

The complaint

Mr R says the advice given and the arrangements made by Portal Financial Services LLP (Portal), trading as Portafina LLP, to transfer his Occupational Pension Scheme (OPS) benefits into a Transact Self-invested Personal Pension (SIPP) and recommend investments in unregulated and specialist investments was unsuitable.

What happened

Mr R says he was cold called and invited to a pension review with Portal. He accepted and in January 2013 information was gathered from him about his circumstances, objectives and matters such as his attitude to risk. The process appears to have been conducted over the phone and in correspondence.

Portal issued a suitability report dated 11 January 2013, identifying his objectives, including to:

- *Use your existing pension plans to provide an income at a later date and to take your Tax Free Cash entitlement immediately.*
- *Retain a residual fund that remains invested until such a time that you require an income in your retirement.*
- *Ensure that you have a good awareness of investment opportunities available to you.*
- *Ensure your portfolio reflects your current Risk & Reward profile.*
- *Have access to a system which will monitor the performance of your investments.*
- *Be kept informed of the performance of your portfolio.*
- *Consolidate your investments, as far as reasonable, to facilitate clearer and simpler reporting on investment performance.*

Mr R was a deferred member of two OPS – the Premier Foods Pension Scheme and the Ryder Pension scheme. Ultimately, he was persuaded to transfer his benefits, which had a combined value of around £89,000.

Portal noted its recommendation would allow Mr R to access tax-free cash (TFC) of around £22,000. The bulk of Mr R's residual pot was to be invested in line with its recommendations, with 87.5% being placed in four unregulated and specialist funds, and 12.5% in cash. The balance was used to pay Portal and Transact fees.

Mr R approached this Service in January 2020. When he spoke to an Investigator he raised concerns about the advice he'd been given in 2013. For example, he says he was told his OPS pensions were frozen and not doing anything. He had no other provision and so wanted low risk investments. He said that Portal had continued to give him assurances that the investments would pay out. He trusted what it told him.

Portal had sent Mr R its final response to his complaint on 7 October 2019. It argued he'd brought his complaint too late and so this Service couldn't consider it. An Investigator set out

why we could look at the case, but Portal disagreed. So, the matter was passed to an Ombudsman for review. He concluded that we could look at Mr R's complaint.

Whenever a case comes to an Ombudsman for a decision on the merits of a complaint, they must still consider jurisdiction. Having done so I agree with the findings and conclusions set out by the Ombudsman in October last year. There's little point in me rehearsing everything again. Portal's main argument hinged on two letters it said Mr R had received in 2015 and 2016 from his SIPP provider which noted problems with his investments. I think the following extract from the Ombudsman's decision neatly summarises the position:

"Portafina said it wrote to Mr R in 2015 and 2016 and said the investments weren't growing as expected, and there had been a loss in their value. And Mr R should have known there was a problem with the investments and the advice after receiving the letters in 2015 and 2016. I've seen copies of these letters and have considered them carefully.

The investigator has copied several sections of the 2015 letter, which I don't propose to repeat as the contents are well known to Portafina and Mr R. But having read the letter I am satisfied it would have reassured Mr R that Portafina was optimistic that he would eventually get the returns promised. So, I'm satisfied that this letter is not enough to mean he ought to have known the advice was unsuitable or that he had cause to complain.

Portafina have also raised the letter they sent to Mr R in 2016 as additional evidence, which taken together with the 2015 letter, should have made Mr R think he had cause to complain. But again, the wording of the letter, although saying there is cause for concern about the performance of the investments, makes clear that Mr R should not worry. It says the following:

'During the past six month period, the market suffered a downturn. It is nothing to worry about and is something to expect when investing in any type of fund. Although we would like to see investments rise on a constant basis, by nature there will be down periods and as the markets have dropped in recent months this will have a knock on effect to your investment. Investments should be viewed as long term, 5 years plus, so this is when you will see the potential long term gains we would expect.'

It also says Portafina '... are hopeful that because of the security agreements build into these funds your pension grows by the targeted amount by the end of the specified investment period'.

It goes on to say "We believe the funds that currently make up your pension are still the best funds for you, based on your circumstances and future plans."

I think this letter would probably have reassured Mr R that his funds were being managed and would grow sufficiently by maturity. So, I'm satisfied that the two letters, even taken together, would not have meant Mr R ought to have realised he may have cause for complaint in 2016.

Mr R continued to receive annual reviews, which showed the values of his investments drop, until he complained in August 2019. So, I need to consider at what point he reasonably ought to have realised he had cause for complaint. Mr R is an inexperienced investor, who likely was reliant on Portafina to manage and advise on his investments. I think the earliest point it would be considered reasonable to think he had cause for complaint, is when he received the third statement in a row which indicated the performance of his investments wasn't what had been forecast. And this would have been in 2017. As his complaint in 2019 was within three years of this date, I think he made his complaint in time."

This Service can consider Mr R's case.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr R's complaint. I'll explain why.

how does the regulatory framework inform the consideration of Mr R's case?

The first thing I've considered is the extensive regulation around transactions like those performed by Portal for Mr R. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7 – which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Portal. As such, I need to have regard to them in deciding Mr R's complaint.

At the time of the advice Portal gave Mr R, COBS 19.1.6 made the following specific point about advising on a transfer from OPS schemes (bolding is my emphasis):

*“When advising a retail client who is...a member of a defined benefits occupational pension scheme...with safeguarded benefits whether to transfer...**a firm should start by assuming that a transfer...will not be suitable. A firm should only then consider a transfer...to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer...is in the client's best interests.**”*

Under COBS 19.1.2, Portal was required to:

- Compare the benefits likely to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement.
- Ensure that the comparison included enough information for Mr R to be able to make an informed decision.
- Give Mr R a copy of the comparison, drawing his attention to the factors that do and don't support its personal recommendation, in good time.

- Take reasonable steps to ensure that Mr R understood its comparison and how it contributed towards the personal recommendation.

In simple terms, Portal had to assess the benefits likely to be paid and options available under the OPS and compare this with those available under the new arrangements proposed before it advised Mr R on what to do.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of “designated investment business” includes “arranging (bringing about) deals in investments”.

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer’s knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

In July 2010 the FCA issued guidance about unregulated investments in a ‘Good and Poor Practice report’. The report contained examples of good practice in relation to unregulated investments, for example where a firm had robust controls in place and limited client exposure to 3% to 5% of their portfolios, where those clients had been assessed as being suitable for unregulated investments. An example of bad practice given by the FCA was where up to 100% of a client’s holdings were invested in a single UCIS (unregulated collective investment scheme).

It’s also important to review the FCA’s specific stance on advice provided about SIPP’s. For example, in January 2013 it issued an industry alert which said:

“It has been brought to the FSA’s attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers’ retirement savings to [SIPPs] that invest wholly or primarily in high risk, often highly illiquid unregulated investments...”

“Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect. The FSA’s view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes..”

“If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable. This is because if you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements. There are clear requirements under the FSA Principles and Conduct of Business rules.”

Although the alert was issued around the time of the advice Portal gave Mr R, it wasn’t new guidance; it was the regulator re-stating its position.

Did Portal adhere to the regulatory requirements placed on it?

In short, I don't think Portal met the regulatory requirements placed on it. I'll explain why. There are several documents relating to Portal's transaction with Mr R that are important to my consideration, these include the Pension Options Personal Financial Questionnaire (fact find) and the Pension Release Report.

At the time of Portal's advice Mr R was 56 years old and his intention was said to have been to retire when he reached state pension age. He was married with two children in full time education. Mr R was a lorry driver earning around £20,000 a year, but it seems his then employer didn't provide a pension.

There's no detailed information about Mr R's household incomings and outgoings, although the indication is there was a small net disposable income each month. He had £1,000 of savings and £10,000 in an ISA. He had no other assets. He also had a small loan but doesn't appear to have had any other liabilities.

Mr R was a deferred member of two OPS. These had a combined value of around £89,000. This was his only pension provision. When asking the question about what pension income he would require in retirement, the answer recorded is '*full state pension at state retirement age*'.

The first two objectives Portal recorded for Mr R in this transaction were to:

- *Use your existing pension plans to provide an income at a later date and to take your Tax Free Cash entitlement immediately.*
- *Retain a residual fund that remains invested until such a time that you require an income in your retirement.*

In responding to the Investigator's view, Portal's main contention was that Mr R had gone against its recommendation that he shouldn't transfer his pension. It said he had been an insistent client. And it disagreed with the Investigator's conclusion that it hadn't conducted that process properly. I note it had nothing to say about the suitability of the investments he ended up with, a matter I will return to later.

Of its position on Mr R being an insistent client, Portal said:

"You state in your findings that Mr R was not correctly recorded as an insistent client. I am at a loss to understand how you have come to this conclusion. [Mr R] signed the insistent declaration form stating that he was going against our recommendation. This was further repeated in the Suitability Report, that he would be going ahead on the insistent basis. The advice provided was on that insistent basis. [Portal] recommended to leave his pensions where they were but if he wanted to go ahead, he would then become an insistent client."

I've thought carefully about what Portal has said. Where a firm decides to transact with a customer on an insistent client basis, it should communicate with them:

- In terms that are clear, fair and not misleading.
- Having regard for the information needs of the client such that the client can understand.
- That it hasn't recommended the transaction and that it will not be in accordance with the personal recommendation.
- The reasons why it isn't in accordance with that personal recommendation.
- The risks of the transaction proposed by the client.
- The reasons why it didn't recommend the transaction.

Portal also needed to obtain Mr R's acknowledgement that the transaction wouldn't be in accordance with the personal recommendation given by it; and the transaction was being carried out at his request. This acknowledgement should've been in Mr R's own words.

I've reviewed Portal's approach to how it conducted business with Mr R as an insistent client. For example, Portal has provided a letter it sent Mr R, presumably shortly after it had first spoken to him and had secured information from his OPS providers about the benefits he'd be giving up if he transferred his pension. It was a short letter in which it recommended he did not proceed. It said:

"You currently have a pension with Ryder Pension Scheme which has a Transfer Value of £30,768, from which you could release a total amount of £7,692 as a tax free lump sum. You also have a pension with Premier Foods which has a Transfer Value of £58,043, from which you could release a total amount of £14,510 as a tax free lump sum. However, as the Critical Yield (growth rate required to match your guaranteed benefits with Ryder Pension Scheme and Premier Foods) is 12.83% and 11.25%, it would be against our recommendation to do this. Furthermore, you will be waiving your entitlement to a guaranteed pension of £6,236 per annum which is payable at retirement age 65."

In the same short letter to Mr R, Portal immediately went on to say the following:

"If you decide that you still wish to proceed then we can help you with this, but we would have to treat you as an insistent client as this would be against our recommendation. We would, therefore, require you to complete the attached insistent client form confirming that you are aware of the benefits you would be relinquishing."

"I enclose a form detailing the various options available to you. Please can you arrange to complete and return the forms to us at Portal Financial Services. Upon receipt, we will arrange to send out all the relevant application forms and Suitability Report detailing our advice."

Attached to the letter was a form with two options – the first was to take TFC and reinvest the residual funds with Mr R being treated as an insistent client. The second option was to remain with his OPS, which it recommended. Portal also provided Mr R with an insistent client template letter to complete and return if he took the first option. Mr R completed the forms provided by Portal to say he wanted to transfer his pension. Portal then wrote to him and provided a suitability report around 11 January 2012.

I've thought carefully about what Portal did and what it's said about the insistent client process it followed. I have several concerns about it. And like the investigator I've concluded it was flawed. I say this because:

- While it's communication with Mr R did set out its recommendation for him not to proceed with the transfer, this was seriously undermined by advice in the same short letter about how he could still go ahead. Portal should've provided a breathing space here.
- I note that it would only send Mr R the suitability report after he'd decided that he wanted to transfer his OPS. This undermines the process – how could he have been expected to take a fully informed decision without access to the analysis?
- The insistent client form Mr R signed was a template. It wasn't in his own words. It would've been clear to Portal that he had no knowledge or experience of financial matters. So, it would've been important to ensure he understood what he was getting into, and a good way to have done this would've been to see in his own words that he understood the recommendation being made and why he wanted to proceed.

- There are also various examples from Portal's process of gaps in the information it held, or certainly that it provided Mr R, to enable him to make a fully informed decision. For example, what were the terms of his OPS? Many similar schemes allow early access to benefits, albeit often being actuarially reduced.

In responding to Portal's objections to his findings about its dealings with Mr R as an insistent client, I thought the Investigator neatly summarised other concerns about his knowledge and experience of pensions and investments, which again should've put Portal on notice that it wouldn't be fair to treat him as an insistent client:

"[Mr R was at the time a lorry driver with no previous experience in investments. He did not approach Portal Financial, he was cold called and invited to a pension review. I don't believe that it was his intention to invest in UCIS when he was invited to the review. He may have signed an Insistent Client document but this does not mean he was a suitable client to be defined by Portal financial as an insistent client. The insistent client process was a 'papering exercise' and didn't reflect what actually happened.]"

"When I asked [Mr R] about his understanding of what an insistent client was, he had no understanding of what it was or what it meant and disputed it was his intention to invest prior to meeting Portal Financial. This is why it's important that the correct procedures are followed and documents held. The report only has fleeting mentions of an 'insistent client' and does not go into any detail why or what it means."

Given these failings it wouldn't be reasonable for me to conclude that the process Portal followed meant that Mr R can truly be regarded as an insistent client. Its communications weren't clear or fair. It wasn't acting in his best interests. And it failed to act with due care and skill.

Portal says Mr R wanted TFC to establish an emergency fund. It said that it had explored alternatives available for funding, but he didn't want a loan or to access his bonds (ISA?), which were said to be 'tied-up'.

While Portal acknowledged the transfer of Mr R's OPS wasn't suitable, there were failings in the advice process which meant he wasn't fully informed about his position and we don't know what effect fuller information and better analysis would've had on his decision making.

For example, Portal failed to conduct a detailed income and expenditure analysis. There's no substantive input about options for the creation of an emergency fund and how large this should be (it's often suggested 3-6 months of household expenditure is a good guide). And there's no record of any discussion of why accessing his valuable OPS benefits was a better option than turning to the £10,000 he had in 'bonds'.

Portal's arguments here are weak. Even if it had been in Mr R's mind to access his TFC to create such a fund, it would've been obvious to it that this was a questionable strategy that would release funds way beyond what a usual assessment of what would be required for an emergency fund. There's no record it gave Mr R such advice.

It's recorded that Mr R would only require the full state pension in retirement. I've seen no evidence of an attempt by Portal to get to the bottom of this assertion. And I've seen no effective comparison of the benefits available under his OPS and an illustration of what could've been available under the new arrangements. As I've already mentioned, we also don't know what flexibilities were available to Mr R under his OPS.

Portal was in a good position to have analysed, tested, challenged and advised Mr R about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for retirement. And certainly, when early access is contemplated there needs to be compelling reasons, on balance I don't think that was the case here.

It was Portal's role to discern what Mr R's wants and needs were and why. Its role wasn't simply to facilitate what he wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in his best interests. Even though it recommended Mr R didn't transfer his benefits, I don't think it's demonstrably met these obligations.

Turning to the other aspect of what I think was Mr R's main objective, to provide an income in retirement. Leaving aside what we know in hindsight about the investment performance of the funds recommended to him, I have various concerns about Portal's advice here.

I don't believe either party would dispute that Mr R wasn't an investment professional. Nor was he a sophisticated investor. Indeed, from the information gathered by Portal it seems he had little knowledge or experience of investing. This is important context when I consider what happened to him.

Portal conducted a risk questionnaire with Mr R. The Pension Release Report had a brief section about the outcome of the analysis. It said:

"We have evaluated the answers you have given regarding your attitude to risk in respect of these funds. The answers you gave indicate that you have a balanced attitude 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."*

I've several concerns about the risk assessment process Portal conducted. Some of these relate to the fact it hasn't provided us with a copy of the questionnaire it completed with Mr R, which is unusual. I've not seen any notes of the discussion either.

Interestingly, the Pension Options Personal Financial Questionnaire, captures a response from Mr R about the nature of equities. This indicated he wouldn't be happy to invest in the stock market due to volatility. This appears at odds with his supposed balanced attitude to risk.

Even if I thought Portal's risk assessment for Mr R was about right, and I don't, there remain fundamental problems with its approach. For example, it's odd and concerning that it ended up recommending the investment funds it did. I don't think the portfolio it proposed was an appropriate match even for someone with a balanced risk outlook and lots of investment experience. And I don't think Mr R was either of these.

Mr R was recommended investments where 87.5% of his money would be placed in four unregulated collective investment schemes and specialised funds. One of these funds would account for around half of his pension pot, the Hypa Raithwaite Fund was described as follows:

“The Hypa Raithwaite LP Fund is a specialist investment in a five star hotel development in Whitby, Yorkshire and is designed to yield 8% per annum. Our due diligence research evaluates this as a low to medium risk investment which will run over an approximate 7 year period and should provide an average compound return of 11% once capital growth and income are taken into account. The fund will hold the hotel rooms until the hotel becomes established and then look to sell them on at profit as single units or in bulk. This is similar to a buy to let investment.”

As well as creating a serious lack of diversification in how Mr R’s funds were being invested, Portal hasn’t done enough to satisfy me that he was a sufficiently experienced or sophisticated investor to appreciate the risks he was taking on.

Indeed, all Mr R’s non-cash funds were being placed in similar investment vehicles. As Portal noted in the report it prepared for him:

“Please note that the Hypa Raithwaite LP, Kudos Asia Investments Ltd, Venture Oil Investments Ltd and EOS Solar Investments Ltd funds are Unregulated Collective Investment Schemes (UCIS).”

This approach flew in the face of regulatory obligations on Portal that I’ve already set out at some length.

I’m also concerned that Portal didn’t get to grips with Mr R’s capacity for loss. Although he had another 10 years or so before his recorded planned retirement date, he was being advised to transfer his only pension provision and to invest in a high-risk portfolio. He had no other assets or savings to fall back on.

It’s arguable Portal seemed more concerned with facilitating its investment recommendations than providing effective advice about what was in Mr R’s best interests concerning his valuable pension funds.

Portal was being paid a lot of money to provide best advice to Mr R. Those charges are another area of concern. It’s recorded that he was charged 5% of the transfer value for the initial transaction. And there was a 1% ongoing advice fee for Portal. There were also fees for the SIPP provider. And there were management fees associated with each of the funds he was investing in.

Portal failed to provide a clear comparison of the charges he would incur in the new arrangements with his former pension plans. While it did note the new arrangement would be more expensive, I don’t think that was sufficiently transparent.

Portal should’ve provided Mr R with fully formed and unequivocal advice not to proceed with the transfer of his OPS benefits into a Transact SIPP, the purpose of which was to access his TFC and invest in a high-risk portfolio. I say this because of the flaws I’ve found in its advice process; what it knew about his attitude to risk and capacity for loss; and his lack of experience of the sort of investments it was recommending.

Instead, Portal failed to conduct a satisfactory insistent client process with Mr R. And it recommended that his OPS benefits be invested in unregulated and specialist funds way beyond his risk appetite. It knew this and the potential consequences. The funds could be illiquid, meaning Mr R might have difficulty getting access to his pension funds. The investment was specialised, out of the ordinary and reliant on third parties. And it was subject to valuation uncertainty.

I can't see that accessing his TFC was a pressing concern for Mr R. If he'd had a need to access finance, potentially better alternatives weren't properly explored by Portal. Nor was there a convincing assessment of his retirement income requirements.

I think that if Portal had given Mr R appropriate advice, he wouldn't have gone ahead with the transfer of his OPS benefits to the Transact SIPP and the high-risk investment portfolio it proposed. It's unusual for a lay person to seek professional advice and then go against the recommendations received.

To conclude I don't think the switch of Mr R's personal pension funds into the Transact SIPP and the investment in the high-risk portfolio of funds it recommended could sensibly be regarded as fair to him. As such I think Portal failed to meet the regulatory requirements placed on it when providing him with such advice and making the arrangements.

So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against Portal and for it to put things right.

Putting things right

I'm upholding Mr R's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Portal Financial Services LLP responsible for.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Portal Financial Services LLP should pay Mr R the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Portal Financial Services LLP pays Mr R the balance.

This recommendation is not part of my determination or award. Portal doesn't have to do what I recommend. It's unlikely that Mr R can accept my decision and go to court to ask for the balance. He may want to get independent legal advice before deciding whether to accept this decision.

I consider Mr R would've remained in his OPSs. Portal Financial Services LLP should therefore undertake a redress calculation in line with the pension review methodology, as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr R's acceptance of the decision.

Portal may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mr R's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr R as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

My aim is to return Mr R to the position he would have been in but for the actions of Portal. This is complicated where an investment is illiquid (meaning it can't be readily sold on the open market), as its value can't be determined. That appears to be the case here.

To calculate the compensation, Portal should agree an amount with the SIPP provider as a commercial value, then pay the sum agreed to the SIPP plus any costs and take ownership of the investment. If Portal is unable to buy the investment, it should give it a nil value for the purposes of calculating compensation. The value of the SIPP used in the calculations should include anything Portal has paid into the SIPP and any outstanding charges yet to be applied to the SIPP should be deducted.

In return for this, Portal may ask Mr R to provide an undertaking to account to it for the net amount of any payment he may receive from the investment. That undertaking should allow for the effect of any tax and charges on what he receives. Portal will need to meet any costs in drawing up the undertaking. If Portal asks Mr R to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

The SIPP only exists because of the illiquid investment. For the SIPP to be closed and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. I've set out above how this might be achieved by Portal taking over the investment, or this is something that Mr R can discuss with Transact 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. To provide certainty to all parties, I think it's fair that Portal pays Mr R an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

The compensation amount must where possible be paid to Mr R within 90 days of the date Portal receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Portal to pay Mr R.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Distress and inconvenience

In addition, I consider that Portal Financial Services LLP should pay Mr R compensation for distress and inconvenience of £200. This is in recognition of the failings I've identified and the impact these have had on him.

My final decision

For the reasons I've already set out, I'm upholding Mr R's complaint. I require Portal Financial Services LLP to pay compensation to him as I've indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 December 2021.

Kevin Williamson

Ombudsman