

The complaint

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

What happened

Mr H says he was sent some information from his employer about his deferred OPS benefits and this prompted a conversation with Portal. It offered him a free pension review. He accepted and in January 2012 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 1 February 2012, 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.*

Ultimately Mr H was persuaded to transfer his OPS benefits, which had a value of around £98,000, into a SIPP with Transact. His money was moved on 7 March 2012 and the next day he withdrew around £24,500 in tax-free cash. Fees from Portal and Transact accounted for a further £5,000. Over the course of the following weeks and months the bulk of Mr H's residual funds were invested in line with Portal's recommendations, with around 85% being placed in four unregulated and specialist funds, with a balance in cash.

Mr H approached this Service in March 2020. He'd been in contact with Portal a couple of months beforehand about issues with his pension arrangements, but it hadn't responded. When he later spoke to an Investigator, he said he'd several concerns about the advice he'd been given in 2012.

For example, Mr H didn't think his funds had been invested in line with his risk profile, he thought he'd been overcharged and that he'd lost his pension. He also told us he'd been worried for several years about not being able to get access to his funds and that he'd always been given reassurances that everything would be ok.

Portal sent Mr H its final response on 6 April 2020. It argued that 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. She concluded that we could look at Mr H's complaint.

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

"Like our investigator I don't think this letter would have been sufficient to cause Mr H to have concerns about the funds his SIPP was invested in. In particular, I am mindful that the letter included numerous reassuring statements about the investments Mr H held in his SIPP. I must also take into account that in telephone records that have been provided to this Service it is clear that Mr H was repeatedly re-assured that he did not need to be concerned about the investments held in his SIPP and that he would be able to access the funds shortly. In particular, I note that after the October 2017 SIPP statement was issued, a call record dated 8 November 2017 says:

I have made the client aware that they own their proportion of the physical assets that were used to secure the investments. What has happened is that certain information is provided to Transact to inform them of the value of the assets etc. Because Transact have not felt confident to list a value they have now selected a nominal value of either 0 or £1. This is not to say the funds are worthless. Because the design of this is to provide an income to the client at retirement we ensure that should illiquidity still be present we will make payments ex gratia until liquidity is available.

A further call record dated 28 November 2017 said:

Client was calling to see if there is a date for when values will start coming back through. I managed the client's expectations and explained this will take time and its unlikely to happen overnight. Confirmed with client although values are stated as they are, nothing material at this stage has changed with his investments.

I think these records show that, even after nominal values had been applied to two of Mr H's holdings, Portal continued to make optimistic claims and failed to properly explain the likely implications to Mr H of the funds becoming illiquid. Given that Mr H had explained in several previous calls to Portal that he had a pressing need to access the funds in his SIPP I think Portal should have made clear to Mr H that he was unlikely to be able to make the withdrawals he required from his SIPP.

Given the available information I think the earliest Mr H ought reasonably to have known that he might have cause for complaint was when he received his October 2017 SIPP statement.....Under the rules this service must follow Mr H then had three years from this date to bring his complaint. As Mr H complained to Portal in January 2020, I am satisfied that his complaint was brought within three years of the date he ought reasonably to have become aware that he might have cause for complaint."

The Ombudsman went onto make the following observations about Portal's approach to dealing with the concerns Mr H had raised about his investments over several years:

"I would also remind Portal that the industry regulator, the FCA defines a complaint as:

any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service²²⁸ or a redress determination, which:

- *alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and*
- *relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or*

products or claims management services²²⁸, which comes under the jurisdiction of the Financial Ombudsman Service.

Portal is required to treat its customers fairly and as a minimum this would include recording and investigating complaints, regardless of whether they are made verbally or in writing.

It appears that in light of the assurances that Portal gave Mr H when he called it in late 2017 - after he received his SIPP statement showing that two of the funds he was invested in had nominal values - he did not pursue a complaint until January 2020 when he telephoned Portal to again express his concern and dissatisfaction.

It is disappointing that Portal did not record or investigate the concerns Mr H raised with it in January 2020 until Mr H contacted hat Portal initially claimed that Mr H had not complained to it.”

This Service can consider Mr H's case.

In its final response to Mr H, I note that Portal did go on to make Mr H an offer in terms of safeguarding his income in retirement should matters with his investment funds not be resolved.

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's 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 H's complaint. I'll explain why.

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

The first thing I've considered is the extensive regulation around transactions like those performed by Portal for Mr H. 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 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 H's complaint.

At the time of the advice Portal gave Mr H, 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 H to be able to make an informed decision.
- Give Mr H 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 H 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 H 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).

Even if some of the funds Mr H was invested in weren't technically a UCIS, they share similar characteristics including the high-risk nature of the investment, being illiquid, subject to counter-party risk and uncertain valuation. And I think these matters are relevant to my consideration.

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 after the advice given to Mr H, 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 H that are important to my consideration, these include the fact-find and the suitability report, as well as correspondence it sent Mr H.

At the time of Portal's advice Mr H was 55 years old and his intention was said to have been to retire when he reached 65. He was single with no financial dependents. He was unemployed and in receipt of benefits, although it was noted he had an interview that day and might continue working. At the time he was said to be in good health and not taking any medication.

There's no detailed information about Mr H's incomings and outgoings, although the adviser made a note that Mr H had said he didn't have any money left after paying his bills.

Mr H owned his own home which was worth around £200,000 and had a mortgage of about £170,000. It's recorded that Mr H had no savings or other assets. He had loans of just over £3,000 and a credit card balance of around £2,500, but no other liabilities.

Mr H was a deferred member of an OPS. This had a transfer value of around £98,000. It was his only pension provision. It's recorded that Mr H didn't know what income he would need in retirement.

The first two objectives Portal recorded for Mr H 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 H had gone against its recommendation that he shouldn't transfer his pension. It said he was 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'll return to later.

Of its approach to insistent clients, Portal told us:

"Portal Financial's retail investment advisers, who provided financial advice in relation to defined benefit or final salary schemes, either held a G60 or AF3 qualification. In addition to this, Portal Financial made sure all their advisers completed extensive training to make sure that they were competent and able to provide advice on such schemes, which often come with a high level of safeguarded benefits in addition to 100% of files checked by Portal Financial's internal compliance team. "

"Portal Financial have experience of dealing with insistent client process reviews with the FCA. The format of the insistent client process Portal Financial adopted was done so following a meeting with [a former technical specialist at the FCA] in April 2015. This was accepted by the FCA and has not raised any concerns since. This is because the client is seen as truly insistent due to all correspondence being sent through the post which allows the client time to digest the information provided and not return the forms should they not wish to proceed any further.

I'd make two observations here. Firstly, I recognise what Portal is saying about its processes, systems, advisers and training to help make sure things work well. As it knows, I consider the facts and circumstances about what happens in specific cases. Secondly, adopting a particular insistent client process from 2015, which it says satisfied the FCA about its approach, isn't relevant in this case where Mr H received his advice in 2012.

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 H'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 H's own words.

Portal did set out the steps it took in Mr H's case to try and ensure it dealt with him properly as an insistent client. I can see that during the whole process it sent him several communications.

For example, on 17 January 2012 it sent him a letter after it had received information from his OPS. This set out some bold facts about the transfer value of his benefits and outlined what his three broad options were: remain in his scheme; transfer and take TFC while investing the residual funds; or transfer, take TFC and an income. Portal noted its letter didn't amount to financial advice and Mr H should make contact to discuss matters.

Portal has provided a second communication, which appears to have been issued just after the fact-find exercise it conducted with Mr H on 25 January 2012. It was a short letter in which it recommended Mr H did not proceed with the transfer of his pension. It said:

"You currently have a pension with [your former employer] which has a Transfer Value of £98,167, from which you could release a total amount of £24,541 as a tax free lump sum. However, as the Critical Yield (growth rate required to match your guaranteed benefits [from your OPS] is 9.2% it would be against our recommendation to do this. Furthermore, you will be waiving your entitlement to a guaranteed pension of £9,393.71 per annum which is payable at retirement age 65."

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

"If you decide that you still wish to proceed, we can help you release money from your pension, 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 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 H being treated as an insistent client. The second option was to remain with his OPS, which it recommended. Portal also provided Mr H with an insistent client template letter to complete and return if he took the first option.

Mr H 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 1 February 2012.

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

- While it's second communication with Mr H 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 knew he was in a difficult short-term financial position and I think it should've provided a breathing space.
- I note that it only sent Mr H 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 H signed was a template. It wasn't in his own words. It would've been clear to Portal 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 H. So, he wasn't able to make a fully informed decision. For example, what were the terms of his OPS. Many similar schemes allow early access to benefits, albeit sometimes on an actuarially reduced basis.

Given these failings it's not reasonable for me to conclude that the process Portal followed meant that Mr H 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 H wanted his maximum TFC to reduce his debt, there's also mention of paying for his son's education. It said that he had explored alternatives available for funding, but he couldn't take out a loan because he wasn't working. And he thought re-mortgaging might incur redemption penalties as well as the interest on the loan amount. It recorded accessing TFC was a higher priority for him than retirement planning.

Mr H said Portal told him he could take the TFC and that by investing the residual amount his fund would grow again. He told us he mostly used the TFC for paying bills.

While Portal acknowledged the transfer of Mr H'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.

For example, Portal failed to conduct a detailed income and expenditure analysis. There's no substantive input about options for managing Mr H's relatively modest debt. And it seems clear accessing his TFC was never the solution to his outstanding mortgage. And while supporting his 20 year old non-dependent son's education may've been important to him, how was this discussed against his own need for an income in retirement?

It's recorded that Mr H was unsure what income he would need in retirement. I've seen no evidence of an attempt by Portal to get to the bottom of this key question. And I've seen no 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 H under his OPS.

Portal was in a good position to have analysed, tested, challenged and advised Mr H 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 H'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 H 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 H'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 H 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

For example, Portal conducted a risk questionnaire with Mr H. It concluded he had a moderately cautious attitude to investment risk. This was defined in the following terms:

“Moderately Cautious investors typically have low to moderate levels of knowledge about financial matters and quite limited interest in keeping up to date with financial issues. They may have some experience of investment products, but will be more familiar with bank and building society accounts than other types of investments.”

“In general, moderately cautious investors are uncomfortable taking risk with their investments, but would be willing to do so to a limited extent. They realise that risky investments are likely to be better for longer-term returns.”

“Moderately Cautious investors typically prefer certain outcomes to gambles. They can take a relatively long time to make up their mind on financial matters and may suffer from regret when decisions turn out badly.”

The risk assessment Portal conducted for Mr H appears about right. So, it's genuinely baffling and concerning that it ended up recommending the investment funds it did. I don't think the portfolio it recommended was an appropriate match even for someone with a balanced risk outlook and lots of investment experience. And it knew Mr H was neither of these.

Portal recommended investments where 85% of Mr H's money would be placed in four unregulated collective investment schemes and specialised funds. One of these funds would account for half of his pension pot - the Raithwaites Hypa Fund was described as follows:

“The Raithwaites Hypa Fund is a specialist investment in a five star hotel development in Whitby, Yorkshire designed to yield 8% per annum. In addition the fund has secured a discount to current market value which means that the investment should be worth 25% more than the amount, you invest once the Hotel opens in August 2011. 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.”

As well as creating a serious lack of diversification in how Mr H'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.

I'm also concerned that Mr H's capacity for loss doesn't appear to have been thought through properly. 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 H's best interests concerning his valuable pension funds.

Portal was being paid a lot of money to provide best advice to Mr H. Those charges are another area of concern. It's recorded that he was charged a 5% commission for the initial transaction (portfolio establishment fees). There was a 1% ongoing advice fee for Portal. There were 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.

Portal failed to provide Mr H 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.

Portal failed to conduct a satisfactory insistent client process with Mr H. I'm not satisfied that accessing his TFC was the answer to the situation Mr H found himself in 2012 or looking forward. There was no effective assessment of his retirement income requirements. And it recommended that his OPS benefits be invested in unregulated and specialist funds way beyond his risk appetite.

Portal knew the potential consequences of its actions. The funds Mr H ended up investing in could be illiquid, meaning he 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 think that if Portal had given Mr H appropriate and fully formed advice, he wouldn't have gone ahead with the transfer of his OPS to the Transact SIPP and the high-risk investment portfolio it recommended. 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 transfer of Mr H's OPS benefits into the Transact SIPP and the investment in the high-risk portfolio of funds Portal recommended could sensibly be regarded as fair to him. As such I think it failed to meet the regulatory requirements when providing him with 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 H'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 H 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 pays Mr H 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 H 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 H would've remained in his OPS. 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 that date. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of the decision.

Portal may wish to contact the Department for Work and Pensions (DWP) to obtain Mr H'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 H's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mr H'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 H 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.

The compensation amount must where possible be paid to Mr H 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 H.

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 of time 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.

My aim is to return Mr H to the position he would've been in but for the actions of Portal. This is complicated where an investment is illiquid (meaning it cannot 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 H 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 H 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. In order 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 H can discuss with his SIPP provider directly. But I don't know how long that will take.

Third parties are involved, and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that Portal pay Mr H 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.

Further information

Some examples of how calculations should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'

Distress and inconvenience

In addition, I consider that Portal should pay Mr H compensation for distress and inconvenience of £250. 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 H'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 H to accept or reject my decision before 16 November 2021.

Kevin Williamson

Ombudsman