Financial Ombudsman Service

complaint

Mrs C complains that Portafina LLP wrongly advised her to transfer her personal pension to a self-invested personal pension (SIPP) in 2013.

background

I issued a provisional decision on this complaint on 11 June 2018. The background and circumstances to the complaint, and the reasons for my provisional finding which was to uphold the complaint were set out in that decision. A copy is attached and it forms part of this final decision.

I asked both parties to provide any more evidence or arguments that they wanted me to consider before I made my final decision.

Neither Portafina nor Mrs C provided any further material submissions.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I've seen no reason to depart from the conclusions I reached in my provisional decision.

my final decision

Accordingly, for the reasons outlined in my provisional decision attached, my final decision is that I uphold this complaint.

I order Portafina LLP to calculate and pay any compensation due to Mrs C in accordance with the methodology I outlined in that provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 August 2018.

David Ashley
ombudsman

Copy of provisional decision

complaint

Mrs C complains that Portafina LLP wrongly advised her to transfer her personal pension to a self-invested personal pension (SIPP) in 2013.

background

Mrs C was in her late 40s when she was advised to transfer her personal pension. She was employed and a member of her employer's occupational pension scheme. It was recorded at the time that she had a moderately cautious attitude towards investment risk; that her existing personal pension had charges of 1% per year; and that the transfer value was about £11,600.

It was recommended in the suitability report that the transfer value be invested in the following funds:

- Lakeview UK Investments - 5.7%
- Marbella Resort & Spa - 7.2%
- Real Estate Investments USA - 7.8%
- Motion Picture Global Investments - 3.6%
- Strategic Residential Developments - 5.7%
- Jupiter Distribution - 12.0%
- Prudential Managed Defensive - 12.0%
- IFSL Brooks Macdonald Defensive Income - 12.0%
- Invesco Perpetual European High Income - 6.0%
- Invesco Perpetual Distribution - 6.0%
- Standard Life Dynamic Distribution - 6.0%
- Kames Ethical Cautious Managed - 6.0%
- Cash - 10.0%

The transfer value was invested around January 2014.

One of our adjudicators investigated the complaint. He recommended that the complaint should be upheld. He thought that the charges on the SIPP were higher than Mrs C's existing pension. And his view was that the first five funds listed above were bonds that were complex and inherently risky. He didn't think they were aligned to the moderately cautious degree of risk that Mrs C had agreed to take and that, as a whole, the portfolio of funds wasn't suitable. He recommended that Portafina should calculate compensation by comparing the value of Mrs C's SIPP with the value that her personal pension would have been had she not transferred out of it.

Portafina didn't agree with the adjudicator's assessment. It said, in summary, that the SIPP was suitable for Mrs C; it had lower charges than the personal pension. And it also didn't agree with the methodology the adjudicator had proposed to calculate compensation; it thought the funds Mrs C's original pension was invested in presented a higher than moderately cautious degree of risk.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The adjudicator went into some detail about each of the five investments that are illiquid and like the adjudicator I think the risks they presented were higher than the degree of risk that Mrs C had agreed to take. The concept of risk and reward is well known and four of these funds were promoted to provide returns of 10% or over per year and the fifth 7%. This was at the end of 2013 and in the context of a prolonged period of low interest rates. I think it should have been clear these funds presented material risks and the suitability report itself said they were also relatively illiquid.

Although the SIPP had a 0.5% annual management charge there were other charges associated with the transaction. There was a 5% initial charge, 1% ongoing charge and charges against the underlying funds. I'm satisfied the overall charges for the SIPP were higher than Mrs C's original pension.

Overall, like the adjudicator, I'm not persuaded that the advice to transfer was suitable. Looking at the portfolio of funds as a whole, I think it presented a higher degree of risk than the moderately cautious risk that Mrs C wanted to take. And in addition given the SIPP's higher charges, I'm not persuaded that the advice to transfer was suitable.

Portafina has said it disagrees with the adjudicator's proposal for calculating redress as Mrs C's original pension had a significant amount invested in equities and was higher risk than the moderately cautious risk that she had agreed to take. Given that the original plan had about 55% invested in international equities I agree with Portafina. So although I don't think Mrs C should have been advised to transfer I think the adviser should have recommended that she switch to funds better aligned to her risk profile in her existing arrangement. I've therefore taken this into account in my provisional proposal for calculating fair compensation.

my provisional decision

My provisional decision is that I uphold Mrs C's complaint.

I intend to order that Portafina LLP calculates loss and pays compensation to Mrs C if a loss is found in the following manner.

fair compensation

In assessing what would be fair compensation my aim is to put Mrs C as close to the position she would probably now be in if she had not been given unsuitable advice. I think Mrs C would have invested differently. It's not possible to say precisely what she would have done, but I'm satisfied that what I have set out below is fair and reasonable given Mrs C's circumstances and objectives when she invested.

what should Portafina do?

To compensate Mrs C fairly Portafina LLP should:

Compare the performance of Mrs C's SIPP with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investments. If the actual value is greater than the fair value, no compensation is payable.

Portafina should also pay any interest, as set out below.

investment name	status	Benchmark	from ("start date")	("end date")	additional interest
The SIPP	still exists	for half the investment: (FTSE UK Private Investors Income total return index – formerly known as FTSE WMA Stock Market Income Total Return Index); for the other half: average rate from fixed rate bonds	date of investment	date of 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)

If there is a loss, Portafina LLP should pay such amount as may be required into Mrs C'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. However the compensation shouldn't 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 Mrs C'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. I'm satisfied that Mrs C will likely be a basic rate taxpayer in retirement and therefore the notional allowance should be calculated assuming a basic rate of tax.

In addition, Portafina should pay Mrs C £250 for the distress and inconvenience I'm satisfied has been caused by the matter.

Portafina should provide details of the calculation to Mrs C in a clear, simple format. Income tax may be payable on any interest awarded.

actual value

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

My aim is to return Mrs C 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 may be the case here. 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. Portafina LLP 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 Mrs C and the balance be paid as I set out above.

If Portafina is unwilling or unable to buy the investment the *actual value* should be assumed to be nil for the purpose of calculation. Portafina may wish to require that Mrs C provides an undertaking to pay it any amount she may receive from the investment in the future.

My understanding is that Mrs C wants to take benefits from her pension as her husband isn't well and needs to finish work. If it's not possible to take all the benefits from the plan due to some of the funds illiquidity following payment of any compensation by Portafina, I don't think it's fair that Mrs C continues to have to pay annual SIPP fees. Ideally, Portafina would take over any illiquid holdings, thus allowing Mrs C to decide what she wants to do with her SIPP. But third parties are involved and I can't tell them what to do.

So if there are illiquid holdings and Portafina is unable to buy them all from the SIPP, then it's fair that Portafina pay Mrs C an upfront lump sum equivalent to five years of SIPP fees (calculated using the previous year's fees). This gives a reasonable period to arrange for the SIPP to be closed.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investments should be added to the fair value calculation from the point in time 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 Portafina totals all those payments and deduct that figure at the end instead of deducting periodically.

To arrive at the *fair value* when using the fixed rate bonds part of the benchmark, Portafina 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. Apply those rates to the investment on an annually compounded basis.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs C was willing to take a moderately cautious degree of risk.

- 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 their capital.

- The FTSE UK Private Investors 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 Mrs C's willingness to accept risk was somewhere in between. So, the 50/50 combination would reflect her attitude to risk. It doesn't mean that Mrs C 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 C could have obtained from investments suited to her circumstances and risk attitude.

- Mrs C hasn't yet used her pension plan to buy an annuity.

David Ashley
ombudsman