complaint

Ms T complains that Portal Financial Services LLP ("Portal") advised her to invest in a number of unsuitable funds.

background

In 2011 and against Portal's advice Ms T transferred her existing pension into a self-invested pension plan ("SIPP"). At the time, she was aged 55, divorced and with no dependents. She was earning £12,000 pa gross. She had no savings or investments. She was a 'moderately cautious' risk investor. Apart from her existing pension, she was a member of the NHS final salary scheme.

Portal then advised Ms T to invest over 80% of her SIPP in the following funds:

- Raithwaites Hypa
- Hypa Asia
- Venture Oil International
- EOS Solar Energy

One of our adjudicators investigated the complaint. He said:

- The first two funds were unregulated collective investment schemes ("UCIS"). Even if Ms T was eligible to receive UCIS promotions, her risk profile and circumstances made such investments unsuitable.

- A Portal adviser was also a general partner in the Raithwaites Hypa fund. Ms T was not told about this potential conflict of interest.

- The Venture Oil and Solar Energy funds were also specialised investments. The former invested in crude oil. Its risk was not only currency exposure but also losses if the oil price fell. The latter is a Special Purpose Vehicle ("for a project to use new technology in Cyprus"). Both funds had a level of risk Ms T was not prepared to take.

- Preserving her pension fund was Ms T's priority. In its suitability report, Portal said that the portfolio recommended was based on Ms T's risk profile. It was also designed to provide growth and gradually reduce her risk exposure nearer to her retirement age. But the funds recommended did not address these requirements.

Portal did not agree. It said:

- When Ms T completed a risk questionnaire, she confirmed that: she strongly disagreed that she preferred the safety of keeping her money in the bank; she agreed she preferred alternative investments which were less volatile, even if they reduced liquidity; she had no strong opinion on whether she was willing to take substantial financial risk or on whether she was not willing to take any financial risk. These responses did not show that Ms T was completely risk averse.

- Portal did extensive due diligence. This showed the funds recommended had a low to medium risk. They matched her risk profile.

- Ms T signed all relevant documents indicating her desire to proceed with the investments. This shows she was happy to accept the risks.

- Ms T was told the funds had a fixed term of up to seven years and so were illiquid. Although they have not acted as expected, Portal is confident there will be a return to investors due to securities within the funds.

- Ms T was eligible to receive UCIS promotion. She was exempt under Category 2 of the Conduct of Business Sourcebook ("COBS"). She was a person for whom the firm had taken reasonable steps to ensure that investment in UCIS was suitable. Under such an exemption, it would not have been necessary for a personal recommendation to be made.

Ms T said:

- She was not told the implications of investing in illiquid funds. She had a 20 minute phone interview with Portal at the time. Portal did not give her all the information it claims it did.

- She did not sign anything to agree she was investing in illiquid funds.

- In her view, there is not much difference between 'default' and 'non performance'. Her funds are unchanged.

- Portal has still not addressed that it had a personal interest in one of the funds It did not mention this at the outset.

my findings

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

I note that Ms T has specifically not complained about the transfer of her funds to a SIPP. She did this against the advice of Portal. So my decision here only concerns the investments into the SIPP which were recommended by Portal.

Ms T wished to retire within seven years from the time of the advice. She had no disposable income and no savings or investments. Her only retirement provision was the SIPP, her NHS pension and any State pension she would receive.

She was also a moderately cautious risk investor. This meant that she only wished to take a low risk approach with her investments. This is also shown in the recommendation letter, which indicated that preserving her pension fund was the highest priority for her.

Furthermore, page 17 of that letter said that the portfolio recommended was based on Ms T's risk profile and designed to provide growth, and gradually reduce her risk exposure as she approached her retirement age. So irrespective of whether the illiquidity risks were explained to her, Ms T should not have been advised to invest any of her funds in investments that had a liquidity risk.

In respect of the recommended funds:

The **Raithwaites UCIS** was a *'specialist investment in a five star hotel development ...designed to yield 8% per annum'.* Portal's due diligence evaluated this to be a low to medium risk investment, which should provide an average compound return of 11%. One of the advisers in Portal was also a general partner with that fund. This potential conflict of interest was not told to Ms T.

I am not persuaded that an unregulated investment that sought an average rate of return of 11% per year could be seen as suitable for Ms T; or to be considered a low to medium risk investment.

The **Hypa Asia UCIS** fund invested in off-plan villas and hotel rooms. Again, I do not see how this UCIS could be suitable for an investor like Ms T.

The previous industry regulator, the Financial Services Authority ("FSA"), has said that it considers a UCIS as having a high degree of volatility, illiquidity or both and therefore it is usually regarded as a speculative investment and, in practice rarely regarded as suitable for more than a small share of an investor's portfolio.

A report published by the FSA in July 2010 (before the advice given to Ms T) about the sale of UCIS suggested that good industry practice would be to limit investment in UCIS to between 3% and 5% of a portfolio.

Even if Ms T was eligible to receive promotions in UCIS, which I do not agree was the case, I do not see how the two UCIS, not least because of the proportion of Ms T's limited funds invested in them, were suitable for a moderately cautious investor such as her.

Ms T had a low attitude to risk. She wanted to preserve her pension fund. Portal advised her to invest in these two UCIS, knowing that they had a liquidity risk (so close to her retirement), as well as all other risks associated with UCIS. In my view, she should not have invested in any UCIS.

Venture Oil International

My understanding of this investment is that it was an investment in barrels of crude oil. It had a currency risk and exposure to losses if the price of oil fell. But Portal's due diligence expected an annual return close to 10%. It was therefore a specialised investment, suitable only for a more sophisticated investor than Ms T.

EOS Solar Energy

This investment was a Special Purpose Vehicle for a project that sought to utilise a new technology in Cyprus. Again, the regulator has referred to SPVs as non-mainstream pooled investments. They are considered to be *"pooled investments or "funds" characterised by unusual. speculative or complex assets. product structures. investment strategies and/or terms and features ...".*

In my view, none of the investments recommended to Ms T were suitable. They were specialised, non-mainstream and some were unregulated. They represented a level of risk that Ms T was not prepared or able to take. Investing over 80% of her pension funds into four specialised funds with higher risk factors than suitable for a moderately cautious investor was clearly inappropriate.

That some (but not all) of those risks were explained to Ms T is not relevant. Portal had a duty to give suitable advice. This meant it ought to have advised investments suitable for her risk profile and circumstances. It was not sufficient to simply point out the risks.

Apart from the possible loss to Ms T as a result of those investments, she has also been inconvenienced as a result of the advice. This is because she is currently unable to use her SIPP fund as she wishes, since she cannot dispose of the investments. Because of this, she should also be compensated for this inconvenience.

fair compensation

In assessing fair compensation, my aim is to put Ms T as close to the position she would probably now be in if she had not been given unsuitable advice.

In my view Ms T would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Ms T''s circumstances and objectives when she invested.

what should Portal Financial Services LLP do?

It must:

- Compare the performance of Ms T''s investments with the benchmark shown below and pay the difference between *fair value* and *actual value* of the investments. If *actual value* is greater than *fair value*, no compensation is payable.

  A separate calculation should be carried out for each investment.

  Portal should also pay interest as set out below.

  If there is a loss, Portal should pay such amount as may be required into Ms T''s pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

  If Portal is unable to pay the total amount into Ms T''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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Ms T''s marginal rate of tax at retirement.

  For example, if Ms T is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Ms T would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- Pay Ms T £350 for the distress caused to her by the unsuitable advice.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Raithwaites Hypa	mixed	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)
Hypa Asia	mixed	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)
EOS Solar Energy	mixed	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)
Venture Oil International	mixed	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

for each investment:

actual value

This means the actual amount paid or payable from the investment at the end date.

My aim is to return Ms T to the position she would have been in but for the unsuitable advice. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the *actual value* of the investment. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation. Portal should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Ms T and the balance be paid as I set out above.

If Portal is unwilling or unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Portal may require Ms T to give an undertaking to pay Portal any amount she may receive from the investment in the future.

fair value

This is what the 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 the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

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

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Portal totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because:

- Ms T wanted capital growth with a small risk to her 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 her capital.

- The WMA 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 Ms T''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 Ms T into that position. It does not mean that Ms T 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 Ms T could have obtained from investments suited to her objective and risk attitude.

- Ms T has not yet used her pension plan to buy an annuity.

my final decision

I uphold the complaint.

Portal Financial Services LLP must pay Ms T the amount calculated as set out above.

It should give details of its calculation to Ms T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms T either to accept or reject my decision before 18 March 2016. .

Terry Connor
ombudsman