complaint

Mr A has complained that Portafina LLP (formerly known as Portal Financial Services LLP) gave him unsuitable advice. He says the investments made through his Self-Invested Personal Pension (SIPP) were too high risk and not suitable for him.

background

The background to this complaint was set out in my provisional decision which was issued in December 2018. A copy is attached and forms part of this final decision.

In my provisional decision I set out why I was minded to uphold Mr A's complaint. In summary I said that the recommendation for Mr A to transfer his personal pensions to a SIPP wasn't unreasonable. But, overall, I didn't agree that the underlying funds he was advised to invest in were suitable.

I invited both parties to let me have their further comments. Mr A responded to confirm that he accepted the provisional decision. Portafina responded and confirmed that it had nothing further to add.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional decision.

I remain of the view that Mr A's complaint should be upheld on the basis that the funds he was advised to invest in were unsuitable.

fair compensation

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr A would have invested differently. It's not possible to say precisely what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr A's circumstances and objectives when he invested.

what should Portafina do?

To compensate Mr A fairly, Portafina must:

- Compare the performance of Mr A's investment with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Portafina should add interest as set out below.

  If there is a loss, Portafina should pay into Mr A's pension plan to increase its value by the 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 compensation into Mr A'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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr A is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr A would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Mr A £300 for the distress and inconvenience caused as a result of the unsuitable advice it provided Mr A to invest in the UCIS funds.

Income tax may be payable on any interest paid. If Portafina deducts income tax from the interest, it should tell Mr A how much has been taken off. Portafina should give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP fund	mixed	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my final decision	8% simple per year from date of this decision to date of settlement (if compensation is not paid within 28 days of the business being notified of 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 investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Portafina should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Portafina is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Portafina may require that Mr A provides an undertaking to pay Portafina any amount he may receive from the investment 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.

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, 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. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other distribution out of the investment should be deducted from the fair 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 instead of deducting periodically.

why is this remedy suitable?

I've chosen this method of compensation because:

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

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that Portafina LLP pays the balance.

determination and award:

As set out above, I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Portafina LLP should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest on the balance as set out above.

If Portafina LLP does not pay the recommended amount, then any investment currently illiquid should be retained by Mr A. This is until any future benefit that he may receive from the investment together with the compensation paid by Portafina LLP (excluding any interest) equates to the full fair compensation as set out above.

Portafina LLP may request an undertaking from Mr A that either he repays to Portafina LLP any amount Mr A may receive from the investment thereafter, or if possible transfers the investment at that point.

Mr A should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

recommendation:

If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Portafina LLP pays Mr A the balance plus any interest on the balance as set out above.

If Mr A accepts my determination, the money award is binding on Portafina. My recommendation is not binding on Portafina.

It’s unlikely that Mr A can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr A may want to consider getting independent legal advice before deciding whether to accept this decision.

my final decision

I uphold the complaint and order Portafina LLP to calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 16 February 2019.

Lorna Goulding
Ombudsman

copy of provisional decision

complaint

Mr A has complained that Portafina LLP (formerly known as Portal Financial Services LLP) gave him unsuitable advice. He says the investments made through his Self-Invested Personal Pension (SIPP) were too high risk and not suitable for him.

background

Mr A met with Portafina in August 2010. The fact find completed during the sale recorded that:

- Mr A was 57 years old, married with no dependents
- He was working full time, earning £57,000 per year and was a member of his employer's pension scheme
- His home was worth £220,000 and he had £60,000 outstanding on his mortgage
- He had £14,000 on credit cards, less than £2000 in savings and £200 per month disposable income
- He had four personal pension plans and was in receipt of a pension from the civil service – paying £3600 per year
- He intended to retirement at 65
- He wanted to take maximum tax free cash to pay off his credit cards, fund home improvements and to purchase a yacht

The suitability letter that was issued at the time summarised Mr A's objectives, those being that he wanted to use his existing pensions to provide an income at a later date and to take his tax free cash entitlement immediately. He also wanted to retain a residual fund that was invested until he required an income in retirement. And Mr A wanted to ensure that his portfolio reflected his current risk and reward profile. Based on answers Mr A had given, Portafina deemed him to have a moderately adventurous attitude to risk.

The letter further expanded on the risk profile, explaining that this would mean Mr A required "*relatively low short-term security and significantly upside potential*". The holdings could predominately be in medium risk equity and property investments (around 50%) or in a broad selection of UK equities. 30% of the portfolio may be invested in higher risk overseas investments with the remainder of the portfolio being invested in fixed interest holding, cash and loan backed investments.

The suitability letter also set out Portafina's recommendations for Mr A. It explained that it would usually recommend that Mr A leaves his pension benefits where they were, as this would be most beneficial for him in retirement. But his current circumstances meant that he'd like to take his benefits immediately. So Portafina recommended that Mr A transferred his existing personal pensions to a SIPP, take his 25% tax free entitlement and leave the residual fund invested. Portafina also recommended that Mr A invest in the following funds:

- 50% Raithwaites Hypa Fund
- 35% Hypa Asia Fund
- 10 Olive Tree Koroni Fund
- 5% Cash Deposit

Mr A accepted Portafina's recommendations and arranged for his personal pensions to be transferred to a SIPP. After the payment of tax free cash the SIPP balance was £127,348.86, and this was invested in line with Portafina's recommendations.

Mr A complained to Portafina in 2016. He said that the funds recommended were unsuitable as both the Olive Tree Koroni and Raitwaites Hypa funds had been wound up. So he wanted Portafina to return his original investment with interest. As he was unable to resolve matters with Portafina, Mr A referred his complaint to our service for consideration.

Portafina initially objected to our service considering the complaint as it didn't think it had been referred in time. Another ombudsman considered the objection and determined that the complaint can be considered.

One of our adjudicators considered the suitability of the investments within the SIPP; he didn't consider the overall advice to transfer into a SIPP. In summary he concluded that:

- It wasn't appropriate to assess Mr A's attitude to risk solely on the basis of the answers he'd provided to the questions on the risk profile questionnaire; the adviser was expected to consider Mr A's overall circumstances, whether he was an experienced investor, if he could afford to take any risk with his pension and if he had adequate savings and investments to be able to afford any losses.
- Given Mr A's age and limited savings, the adjudicator didn't think he would've been prepared to take a considerable risk with his SIPP investments. And as his priority was to preserve his fund for as long as possible, he thought Mr A should've been placed in a portfolio with a low risk profile.
- Section 238 of the Financial Services and Markets Act (FSMA) prohibits firms from communicating an invitation or inducement to retail clients to participate in an unregulated collective investment scheme (UCIS). The FSMA Promotion of Collective Investment Schemes Exemption Order 2001 provided some exemptions, where the investor is considered a high net worth investor or self-certified sophisticated investor. However, the adjudicator didn't think that Mr A met the criteria of a high net worth individual for the purpose of investing in a UCIS. And he didn't think he could be considered as a sophisticated investor, as defined by the Order.
- Subsection 5 of section 238 of the FSMA allows the promotion of UCIS under additional exemptions, stated in section 4.12 of the Conduct of Business Sourcebook (COBS). At the time of the advice, this particular section identified eight categories of investors to whom promotion of a UCIS may be made. However, having considered all eight of these categories the adjudicator didn't think any of these exemptions applied to Mr A. So he didn't consider the three UCIS investments should've been recommended.
- The UCIS investments represented 95% of Mr A's pension fund which increased the risk profile of the SIPP beyond that of a moderately adventurous investor.
- Mr A should've been placed in a low risk portfolio as he wanted to preserve his pension fund.

Portafina responded to the adjudicator's view. In summary it said that:

- The recommendation for Mr A wasn't based solely on his attitude to risk. It had followed FCA guidance of giving suitable advice and had based its recommendation on Mr A's circumstances and retirement provisions, as well as his attitude to risk.
- Mr A had stated that his pension was not his main provision. He was also already receiving an annuity and he had the full state pension. He also had a company pension in place which, if he remained with his employer, would potentially be worth £76,560, not including growth. Mr A had also stated that he wished for the remaining funds to be reinvested and that he would begin receiving an income from the age of 65.
- Mr A was financially stable and sufficient time before retirement to account for any market fluctuations. So taking everything into account, it was clear he should be assessed as a Moderately Adventurous investor.

- Portafina conducted extensive due diligence at the time of the recommendation and the overall assessment of Mr A's portfolio was low to medium risk. However, the adjudicator hadn't requested sight of the due diligence documents.
- It was made clear to Mr A that the recommended portfolio had a fixed term of up to 7 years. And it was Portfina's understanding at the time of the sale that these funds would provide a regular income stream to cover any withdrawals before maturity. It couldn't have reasonably foreseen that the funds would not perform as expected and shouldn't be held responsible for this.
- Being exposed to risk doesn't mean that Mr A's pension isn't being preserved. Mr A is unlikely to be affected by any capital losses as UCIS investments are asset backed. And Portafina has sufficient security in place to guarantee security over all client investments.
- Portafina still maintains the complaint is time barred.

Mr A responded to the adjudicator's opinion. He said that it was his recollection that when he questioned Portfina about the SIPP product offered, he was told that because he'd transferred money from Scottish Widows, he could only put it into a SIPP. And the funds recommended were the most suitable. Mr A believes he was lied to regarding the SIPP and the investments.

As the complaint remains unresolved, it's been referred to me for a decision.

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. Having done so, I currently intend to
uphold the complaint for mostly the same reasons set out by the adjudicator. But before making a final decision, I wanted to set out my thoughts regarding the suitability of the advice Mr A received to transfer his previous personal pension plans into a SIPP, as it doesn't appear this has previously been addressed.

<u>Was the complaint made in time?</u>

As explained above, a decision has already been issued determining that Mr A complained within three years of when he was first aware of the cause for complaint. And I'm not going to repeat the content of that decision here. However, I would like to confirm that following the previous decision on jurisdiction, information has been provided to this service that shows that Mr A did in fact complain within six years of the advice he received. I'm therefore satisfied that this is a complaint that I can consider under our rules.

<u>Suitability of the advice to take out the SIPP</u>

Most of Mr A's concerns have focused on the funds he was advised to invest in. But his response to the adjudicator's view would suggest he also has concerns about the overall advice he was given to take out the SIPP. So I've considered this aspect further.

The options available for individuals wanting to take their pension benefits have increased since the introduction of the pension freedom legislation in 2015. However, at the time Mr A received advice in 2010, the choices were limited. After obtaining up to date information on Mr A's various pension arrangements, Portafina wrote to him to explain the options he had at that time. The letter explained that Mr A could:

> "<u>*Do nothing*</u>
> *You could leave your pension benefits with your current pension providers*
>
> <u>*Pension Release*</u>
> *You could release a cash lump sum of up to £44,398 from your pension fund and leave the residual amount invested, until a time where by you need to take an income from your pension.*

> *Take full benefits and retire*
> *You could take £44,398 as lump sum and use the remaining fund to produce an income, which we can use the open market option to get the best possible deal for you."*

A subsequent telephone call was arranged to talk through Mr A's objectives. The fact find completed at this time and the suitability letter that was issued following the call, state that Mr A wished to release funds from his pension so he could repay his credit cards and purchase a yacht. It also says other ways to raise this money had been discussed. But Mr A didn't wish to take on further lending, including a remortgage, as he didn't want to have to pay redemption penalties or any further interest on the amount he'd need to borrow. The letter also confirmed that Mr A had decided he wanted to release his tax free cash entitlement and leave the remainder of his funds invested as he didn't have an immediate need for income.

The only way it was possible for Mr A to release his tax free cash was to move his existing plans into drawdown; it wasn't possible for him to take tax free cash from his personal pension plans and leave the remaining funds invested in the plans they were in at that time. And the SIPP that Portafina recommended allowed Mr A to facilitate the drawdown of his tax free cash, leaving the remainder of his funds invested.

The suitability letter also explained Portafina's reasons for recommending the SIPP provider it did, those reasons being that it had excellent administration and technical support. And it offered an extremely competitive fee structure for their product.

So, taking the above into consideration, it doesn't seem the advice to transfer Mr A's personal pension plans to a SIPP was in itself unreasonable as it did allow Mr A to meet his objectives.

Suitability of the investments within the SIPP

Although I'm minded to conclude that the advice to take out the SIPP wasn't unsuitable, I'm in agreement with the adjudicator that the advice Portafina gave Mr A regarding the three UCIS investments was unsuitable. I've explained my reasons for this below.

Portafina assessed Mr A's risk profile as "*moderately adventurous*" based on the information he gave in the attitude to risk questionnaire. In summary, this is described as someone who:

- has a moderate to high level of financial knowledge
- will usually be a fairly experienced investor having used a range of investment products in the past
- will be willing to take risk with a substantial proportion of their available assets
- will usually take gambles where they see the potential rewards being attractive

Whilst I agree that some of the answers Mr A gave on the questionnaire might suggest he was willing to take some degree of risk, I think other answers should've led Portafina to question whether the assessment of his risk profile was correct. For example, Mr A provided the following answers to the questions below:

- *I feel comfortable about investing in the stock market.* — *disagree*
- *I generally look for the safest type of investment, even if that means lower returns.* — *no strong opinion*
- *I am willing to take substantial financial risk to earn substantial returns.* — *disagree*
- *I have little experience of investing in stocks and shares.* — *agree*
- *When it comes to investing, I'd rather be safe than sorry.* — *agree*

Given the above, I don't think moderately adventurous was an accurate reflection of Mr A's attitude to risk.

Portafina says it didn't base its recommendation solely on Mr A's attitude to risk. It says it followed the FCA guidance of giving suitable advice and took account of Mr A's circumstances and retirement provision. It also says that it conducted extensive due diligence and its overall assessment of Mr A's portfolio was low to medium risk. However, its recommendation was for Mr A to invest 95% of his pension fund in UCIS funds so I don't agree that that this could be considered low to medium risk. UCIS funds are unregulated and thus high risk. Although they may have greater freedom to employ techniques to potentially improve returns, this is at the risk of greater volatility. They can also be high risk due to illiquidity and investing in very particular areas with narrow remits.

The funds Portafina recommended were all high risk and two were also illiquid, as explained below.

a) The Hypa Raithwaite Fund invested in a hotel development in Yorkshire so was illiquid and its assets were narrowly concentrated.

b) The Hypa Asia Fund invested in 'off-plan' hotel rooms and villas in Asia. It was illiquid, concentrated in a narrow area and involved currency risk.

c) The Koroni Fund loaned money against assessed financial claims. It aimed to return in excess of 6% per annum over three years.

In July 2010, one month before Mr A received advice, the then regulator, the FSA, issued a report – "*Unregulated Collective Investment Schemes: Good and poor practice*". This gives as an example of good practice: "*The firm set up a maximum portfolio proportion for UCIS investments within their customers' portfolio and monitored it on on-going basis. This level was between 3% and 5% and was backed-up by the Firms*' *robust and on-going due diligence and monitoring*". The same report gave as an example of poor practice: "*The firm had a strategy to put all of its customers and all their money into one UCIS*".

I acknowledge that Portafina says that it had security in place to guarantee security of client investments. I'm not aware of what this security was but this in itself suggests to me that Portafina was aware that UCIS funds are high risk. And given the SIPP represented a significant proportion of Mr A's overall retirement provision; I don't currently agree that the recommendation to invest in the three UCIS funds was suitable for Mr A.

<u>What should Portafina have advised?</u>

As explained above, I'm currently minded to conclude that the recommendation for Mr A to transfer his personal pensions to a SIPP wasn't unreasonable based on his recorded objectives. But, overall, I don't think that the underlying funds were suitable for him.

Apart from his pensions and his main residence, Mr A had limited savings, assets or investments. The sales paperwork records that his highest priority was to preserve his pension fund. Given Mr A's age and his limited savings, I don't think he would've been prepared to take a considerable risk with his SIPP investments. I therefore consider that Mr A should've been placed in a portfolio with a low risk profile, given his priority to preserve his fund for as long as possible.

fair compensation

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr A would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr A's circumstances and objectives when he invested.

what should Portafina do?

To compensate Mr A fairly, Portafina must:

- Compare the performance of Mr A's investment with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Portafina should add interest as set out below.

  If there is a loss, Portafina should pay into Mr A's pension plan to increase its value by the 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 compensation into Mr A'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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.

  For example, if Mr A is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr A would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Mr A £300 for the distress and inconvenience caused as a result of the unsuitable advice it provided Mr A to invest in the UCIS funds.

Income tax may be payable on any interest paid. If Portafina deducts income tax from the interest, it should tell Mr A how much has been taken off. Portafina should give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP fund	mixed	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my final 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)

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 investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Portafina should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Portafina is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Portafina may require that Mr A provides an undertaking to pay Portafina any amount he may receive from the investment 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.

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, 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. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other distribution out of the investment should be deducted from the fair 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 instead of deducting periodically.

why is this remedy suitable?

I've chosen this method of compensation because:

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

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that Portafina LLP pays the balance.

determination and award: As set out above, I'm minded to uphold the complaint, subject to any comments I might receive from the parties. I consider that fair compensation should be calculated as set out above. My provisional decision is that Portafina LLP should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest on the balance as set out above.

If Portafina LLP does not pay the recommended amount, then any investment currently illiquid should be retained by Mr A. This is until any future benefit that he may receive from the investment together with the compensation paid by Portafina LLP (excluding any interest) equates to the full fair compensation as set out above.

Portafina LLP may request an undertaking from Mr A that either he repays to Portafina LLP any amount Mr A may receive from the investment thereafter, or if possible transfers the investment at that point.

Mr A should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Portafina LLP pays Mr A the balance plus any interest on the balance as set out above.

If Mr A accepts my determination, the money award is binding on Portafina. My recommendation is not binding on Portafina.

It’s unlikely that Mr A can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr A may want to consider getting independent legal advice before deciding whether to accept this decision.

my provisional decision

I am minded to conclude that the complaint should be upheld and I intend to award the compensation set out above.

Lorna Goulding
ombudsman