

The complaint

Mr M has complained to Portal Financial Services LLP (formerly known as Portafina) about advice he received to transfer his personal pension to a Self-Invested Personal Pension (SIPP).

What happened

In 2013 Mr N received a cold call from a business offering him a free review of his pension. Mr N agreed to the review and a meeting was arranged with an adviser from Portafina.

At the time of the advice Mr N was 55 and held a Personal Pension with a provider "S". The pension was invested in S's Unitised With Profits fund and it had a transfer value of £21,378.00. Mr N was being charged a 0.875% administration charge by S.

At the time of advice Mr N's circumstances were as follows:

- He was employed but due to his health he wasn't working and was in receipt of industrial injuries disablement benefit
- He owned his own home, which was worth approximately £125,000.
- He had no other assets and no disposable income.

Mr N's objectives at that time were recorded as:

- Being able to provide benefits to his son in the event of his death
- Better fund performance
- He wasn't looking to take the benefits from his pension until age 60

Portafina assessed Mr N's attitude to risk as being "Balanced" and it recommended that he transfer his Personal Pension with S to a SIPP with Novia. It also recommended that he invest in the following funds:

- Lakeview UK Investments PLC - 15%
- Real Estate Investments USA PLC - 20%
- Strategic Residential Developments PLC - 15%
- Invesco Perpetual European High Income Z Shares - 10%
- Premier Multi-Asset Distribution - 10%
- Standard Life Dynamic Distribution - 10%
- Kames Ethical Cautious Managed B Acc - 10%
- Cash - 10%

Mr N accepted the recommendation and his pension was transferred in November 2013. Portafina charged Mr N an initial fee of 5% of the total transfer value and an ongoing adviser charge of 1% per annum. The annual management charge for the Novia SIPP was 0.5%.

In June 2019, with assistance from a Claims Management Company, Mr N complained to Portafina about the advice he'd received. In summary, he complained that:

- Portafina transferred him into a speculative SIPP arrangement from a secure mainstream pension
- All the investments were non-standard, high risk and should not have been promoted to him
- There were no risk warnings ever given regarding these investments
- He had limited or no capacity for loss

Portafina reviewed the complaint but it was satisfied that its recommendation was suitable so it didn't uphold the complaint. Dissatisfied with Portafina's response, Mr N referred his complaint to our service for review.

Our investigator's view

"The regulator issued a report on the quality of advice on pension switching in December 2008. Under the section entitled "our approach" it said it assessed advice as unsuitable when the outcome was the consumer switched into one of the following:

(amongst others)

- *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 flexibility of a drawdown option, but there was no evidence that this option was needed).*
- *A pension that was more expensive than a stakeholder pension, but a stakeholder pension would have met the customer's needs.*
- *A more expensive pension in order to consolidate different pension schemes, but where the extra cost was not explained or justified to the customer.*

In this case the product cost itself was lower, the Novia SIPP annual management charge was 0.5% which was lower than the S Personal Pension charge of 0.875% however, Mr N was also charged an initial fee of 5% of the transfer value and there was an ongoing adviser charge of 1% per annum so the charges on the new plan would be higher than the existing pension.

The initial fee and the ongoing charges will have reduced the amount of the fund invested so the plan would have to recover the cost of the transfer and the ongoing charges before any growth could be achieved.

So, I have considered whether there was a good reason for Mr N to transfer his pension.

Mr N objective was to improve the performance of his pension funds however, Mr N is not an experienced investor and told me that he doesn't understand investments and relied on the advice he had been given by the adviser. Portafina should have given Mr N advice considering not just his investment objectives and his attitude to risk but also his capacity for loss and his experience to understand the risks involved

in what it recommended.

Portafina assessed Mr N's attitude to risk as "Balanced" based on the risk questionnaire he completed. In their suitability report they said;

Based on the answers you provided in your risk profile we believe you have a balanced to risk.

This broadly means:

- Balanced investors typically have moderate levels of knowledge about financial matters and will pay some attention to keeping up to date with financial matters. They may have some experience of investment, including investing in products containing risky assets such as equities and bonds.*
- In general, balanced investors understand that they have to take investment risk in order to be able to meet their long-term goals. They are likely to be willing to take risk with at least part of their available assets.*
- Balanced investors will usually be prepared to give up a certain outcome for a gamble provided that the potential rewards from the gamble are high enough. They will usually be able to make up their minds on financial matters relatively quickly but do still suffer from some feelings of regret when their decisions turn out badly.*

From the answers that Mr N provided in the risk questionnaire I would disagree with him being a "Balanced" Investor.

Mr N provided the following answers to the questions below;

- People who know me would describe me as a cautious person – Agree*
- I feel comfortable investing in the stockmarket – Disagree*
- Usually it takes me a long time to make up my mind on investment matters. – Agree*
- I generally prefer bank deposits to riskier investments – Agree*
- I am willing to take substantial investment risk to earn substantial returns – Disagree*
- I have little experience of investing in stocks and shares – Agree*
- I'm concerned by the volatility of stockmarket investment – Agree*

I have also considered Mr N's circumstances at the time of the advice.

Mr N was looking to retire at age 60 so only had a further 5 years until retirement. So, he had limited time to make up the initial advice charge or any other increased fees.

Mr N was an inexperienced investor with a lack of knowledge about investments. He had no disposable income after his monthly expenditure. His only asset was his home and £6,000 savings in a building society account. His S pension was his only retirement savings.

Taking this into account I don't think Mr N would have been prepared or able to take the level of risk recommended by Portafina with his only pension and I think that his attitude to risk was "Cautious".

I have looked at the funds that Portafina recommended and around 50% of Mr N's pension fund was invested in property bonds so a large proportion of the

recommended investments were illiquid and unregulated. In their suitability report Portafina outlined a summary for each of the secured bonds Mr N was advised to invest in.

The Lakeview UK Investments PLC bond, Real Estate Investments USA PLC and Strategic Residential Developments PLC were all unregulated investments where the funds were being borrowed for property development. They all appear to be new start-ups so had little track record of their performance and the investments were illiquid.

These funds involved investing in UK and overseas property development projects where the targeted returns were said to be from 11%-15% per annum. Risk and reward are linked, and investments offering higher level of return can reasonably be assumed to be high risk. Especially at a time when interest rates were generally quite low.

I also understand that Mr N wanted to provide benefits for his son on his death and the SIPP was recommend so that Mr N could move to drawdown in the future and his remaining pension funds would be left for his son. However, I don't think that this was a good enough reason to transfer his personal pension. Mr Ns wasn't looking to take his benefits until age 60 and if he had wanted to take drawdown, he could look at this option at retirement.

So, for the reasons I have explained, I think that both the transfer and the recommended funds were unsuitable.

I haven't seen anything to say that Mr N was unhappy with the performance of his S pension and I think it's reasonable to say that he only transferred his pension because Portafina advised him to. The with-profits fund he was invested in would have been suitable for his attitude to risk.

With-profits funds are generally considered to be suitable for consumers with a more cautious attitude to risk. This is because with-profits funds usually include a mixture of assets, including those that are more secure. when determining the value of bonuses, providers apply a process of "smoothing". This means money, in terms of bonus levels, is kept back in years when investment returns are high to support bonus payments in years where investment returns are lower; and annual bonuses cannot usually be taken away once they have been added.

So, I think that Mr N's S Personal pension was suitable for his attitude to risk and circumstances and he should not have been advised to transfer."

The investigator went on to set out what Portafina needed to do to put matters right. Both Mr N and Portafina accepted the investigator's findings so our file was closed on the basis that Portafina would settle the matter in line with the investigator's findings.

However, Portafina subsequently retracted its agreement to the investigator's findings. It said that:

- it was concerned the investigator had said that the charges were higher with the SIPP when factoring Portafina's initial and ongoing advice fees. It thought that it was unreasonable as this assumed that Portafina should not have charged a fee for the service provided. It said that had the advice been for Mr N to retain his personal pension but switch funds, then Portafina would still have required a fee of some kind.

- The fund with S was a unitised with profits fund that was performing quite poorly having only shown an annualised return over the past 5 years of 1.925%. As one of Mr N's objectives was to improve performance, Portafina thought that this was something that could be improved on.
- The Novia SIPP was the cheaper option when factoring Portal's initial fee. The ongoing fee wasn't factored into the analysis because this service was optional and Mr N wasn't obliged to continue ongoing management of the plan.

Considering this, Portafina felt that the investigator had incorrectly concluded that the transfer was unsuitable because of the higher charges.

As Mr N hadn't received his settlement from Portafina, he contacted our service and asked for his complaint to be reopened. As both parties requested that the matter be reopened, it was agreed that the complaint would be passed to an ombudsman to reach a final decision.

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.

Under the Dispute Resolution rules, set out in the regulator's handbook, Portafina has an obligation to settle matters promptly and it has a duty to comply with any settlement it has agreed to. I refer Portafina to the following rule:

Complying with awards and settlements DISP 3.7.12R

A respondent must comply promptly with:

1. *any award or direction made by the Ombudsman; and*
2. ***any settlement which it agrees at an earlier stage of the procedures {my emphasis}***

As can be seen from the above rule, once a firm has agreed to a settlement, it must comply promptly. So it's extremely disappointing that Portafina retracted its agreement to settle this complaint in line with our investigator's findings. This has not only delayed the resolution of this matter for Mr N but it's also not in line with the regulator's rules.

It's also disappointing that Portafina would raise this point about fees when ultimately, the investigator thought the SIPP was unsuitable for other reasons.

Our service would not usually reopen matters where an agreement has been reached by both parties. But in this case Mr N also requested that the matter be reopened, so we have agreed to do so on this occasion.

Firstly, I should explain that I agree with the outcome our investigator reached and for mostly the same reasons. I see little point in reiterating what the investigator has already said. So I only intend to address the issue that Portafina has said it no longer accepts; the issue of its fees being taken into account.

As alluded to above, the issue of whether the new arrangement was more expensive is only one of the reasons this complaint was upheld. So even if I was to determine that the SIPP was a cheaper option, the complaint still succeeds on the other aspects.

Regardless of the cost of the SIPP, they aren't suitable for every investor. While they offer greater flexibility in terms of the types of investments that can be made into them, this flexibility isn't necessarily something that less experienced investors, like Mr N, require. And SIPPs generally tend to be suited to investors that are comfortable making their own investment decisions or who have sufficient funds to pay to have their funds managed. Mr N wasn't either of these.

It doesn't seem to be in dispute that the investments Portafina recommended were unsuitable. Having considered the investments further, I agree this was the case. They were high risk and Mr N didn't have the appetite for risk or capacity for loss that these types of investments carried. Portafina erroneously classed Mr N as having a balanced ATR. And the main reason the transfer was recommended and the SIPP was established seems to have been so Mr N could invest in a number of UCIS and other high risk investments, which were not suitable for him. So, as I've already said above, the complaint still succeeds even if the transfer was deemed suitable. As such, the remedy to put things right is the same, regardless of the findings in terms of the actual transfer.

However, for completeness, I have addressed Portafina's concerns about the fees and the transfer below.

Portafina says that by factoring in its initial and ongoing advice fee the investigator concluded the transfer was unsuitable. But it considers this is unreasonable as it assumes Portafina shouldn't have charged a fee for the service provided, even if it had recommended that Mr N switched funds within his existing arrangement.

Mr N had agreed to a free pension review so had Portafina not recommended Mr N take any action with his pension, it wouldn't have been able to charge a fee. However, I do accept that if it had given Mr N advice to switch investments within his current plan, then it might have decided to charge a fee for this particular advice. But that's not what happened here.

Portafina says that it wasn't possible for Mr N to switch funds within his existing arrangement. And that may well have been the case. But I'm conscious Mr N was cold called by a company working for Portafina and he was offered a free pension review. This doesn't suggest to me that he was so unhappy with his existing arrangement that he was actively looking to move his pension fund or switch investments.

The fees represented a sizable reduction to Mr N's already modest transfer value. And the ongoing SIPP charges were higher than his existing arrangement. Portafina's initial fee was 5% of Mr N's transferred fund value and its ongoing advice fee was 1%. I appreciate that the ongoing servicing was an optional service that Mr N chose to have. But with so little investment experience, I can't see that Mr N would have been happy to manage the SIPP investments himself. So whilst it may have been an optional service, I think the cost needed to be included in the overall assessment.

The SIPP's AMC was 0.5% and there were additional charges for each individual investment within the SIPP. Whereas for Mr N's existing plan, the only cost he was incurring was a 0.875% AMC.

Mr N's existing arrangement was invested more in line with his ATR. I acknowledge that the average return over the past 5 years was fairly low at 1.925%. But given the significant reduction in fund value when taking account of the fees and ongoing charges - and bearing in mind Mr N was, at most, a balanced investor - I don't believe there was great prospect of making up the cost of the switch via investment growth without taking significant investment risks. And as I've already said, I don't believe the investment approach Portafina advised Mr N to take was suitable. I think more appropriate advice would've been for Mr N to leave

his pension where it was. And had Portafina provided Mr N with this suitable advice when it completed its free pension review – no fees would have been payable.

I therefore uphold this complaint and direct Portal Financial Services LLP to pay redress as set out below.

Putting things right

Fair compensation

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 Portafina do?

To compensate Mr N fairly, Portafina 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.
- Portafina should add interest as set out below:
- Portafina 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 Portafina 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%.

Income tax may be payable on any interest paid. If Portafina deducts income tax from the interest it should tell Mr N how much has been taken off. Portafina 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
The 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. Portafina should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Portafina pays should be included in the actual value before compensation is calculated.

If Portafina is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Portafina may require that Mr N provides an undertaking to pay Portafina 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. Portafina 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. Portafina should request that the previous provider calculate this value.

Any withdrawal from the 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 Portafina 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, Portafina will need to determine a fair value for Mr N'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 SIPP only exists because of illiquid assets. In order for the 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 Portafina 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 Portafina 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 SIPP to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr N wanted Capital growth with a small risk to his 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 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 N'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 N into that position. It does not mean that Mr N 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 N could have obtained from investments suited to his objective 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 14 December 2022.

Lorna Goulding
Ombudsman