DRN-3901723

Financial Ombudsman Service

The complaint

Mrs H complains that she was advised by Portal Financial Services LLP to transfer two personal pensions to a self-invested personal pension (SIPP) to be invested in investments that weren't suitable for her. Causing her to suffer a loss in the value of her pension.

What happened

Mrs H was advised by Portal in 2014 about her personal pensions. She was aged 47 at the time. Portal identified that she had two separate personal pension policies that had combined fund values around £9,000.

Portal documented that, at the time of providing advice, Mrs H was:

- Married with a dependent child
- Mrs H was unemployed and receiving benefits
- She had a debt management plan
- She had no other savings or investments

Portal documented the following objectives for Mrs H:

- To consolidate her pension plans
- Higher investment performance
- Passing benefits to her family
- More flexibility and control
- Invest in a specific area and move away from equity based investments
- Would like to retire at age 55

It conducted a fact-find and determined Mrs H to have a balanced attitude to investment risk (ATR).

It advised Mrs H to transfer her personal pensions to a SIPP and to invest her pension fund in the following way:

- Lakeview UK Investments plc
- Real Estate Investments USA plc
- Strategic Residential Developments plc
- Dimensional Global Short Dated Bond
- Dimensional World Equity

Mrs H followed Portal's advice. But has subsequently seen the unregulated structured investments fail which has caused her the loss of a large part of her pension portfolio. Mrs H complained to Portal about the suitability of its recommendation to transfer her pensions in August 2021. Portal didn't consider the merits of her case as it thought she'd made the complaint too late.

Our investigator explained why he didn't think Mrs H had brought her complaint late. And went on to give his opinion on the merits for Portal to consider. Portal didn't agree with what the investigator said and asked for an ombudsman to give a final decision on this case.

I issued a provisional decision to both parties. In it I gave my decision on jurisdiction. I explained why Mrs H's complaint was made in time and said that I wouldn't specifically revisit my decision on jurisdiction again in my final decision unless Portal provided new evidence that caused me to reconsider the matter.

In my provisional decision I then went on to consider the merits of Mrs H's complaint. I explained my provisional findings for both sides to consider and respond if required. I explained why I considered that Mrs H's complaint should be upheld. I explained what I thought Portal should do to put Mrs H into the position she would have been if she'd not transferred. I suggested that Portal should compare what her pension would have been worth if she'd never transferred, with what it ended up being worth. And paying Mrs H the difference. I also recommended that Portal pay an additional £250 compensation for the distress and inconvenience.

Mrs H responded to my provisional decision, explaining that she wanted the full amount back that had been lost in the Lakeview investment and didn't think that £250 was enough compensation.

Portal haven't responded with any further comments or evidence.

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 seen no further evidence on the matter of jurisdiction. I've considered the evidence that I do have again and remain satisfied that Mrs H's complaint was made within the time limits. Specifically, that she brought her complaint within three years of when she ought to have had cause to complain. So I won't repeat the rationale for this decision again here.

I haven't been provided with further evidence following my provisional finding. And having considered everything in this case again, I still think that Mrs H's complaint should be upheld. What follows are the reasons, that I set out in my provisional decision, why I don't think Portal's recommendation to Mrs H was suitable for her.

Portal assessed Mrs H's ATR as being balanced. Which, in summary, it described as meaning she had a moderate level of knowledge of financial matters, may have had some investment experience including investing in products containing risky assets such as equities and bonds.

Portal shared the questionnaire that it used to assess Mrs H's attitude to risk. It gives Mrs H's responses, although doesn't share the scoring that implied she had a balanced ATR. Her responses indicated a lack of experience of investing, little experience of investing in property, being uncomfortable investing in the stock market, preferring bank deposits to riskier investments. Overall, I find it surprising that Portal had these answers, as well as understanding Mrs H's circumstances and accepted that she was likely to have a balanced ATR. Other than the two pensions she held, which were occupational schemes, she seems to have had no investment experience. I think that a more cautious ATR might better have fitted the information Portal had.

Equally important though is the capacity that Mrs H had to suffer investment loss on these pensions. She was seven or eight years away from being able to access her pension benefits. The pensions were small pots, and she seemed unlikely to have time or means to contribute or replace any losses. Whilst she would likely have wanted growth in the funds, her capacity for loss on these pensions was very low. Portal gave little comment to this in its suitability report other than to say that her capacity for loss was suitable for the recommendation that it made. But I don't think it was. I don't think that Portal considered Mrs H's precarious financial position.

Mrs H had personal pensions that on the face of it seemed to already be appropriate for her. There is no documented evidence that Portal considered the question of leaving her pensions where they were. Which ought to have been considered as a starting point as they appear to have already met her objectives of leaving the fund to her family and being able to access benefits at 55. To recommend a transfer Portal needed to demonstrate that it was in Mrs H's best interests to do so.

The larger of her two pensions had an annual management charge of 0.05%, plus a fund charge of 0.35%. It had a five year average performance of 11.18%. The smaller pension had an annual management charge of 1% a year and had a five year average performance of 10.79%. So it doesn't seem the case that they were obviously performing poorly, or that they had particularly high charges.

The SIPP that Portal recommended had a platform charge of 0.5%. But there would additionally be fund charges that Portal didn't specify. So I don't think that it's clear whether the SIPP was the cheaper option for either pension. Also a SIPP is pension product intended for customers requiring more control or access to a wider range of investment choices. It is more complex and meant that Mrs H was more likely to need periodic reviews than if she'd left her pensions where they were. Which added a further ongoing cost in the form of an additional 1% adviser charge to be paid to Portal each year. So, overall, I don't think Portal's recommendation offered better value for money for Mrs H.

I've also considered whether the overall recommended investment strategy was suitable for Mrs H. My starting point for this is that I think that Portal over estimated Mrs H's ATR as I've explained. And failed to properly consider Mrs H's capacity for loss.

It recommended an investment strategy that required two separate wrappers to be set up in the SIPP. One of those received the transfer from the larger pension, around £6,800. And recommended that be invested across a short-dated bond fund and an equity fund. These were regulated by the Financial Conduct Authority (FCA) providing a balance of security and opportunity for growth.

The second wrapper received the transfer from the smaller pension fund, around £2,300. Portal recommended it be invested in the following:

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

These investments were unregulated collective investment schemes (UCIS) which 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. But Portal didn't explain this to Mrs H. It referred to them variously as: investment bonds; secured bonds and structured investments.

At the time that Portal made its recommendation to Mrs H, 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 Mrs H invest almost a quarter of her 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 schemes defaulted.

For the reasons I've given, these investments weren't suitable for Mrs H's ATR or her capacity for loss. These investments were speculative and it was unsuitable to recommend their being included in the portfolio for Mrs H.

Portal's overall reason for transferring the pension was that it met her objectives. So I've looked at the objectives that Portal identified.

Transferring both of her personal pensions did achieve the stated aim of consolidating her pensions. But I'm not sure that, as an objective in itself, it would have been an especially compelling reason to switch. And not to be invested in the way that was recommended.

The transfer probably offered Mrs H greater investment choices and more flexibility and control. But I am not convinced that this was genuinely a compelling objective for Mrs H. As I've said, she had no investment experience, and I think it was unlikely that she would exercise control or needed the greater fund choice.

Portal identified that Mrs H wanted potentially higher investment performance. Which is likely to be the case for every consumer. But Portal needed to weigh that up against her ATR and capacity for loss. These pensions were relatively small, so Mrs H's options with them in the time remaining to being able to access them, was relatively limited. Portal provided no comparison of likely performance of its recommendation, including charges, with her existing schemes. It wasn't clear to Mrs H how or why the recommendation would outperform her existing arrangements. And given their sizes, whether any likely improvement warranted additional risk.

It follows that I don't think Portal's recommendation was suitable for Mrs H. The advice to invest in the way it recommended in the SIPP was given as a whole, deliberately including a balance of a bond fund, equity based fund and the UCIS. It was, overall, unsuitable for her. So I haven't isolated the different wrappers in considering this. Further I cannot see a compelling reason for Mrs H to have transferred at all at that stage. She wasn't in a position to take her benefits, and no advice was given regarding that. But for Portal's unsuitable advice to switch, I think it's more likely than not that Mrs H's pensions would have remained where they were.

Putting things right

To address Mrs H's concerns following my provisional decision, I don't think it's as simple as refunding the amount invested in the Lakeview investment. That amount would have remained invested elsewhere and would have been subject to the impact of that investment instead. My aim is that Mrs H should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. Whilst it appears complicated, what I’ve set out is, I think, the fairest way to do that.

I think Mrs H would most likely have remained with her previous provider. However I cannot be certain that a value will be obtainable for what the previous policies would have been worth. I’m satisfied that what I’ve set out below is fair and reasonable, taking this into account and given Mrs H's circumstances and objectives when she was advised.

What must Portal do?

To compensate Mrs H fairly, Portal must:

- Compare the performance of Mrs H's SIPP with the notional value if it had remained with the previous providers. 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 also add any interest set out below to the compensation payable.

- If there is a loss, Portal should pay into Mrs H'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 Mrs H's pension plan, it should pay that amount direct to her. 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 Mrs H won’t be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mrs H's actual or expected marginal rate of tax at her selected retirement age.

- It’s reasonable to assume that Mrs H is likely to be a nil rate taxpayer at the selected retirement age, so no reduction would apply in this case.

- In addition to putting right any loss that Mrs H has suffered – as set out in the steps above – Portal must pay Mrs H £250 for the distress she was caused in seeing a large part of her pension fund reduced to nil value as she neared the age that she could take her benefits.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest, it should tell Mrs H how much has been taken off. Portal should give Mrs H a tax deduction certificate in respect of interest if Mrs H asks for one, so she 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	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 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 asset the *actual value* should be assumed to be nil for the purpose of calculation. Portal may require that Mrs H provides an undertaking to pay Portal any amount she 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 Mrs H'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 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 Mrs H'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 Mrs H 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 and illiquid investments remain in the SIPP, to provide certainty to all parties I think it's fair that it pays Mrs H 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 remedy suitable?

I’ve chosen this method of compensation because:

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

My final decision

I uphold this complaint and direct Portal Financial Services LLP to compensate Mrs H as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 17 February 2023.

Gary Lane
Ombudsman