DRN-3927997

The complaint

Mr N complained to Portal Financial Services LLP (Portal) that the advice he received in 2014 was unsuitable.

What happened

In January 2014, Mr N was advised by Portal to transfer two personal pensions with Reassure (with a combined value of around £25,500) to a Novia self-invested personal pension (SIPP).

At the time Mr N had two other pension arrangements; a defined benefit scheme with Sara Lee with a transfer value of £106,145 and personal pension valued at £46,662 with Standard Life. The documentation from the time also records that Mr N was in his mid-40s and in good health. He was earning £1,350 (net) per month, and his wife was earning £800 (net) per month. Mr N had an outstanding mortgage of £95,000, and £2,500 of credit card debt. He had a very small amount of cash in savings.

Portal recommended that Mr N should invest around £12,000, just under 50% of the overall funds, into six Secured Bonds. The £12,000 was split equally – roughly – between these six bonds.

The suitability report produced by Portal stated these bonds were suitable as they would produce returns to meet Mr N's income requirements. The bonds were issued by UK PLC companies to fund investment projects and had investment terms of between five and ten years. Security - such as land, buildings or other valuable assets - was provided by the borrower to secure the capital borrowed, and these bonds were illiquid. The suitability report also noted that any interest over the first two to three years might be accumulated rather than paid to the consumer.

It seems the remaining funds were invested in liquid regulated investments or cash. There was an initial charge of 5%, an on-going adviser fee of 1%, a SIPP charge of 0.5%, and a market value reduction (MVR) was applied to one of his plans.

In October 2018 Portal recommended that Mr N also transfer his Standard Life personal pension into his Novia SIPP. The transfer value was just over £76,720.

Mr N first complained to Portal on 2 August 2021, and this complaint centred on the advice he received in October 2018. Specifically, Mr N said that he had received notice from Novia stating Portal would no longer be his financial adviser, and therefore the ongoing adviser charge would cease. This prompted Mr N to query the position; saying he wasn't aware of having had any benefit from this adviser service, and that he felt his fees should be returned.

However, this initial complaint fell away when Mr N met with his new adviser, who told him that his secured bonds were high risk. At this point Mr N redirected his attention to concerns about the suitability of the original advice he was given in 2014, and it is this issue that forms the basis of his current complaint. Mr N has since told us he is no longer interested in pursuing his original complaint relating to the adviser service and fees.

Mr N made this second complaint to Portal on 9 September 2021 after he discovered the secured bonds had either gone into liquidation or were locked. Mr N says he discovered this when he received statements in August 2021 showing a value of around £8,750, while at the same time less than £400 was available for withdrawal.

Portal responded to this second complaint saying that it had been made too late, and that Mr N should've known he had cause for concern earlier based on his receipt of the following information:

- The returned application and agreement to the terms dated 13 January 2014,
- An extract from an annual review letter of 26 February 2015 which explained the nature of the illiquid funds,
- An annual review letter dated 22 January 2016 which outlined how the plan was performing and the risks associated with the funds.

Mr N referred his complaint about the suitability of the 2014 advice to this Service on 1 February 2022. Portal didn't provide consent for this service to consider the complaint, saying it had been brought too late.

Our investigator considered the reasons Portal gave for the complaint being out of time and concluded Mr N had complained within the relevant timescales and, as such, we could investigate the complaint.

Our investigator then went on to consider the merits of the complaint and found that the advice Portal gave to Mr N was unsuitable, and that – but for this advice – Mr N would have most likely left his pensions where they were. As such, our investigator upheld the complaint and asked Portal to pay Mr N compensation.

Portal has not accepted our investigator's view on either jurisdiction or merits, and so the complaint has been passed to me for a decision.

I note Mr N has informed this Service he has moved the liquid part of his SIPP to a new provider however, the illiquid elements of the investment still remain in the Novia SIPP, as these can't be moved to the new provider.

Why I can look into this complaint

I've considered all the available evidence to decide whether this is a complaint the Financial Ombudsman Service can look at further. Having done so, I've come to the same conclusion as our investigator, which is that this is a complaint we can consider under our jurisdiction. I've set out my reasoning below.

When looking at a complaint, the time limits I must consider and apply are set out in DISP 2 of the Financial Conduct Authority ("FCA") Handbook. The particular rule that's relevant here is DISP 2.8, which says:

> *"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
>
> *(2) more than:*
>
> > *(a) six years after the event complained of; or (if later)*
> > *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint."*

DISP 2.8.2 goes on to state a number of exceptions to the above rule, including cases in which the Ombudsman agrees that the failure to meet the deadline was *"a result of exceptional circumstances"*.

In Mr N's case, the event complained of is the advice to switch his pension and invest in the recommended funds, which took place in January 2014. This is more than six years before the complaint was raised in September 2021, and so it falls outside the window set out under part a, above. As such, part b becomes relevant.

This means I must consider, firstly, whether more than three years has passed since Mr N became aware, or ought reasonably to have become aware, that he had cause for complaint. Secondly, if so, I must then consider whether his failure to complain within the three-year time frame set out under part b was due to exceptional circumstances.

Mr N brought his complaint in September 2021. Thus, he would be out of time under the 3-year rule if he had been aware (or ought reasonably to have been aware) that he had cause for complaint prior to September 2018. So, I have considered whether Mr N was provided with any information prior to this date that would have prompted this awareness.

As stated above, the business has pointed to three different communications to Mr N – the application and agreement made in January 2014, the annual review letter of February 2015 and the annual review letter of January 2016. I have considered these documents, as well as all other evidence provided, to determine whether there is anything to suggest Mr N should have been aware he had a cause for complaint before September 2018.

The 2014 application and agreement signed by Mr N included details of the adviser firm and adviser as well as the initial and ongoing charges. I haven't seen anything in this document that could have reasonably been expected to alert Mr N that he might have cause for complaint about the suitability of the advice. Indeed, had there been, I doubt Mr N would've signed the agreement at the time.

Furthermore, when reading the description of the investments at the time of the original advice, I can see Mr N was told he wouldn't have access to the secured bonds for between five to ten years. As such, am satisfied that any subsequent communications which stated a proportion of the fund was illiquid and wasn't accessible would not have triggered alarm bells for Mr N, nor set him on the path to discovery of a cause for complaint. Instead, Mr N would've expected this to be the case.

The second piece of information Portal has cited is the annual review letter of 26 February 2015. Only an extract was provided, part of which reads as follows:

> ***"How are your investments performing (Capital Secured Bonds)?***
>
> *Lakeview, Marbella, Motion Picture, Real Estate USA, Strategic Residential and Tambaba are not conventional pension funds. They are vehicles through which you have loaned money to specific enterprises. Each of these investments:*
>
> - *Is for a specific term, ranging from five to ten years.*
> - *Aims to pay you the stated annual return. Returns are paid in the form of cash and added to your pension plan's bank account. They are not rolled up into the fund value. Returns are not guaranteed.*
> - *Aims to repay your initial investment capital in full at the end of the term. It is important to remember that a guarantee is only as good as the entity that offers it. Capital is secured on specific assets.*

- *Can be redeemed early at the directors' discretion."*

At the point Mr N received this letter he was only two years into the recommended investment strategy. In my view, this information merely confirmed what Mr N had already been told, and there is nothing to suggest there might be any cause for concern. In fact, if anything, the confirmation of the possibility of the investments being redeemed early, albeit at the directors' discretion, is likely to have been reassuring.

The third piece of evidence Portal has referenced is the annual review letter of 22 January 2016. This document has been provided to this service in full. It seems the purpose of this review letter was to make sure Mr N's pension was on track to deliver his pension goals as a balanced investor, and to tell him how his plan was performing. Although it noted a small fall in the fund value of 0.62% since 2015, overall this letter provided robust projections - both in fund value and as an income - in terms of what Mr N could receive when he reached 55. It further clarified the aims of each of the funds he was invested in.

The 2016 review letter also said that the cash holdings of £1,383.99 in Mr N's SIPP bank account were too high. As such, Portal recommend leaving only £1,177.04 in the account, which would cover the scheme liabilities for three years. Portal recommended investing the surplus cash, saying that this (along with changes to Mr N's existing liquid funds) would produce a positive return of £11,500. It is not clear from the letter or any other evidence that has been provided exactly what investment strategy Portal was expecting to produce this return.

In my view, the positive and reassuring language in this 2016 review letter would've been likely to strengthen Mr N's assumption that these investments continued to be suitable for him. I haven't seen anything that would reasonably have set him on the path to discovery that he had cause for complaint.

In general, I would also note that Portal is suggesting that Mr N should've known he had cause for complaint because the funds were illiquid, meaning he couldn't access them. But at the at the time of advice Mr N was 44, with just over 10 years until his retirement goal of 55. He couldn't access his pension funds until he was 55 at the earliest anyway, and he didn't need or expect access prior to this. So, awareness of the funds being illiquid wouldn't have been an obvious concern to him or been likely to prompt him to complain.

I've also considered the transfer advice Portal gave to Mr N in 2018, and how that may have affected his awareness (or lack thereof) that the advice of 2014 may have been unsuitable. I'd say it's likely that, at that time, there was a good relationship between Portal and Mr N. Had Mr N had any concerns about the original advice and its suitability by that point, I think it's unlikely he would have taken further advice from Portal. However, in the event, Mr N received and followed advice which led to his transferring further funds into his Novia SIPP.

As stated previously, Mr N has told us that it wasn't until he got a new adviser in 2021 – replacing Portal's adviser – that he discovered that these investments were high risk, giving his cause for complaint. I haven't seen anything to suggest that Mr N was, or should reasonably have been, aware of this earlier. Mr N brought his complaint shortly after this. So, it seems to me that Mr N raised his complaint well within the relevant window.

Having reviewed all the evidence available to me, I've not seen anything to make me think Mr N ought reasonably to have been aware he had cause for complaint prior to September 2018. So, Mr N's complaint has not been brought outside of the three-year window set out in part b of the relevant DISP rule.

What I've decided – and why

Having reached the decision that this complaint falls within our jurisdiction, I have gone on to review the merits. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In accordance with the regulations, standards and industry practice at the time, Portal had to take reasonable steps to understand Mr N's financial situation and investment objectives in order to ensure recommendations were suitable, as well as acting in accordance with Mr N's best interests.

Furthermore, in 2009 the regulator published considerations for pension switching. One of the key issues the FCA identified was that consumers shouldn't be advised to switch to a more expensive pension than their existing one(s) without good reason.

The SIPP Portal recommended to Mr N had an annual management charge of 0.5% which wasn't an unreasonable amount. However, Portal also charged an initial fee of 5% which had a significant impact on the value of the fund, as well as an ongoing advice charge of 1%. In addition, I understand an MVR was also applied to one of his plans. Overall, therefore, Portal's recommendations to transfer into the Novia SIPP appear to have led to a more expensive plan.

I've weighed this higher cost against Mr N's needs and objectives for retirement, as recorded at the time the advice was given and – taking everything into account - I'm not persuaded there were sufficient reasons to justify the extra expense.

The retirement needs and objectives were consolidation, improved performance, the desire to move away from equity backed funds to specific investments, switching to a cheaper scheme, greater fund choice, and the opportunity to take tax free cash at age 55 followed by an income at retirement. However, the reasoning behind a number of these points isn't clear. For example, Mr N was only 44 at the time of the advice, and so there was no need for him to make costly amendments to his pensions arrangements at that point to ensure he could access tax free cash 11 years in the future.

I also have concerns regarding the objective to be able to hold specific investments. This point isn't explained and seems unlikely to have been something that Mr N brought to the table as one of his key objectives. Instead, it seems more likely that Portal either introduced this objective, or guided Mr N towards it, in order to pave the way for the investments they then went on to recommend.

So I don't think Portal's recommendation to transfer was suitable – it seems that Mr N was advised to switch to more expensive arrangements without good reason. I also note that one of the recorded objectives was to save money by switching to a cheaper scheme – which appears to be in direct contrast with Portal's recommendations.

In addition, the documents from the advice in January 2014 record that Mr N had no previous investment experience, and that he had a "balanced" attitude to risk. However, the unregulated investments Portal recommended carried a significant risk (for example, illiquidity, foreign currency risk and valuation difficulties, amongst other factors). As unregulated high-risk investments they were entirely unsuitable for investors with a balanced attitude to risk.

Furthermore, the high proportion of Mr N's pension fund invested in these unregulated investments at the outset (just under 50%) would've been unsuitable for a customer in Mr N's financial situation, even if he had a high tolerance for risk.

I also note the regulator's comments on unregulated investments from July 2010, which warned about investment schemes that share many of the same characteristics as the bonds recommended to Mr N. In such cases, the regulator indicated that it was good practice to limit client exposure to unregulated funds to 5% or less of their portfolios.

In summary, not only were the investments Portal recommended to Mr N in 2014 unsuitable, Portal shouldn't have advised Mr N to transfer out of his existing pension arrangements in the first place.

Had Portal advised him that it was not in his best interests to transfer out of his existing arrangements, I think it's likely Mr N would have followed this advice. Therefore, Portal should pay Mr N fair compensation as set out below.

Putting things right

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 also add any interest set out below to the compensation payable.

- 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%.

- Pay to Mr N £300 for the distress and inconvenience worrying he had lost some of his investments.

Income tax may be payable on any interest paid. If Portal Financial deducts income tax from the interest it should tell Mr N how much has been taken off. Portal Financial 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 transfer	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 Financial should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Portal Financial 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 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/transfer 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: FTSE UK Private Investors Income Total Return Index. 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 assets need to be removed. I've set out above how this might be achieved by Portal taking over the illiquid assets, 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 illiquid assets, 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 this remedy suitable?

I've decided on this method of compensation because:

- Mr N wanted Capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr N's circumstances 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.

Ellie Clare
Ombudsman