complaint

Miss A complains about the advice she got from Portal Financial Services LLP to transfer her pension benefits into a Self Invested Personal Pension (SIPP) Plan. She's been told that her SIPP investments are now illiquid and can't be used for income drawdown.

Miss A got advice from Portal in 2010

- to transfer her pension benefits from her former employer's occupational pension scheme (OPS) into a SIPP; and
- to then invest in unregulated collective investment schemes (UCIS).

At the time of advice Miss A's financial circumstances were:

- She was in her mid fifties, in part time employment, earning around £120 per week.
- She got £600 per month in working tax credits.
- Her rent was covered by housing benefit.
- She had one dependent grandchild who lived with her.
- She had an outstanding loan of £3,000 which she was paying around £240 per month for.
- Her OPS was a local government pension scheme with guaranteed benefits. Her transfer value was around £35,000.

On the form completed by Portal it said that Miss A wanted to release tax-free cash from her pension to set up a new business. And that she needed around £9,000 to £10,000 for this purpose. Miss A says that her business was already up and running at that time, and she didn't need to invest money into it.

The adviser assessed Miss A's attitude to risk as 'moderately adventurous' based on her answers to a risk questionnaire.

Portal advised Miss A to take 25% tax-free cash and place the remaining 75% into drawdown within a SIPP. The recommended investment selection was:

- 50% Raithwaites Hypa Fund
- 35% Hypa Asia Fund
- 10% Hypa finance
- 5% Cash deposit

Miss A was told that she would need to leave her capital invested until the maturity date, which was for up to seven years. But, she may be able to take an income from the interest payments she got from the growth of the fund.

Miss A took Portal's advice and transferred her pension benefits out the OPS into a SIPP. She took tax free cash of around £8,700 and went into drawdown investing as recommended. She took the maximum income she could to begin with (around £1700 per year) and then was no longer able to take any income as her cash deposit was used up and the interest payments didn't materialise. She was told she couldn't switch investments because she had agreed to keep them until the maturity date.

One of our adjudicators looked into Miss A's case. She thought that as the issue being complained about was the illiquidity of the funds, it was reasonable to look into why these funds were chosen and if the advice she was given to invest in these was suitable for Miss A's needs.

She concluded that the advice was not suitable for the following reasons:

- She didn't agree with the assessment of Miss A's attitude to risk.
- Instead she considered a more appropriate assessment would've been 'low risk' or no risk.
- Miss A said that she didn't need the tax free cash which seemed to be the main reason for the recommendation made.
- Miss A had no savings or other investments. Her OPS benefits represented her only future retirement provision, apart from any state pension entitlement. She felt that Miss A would've valued the OPS benefits and not been prepared to take such a high level of risk with them had the risks involved been made clearer.
- The UCIS investments exposed Miss A's fund to an inappropriate amount of volatility.

Portal disagreed with this and said:

- Miss A didn't raise concerns about the assessment that she had a 'moderately adventurous' attitude to risk;
- The attitude to risk was obtained from a risk questionnaire over which the firm had no control. It wouldn't be fair for it to assign an attitude to risk.
- Had Miss A's attitude to risk been assessed as lower it's unlikely the fund selection would've changed, just the distribution.
- Miss A came to it for advice about her pension. It worked with a third party who sent information to clients who wanted to release funds from their pension. Once a form was completed the client's details were passed on to Portal.
- At the time of advice, after due diligence checks were made, the UCIS fund was considered less volatile and a lower risk investment than the stock market.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the conclusions reached by the adjudicator, and for much the same reasons.

I agree with our adjudicator, as Miss A is complaining about her SIPP investments, I think it reasonable for us to look at whether the advice given by Portal to invest in these investments was suitable for her needs and circumstances. And when assessing whether an investment is suitable for a person, it is usual for us to take into consideration their attitude to risk. Portal has been given the opportunity to respond on all the points considered. So, contrary to what Portal has said, I think our adjudicator has approached this investigation fairly.

Miss A was clearly not in a strong financial position at the time she got advice. She was getting means tested state benefits and was in debt. She was eight years off her expected normal retirement date, and had a family member financially dependent on her. Her pension pot was valued at around £35,000; her benefits were guaranteed in her OPS. She had no other retirement provision, other than state pension, and I don't know what her entitlement was going to be there. She said she had no other assets. So, it seems the guaranteed benefits she had in her OPS were her most valuable asset. I think it likely therefore, it would've been important to her to ensure that she was able to take a regular income in retirement from these, as well as any lump sum.

I note Portal says Miss A's risk assessment is based on the answers she gave in the risk questionnaire. Having looked carefully at this, I think however, that there is some inconsistency in the responses given. For example to the question *"People who know me would describe me as a cautious person"*, Miss A answered *"strongly agree"*. She said she agreed with the statement *"I generally look for the safest type of investment even if that means lower returns".* And that she agreed that "*When it came to investing I'd rather be safe than sorry"*. But on the other hand, she also said she agreed with the statement *"I am willing to take substantial financial risk to earn substantial returns"*. I think this inconsistency, coupled with Miss A's financial circumstances, ought reasonably to have created doubt in Portal's mind that she was a 'moderately adventurous' investor. I agree with our adjudicator based on what Miss A told her adviser, I think more likely Miss A's appetite for risk would've more appropriately been assessed as low.

Portal said that had her appetite for risk been assessed as low likely the fund selection wouldn't have changed, just the distribution. I think advising her to transfer into a SIPP and go into drawdown and invest in UCIS investments would've been inappropriate advice taking into account her circumstances. She was giving up guaranteed benefits, to invest a relatively small pension pot, her only asset, in volatile investments, where she had to commit to leave her money for up to seven years.

I think the consequences of placing most of her money in investments which had a maturity date of up to seven years should've been made clearer to Miss A. Only 5% of her fund was put on cash deposit readily available for drawdown. She was told that she couldn't access her capital, only the interest payments - but these didn't materialise. So, within a few years, Miss A was unable to draw any income from her drawdown policy. I think this important risk should've been more clearly brought to Miss A's attention, given her restricted financial circumstances and how reliant she was on her pension as a source of income. She obviously didn't understand what she had committed to, because not long afterwards she talked about changing her investments.

There is disagreement about whether Miss A told Portal that she wanted the tax free cash to set up a restaurant business. This is certainly what Portal recorded at the time. I wasn't present at the meeting, so can't know what was discussed. Even, if I accept that Miss A intended to start a business with her tax free cash and get an income this way, new businesses (in particular restaurant businesses) are prone to failure. So, I think it would've been important to her to fully understand all the risks involved. Portal acknowledged that normally it would've recommended that she leave her pensions benefits as they were, as this would've been the *"most beneficial"* to her. So, it was clear that she was taking a risk with her most valuable asset, and so these risks ought to have been more clearly spelt out.

For the reasons given above I think the advice Miss A was given to transfer into a SIPP, and invest as she did, was unsuitable, given what she told Portal about her needs and circumstances at the time.

fair compensation

To put Miss A back into the position that she would've been in with better advice:

A. Portal Financial Services LLP should find out if her OPS will allow reinstatement into the scheme. If so, it should pay her former OPS the amount calculated to reinstate her into the scheme, deducting from this the tax free cash and any income payments she has already received; or

B. If reinstatement is not possible then Portal Financial Services LLP should perform a loss calculation using the methodology determined by the regulator for the industry-wide Pensions Review, but using the latest assumptions published for cases that fall outside of the review. The assumptions and the relevant calculation date can be found on our website at the following link:

   http://www.financialombudsman.org.uk/publications/guidance/pension_assumptions.htm

   If the calculations show a financial loss then the difference should be paid into a pension arrangement for Miss A. If this is not possible, then the amount should be paid direct to Miss A less 15%. This represents the tax position on the basis that she can take 25% from the compensation amount tax free with the residual taxed at basic rate income tax.

my final decision

I uphold this compliant and order Portal Financial Services LLP to pay Miss A fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 3 May 2016.

Kim Parsons
ombudsman