere.

#### **My final decision**

For the reasons given I uphold the complaint made against Portal Financial Services LLP. Portal will be required, on acceptance of my decision, to pay Mr B £300 to represent his distress and inconvenience, and to complete the redress exercise set out above and pay any sum due to Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 February 2023.

Louise Wilson  
**Ombudsman**