DRN-2953292

The complaint

Miss W complains about advice she received from Portal Financial Services LLP ('Portal') in relation to a defined benefit ('DB') occupational pension scheme ('OPS'). Portal processed the transfer of Miss W's OPS benefits on an 'insistent client' basis to a personal pension. Portal recommended the new pension provider as well as how Miss W's pensions savings should be apportioned within her new portfolio.

Miss W is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Miss W.

What happened

In late 2016, Portal sent Miss W a form inviting her for a pension review. Miss W signed and returned this form on 21 November 2016, giving Portal authority to gather information about her existing pensions.

Portal gathered information and, in September 2017, it completed a pension transfer analysis, or transfer value analysis ('TVAS'), and produced a report. Although this document says it was prepared for Miss W, I haven't seen anything in the correspondence subsequently sent to her to suggest it was actually shared with Miss W. The report stated it was designed to assist in deciding whether a transfer from Miss W's OPS was appropriate. It included details of the cash equivalent transfer value ('CETV') of the OPS, which was quoted as £45,184.67. It also gave details of the critical yield ('CY') - the growth rate required of a new pension to allow Miss W to purchase an annuity that would match the guaranteed benefits of her OPS. It said, for retiring at age 65, the CY was 15.1% if Miss W took a full pension or 12.4% if she were to take tax free cash ('TFC') and a reduced pension. It also looked at the CY if Miss W were to take retirement benefits at age 57. And it provided cash flow modelling projections, for retirement at ages 65 and 57.

On 6 October 2017, Portal sent Miss W a letter titled "*We are ready to complete your pension release review*". This started by saying "*We have all the information we need from your current pension providers, which is great news. And we can confirm that the maximum tax-free amount you could now access from your pensions is £11,453."* It went on to say that it now needed to arrange a conversation between Miss W and one of its paraplanners to get to know her better and gather information about her circumstances. The letter said "*The conversation will cover a range of topics including: the pension options available to you; your current financial needs and future plans; your health; your attitude to investment risk for your pension fund; and, of course, the amount of tax-free cash you wish to take*. And it told Miss W how to get in touch to arrange this discussion.

The letter went on to note as a PS (the underlined sections having been emphasised in bold by Portal) *"The transfer value of your pension is <u>guaranteed for a limited period of time only</u>. If your pension has not been transferred by the time this guarantee expires then we will need to recalculate its value before the transfer can be completed. <u>This could delay how long it will take to receive your</u> <u>tax-free cash</u>."* Lastly the letter included an information sheet noting the current value of Miss W's existing pensions and explaining more about some of the options Portal would discuss.

I understand a conversation subsequently took place on 12 October 2017, where Portal gathered information about Miss W's circumstances and objectives. The fact find document it recorded at the time said she was 55, employed full time, co-habiting in a rented property and that she didn't own her own home. Miss W was recorded as having approximately £1,000 in unsecured debts, which appeared to be due to be repaid within the next few months. It was also noted that she was discharged from an Individual Voluntary Arrangement ('IVA') approximately a year earlier.

The income and expenditure information recorded indicated, after standard living expenses, she had approximately £730 per month left over. But it was noted her miscellaneous expenditure matched this surplus, as she was supporting her daughter. So, it was recorded that she in fact had no disposable income. The fact find said Miss W had a need for tax free cash in order to provide further financial support to her daughter and help her move house - as her daughter was in a difficult domestic situation and Miss W wanted to be sure of her and her granddaughters safety. It said she needed £8,000 for this purpose and any residual TFC would be used to buy a newer car. Portal also carried out an assessment of Miss W's attitude to risk, which it deemed to be 'moderately cautious'.

Portal then sent Miss W a further letter on 23 October 2017. This said "*Since our conversation we have completed our initial phase of research and analysis and <u>we strongly recommend that you do not transfer</u> your [OPS] pension and instead leave them where they are because of the guarantees/benefits that you will be giving up*" with the underlined section again emphasised in bold text by Portal. The letter then immediately followed this up by saying;

"What happens if you still want to go ahead and transfer your funds?

This is absolutely your decision. Everyone's circumstances are different and if you decide you still want to transfer your [OPS] pensions to a new scheme to release tax-free cash then this is something we can help you with. In this instance we would need to treat you as an insistent client throughout your pension review."

The letter also included an 'options form' for Miss W to complete. The first option given was for Miss W to "Disregard our recommendation and continue as an insistent client". With the second being to accept Portal's recommendation and end the pension review.

An 'insistent client form' was also included for Miss W to complete. This comprised three declarations for Miss W to tick and agree to. These declarations;

- acknowledged the critical yield was unlikely to be achieved and included a brief summary of the projected benefits due under her existing scheme at age 65 that she'd be giving up,
- set out briefly what she'd receive instead by transferring – the TFC figure and the *potential* income she might be able to obtain post retirement – and that she'd have no entitlement to any further TFC,
- acknowledged that transferring was against Portal's recommendation.

There was also a section for Miss W to explain in her own words why she wanted to be an insistent client.

Miss W completed and returned the forms saying she wished to proceed as an insistent client, on the same day. In the section of the form to explain in her own words why, Miss W wrote *"I understand about taking the tax free sum, and what effects it has on me. I need this money for my family. It will help a great deal. I have spoken and explained everything to my family and they are in agreement. This will take a lot of pressure off me and make my life* *easier. I am also paying £150 a month into my work pension and they match 5%. So I am happy with this. This request is urgent. I need my money as soon as possible please."*

Portal then sent Miss W a suitability report on 10 November 2017. The covering letter said;

"Thank you for all of the information you have provided regarding your pension. Having considered your current situation and what you would like to achieve, we are delighted to recommend:

<u>Transferring your pension to an [new provider] pension plan.</u>

If you agree with this recommendation and instruct us to act on it:

- *You will receive your tax-free lump sum of £11,453.*
- *We will manage your remaining pension fund, with the aim of maximising its performance.*
- *We will review your pension annually, to make sure it is on track to delivering as intended."*

The suitability report itself said Miss W's objectives were to help her daughter financially and to buy a car. It said it had already recommended that Miss W not transfer. But, as she had chosen to proceed as an insistent client, it was recommending a transfer to a specific plan because this would allow her to take TFC and meet her objectives while not requiring her to take an income – which it said Miss W didn't want. The report went on to recommend a specific portfolio mix, with the new provider, which Portal felt was right for Miss W. The report also covered, in the additional important information section after the recommendation was made, that Portal believed there was no other viable way of raising the money Miss W needed. It said this was because she didn't want to take a loan or pay additional interest, didn't own a property in order to take a mortgage, didn't have other assets and didn't have enough disposable income.

Miss W completed the application forms – which included a further declaration acknowledging she was proceeding as an insistent client – and the transfer went ahead on the basis of this recommendation.

Miss W complained to Portal in June 2020 that the advice she'd been given was unsuitable. She said when she'd spoken to Portal it had said it would first be recommending against the transfer as a matter of procedure but would then go on to help her with the transfer. So, she thought the advice was always to transfer. She said Portal didn't do enough to explain what she was giving up and why it wasn't recommending she do so. And she thinks this was because it wasn't actually recommending against the transfer – because if it was, it wouldn't have offered to assist her. She also said it hadn't been made clear to her how her pension savings would be invested – specifically that a significant portion was invested in stocks and shares. Miss W said she'd become so alarmed when she found this out, as she considered it to be high risk, she'd drawn down the remainder of her fund to prevent herself being left with nothing.

Portal didn't think it had done anything wrong. It said it had advised Miss W against transferring. But she had insisted on doing so – and made it clear through the documentation she'd completed that she understood this. So, it had helped on this basis, subsequently making a recommendation it felt was suitable. It said it had acted in line with the regulators requirements when doing so and that Miss W had a genuine need to release TFC

The complaint was then referred to our service. Miss W has since said, on the point of needing access to TFC, she did have a need for a set amount of money to assist her daughter (£8,000). But this was less than the TFC that was released, so she hadn't needed the full amount. And she said there were other options available to her – including a loan. This would've had a high interest rate due to her previous IVA. But that was why she approached Portal – for impartial advice before deciding how to obtain the money, not with taking TFC as an unchangeable objective.

I issued a provisional decision earlier this month explaining that I intended to uphold Miss W's complaint. Below are extracts from my provisional findings, explaining why I thought this.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Suitability of advice

Portal has argued that the advice it gave was suitable. This is because it says it recommended that Miss W not transfer her pension, but she was insistent that she wanted to. And when this was clear, it recommended an appropriate pension. But for the reasons I'll explain, I think Portal's advice was incomplete and the process it followed misleading. Which I think means Miss W did not have enough information to make an informed decision.

COBS 2.1.1R required Portal to "act honestly, fairly and professionally in accordance with the best interests of its client". And, as part of that, COBS 9.2 required Portal to take reasonable steps to make sure its recommendation was suitable for Miss W. To achieve this, COBS 9.2.2R said Portal had to obtain enough information from Miss W so that it could understand the essential facts about her and have a reasonable basis for believing its recommendation met her objectives, that she could bear the related investment risks consistent with these objectives and that she had the necessary experience and knowledge to understand the risks involved in the transaction.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;
(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and
(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading 'Suitability', COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to

transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

In short, Portal needed to start with the assumption a transfer would be unsuitable. It needed to consider Miss W's specific circumstances and objectives, assess the options available and look at what was in her best interests. It needed to provide a comparison highlighting the risks. And it needed to make sure that Miss W understood all of this information, having regard for her level of experience and knowledge, so that she could make an informed decision. All while ensuring it acted honestly, fairly and professionally.

The letter Portal sent to Miss W on 6 October 2017 was headed "We are ready to complete your pension release review." And the first paragraph included the statement "we can confirm that the maximum tax-free amount you could now access from your pensions is £11,453." It went on to say a call would have to now take place to understand Miss W's circumstances and that options would be discussed including "of course, the amount of tax-free cash you wish to take." And it also said, in fact emphasising in bold, that the transfer value "is guaranteed for a limited period of time only" and if this needed to be re-calculated "This could delay how long it will take to receive your tax-free cash."

This letter was sent before a fact-finding conversation had been completed or any details of Miss W's aims or objectives had been obtained. Yet it was already strongly emphasising the release of tax free cash – involving a change to Miss W's current pension arrangements – how much could be released and suggesting a need for urgency. I think the contents of this letter suggests the approach already being skewed to a particular outcome. I don't think this was in line with the requirement to start by assuming the transfer was unsuitable.

And I don't think the emphasis placed on this outcome, before any fact finding had taken place, was fair to Miss W or could be said to demonstrate Portal was acting in her best interests. And I think the content of this letter was likely to affect Miss W's thinking and reasonably lead her to think at that stage Portal was suggesting this option.

Portal did then complete a fact finding call. But the emphasis of the information recorded in the fact find was, in my view, the release of TFC above all else. There is very little by way of information about Miss W's income needs in retirement. Indeed, the only mention of this seems to be one question saying "How much in todays money will you need when you retire?" which was answered "unsure". The primary purpose of a pension is to provide benefits in retirement. So, the lack of any real consideration of Miss W's retirement needs make it difficult to say that enough essential information was obtained to make a suitable recommendation. And the repeated emphasis within some of the questions around the need for TFC could very well have led Miss W into thinking that this what Portal thought was best.

The bigger issue in my view though is the correspondence that then followed the fact find. The next correspondence Portal sent Miss W was a letter on 23 October 2017 called "Important news about taking money early from your pension" – again placing emphasis on withdrawing money from the pension. This went on to say that, after completing its "initial phase of research" Portal "strongly recommend that you do not transfer". So, this is the document which summarised Portal's advice and personal recommendation to Miss W. And in my view, should've made it clear that it had understood enough about Miss W's circumstances for Portal to believe its advice was suitable. And provided comparisons, or detailed information, in order for Miss W to make an informed opinion. But there was no further reason given in the letter itself for this recommendation or why Portal had reached this conclusion.

There was an attachment to the letter called "Overview of your pensions". And this gave the only additional explanation of the recommendation by saying "If you transfer out of this scheme now then any new pension would need to grow at a rate of 12.40% per year to at least match these benefits (the technical term for this rate is the critical yield). We just do not think this is achievable". Suggesting this was the reason for the recommendation made. But again, there was no further explanation or reasoning.

I think Portal was correct that the required critical yield was unlikely to be achievable. And this meant that a transfer was not financially viable. But this isn't the only thing I'd have expected Portal to take into account before making a personal recommendation. The critical yield is important, and a strong indicator of whether retirement benefits are likely to be better or not by transferring. But this isn't the only consideration for whether advice is suitable.

There can be reasons that it is in a consumers best interests to make a transfer, even if their retirement benefits will be lower. And I'd have expected to see some consideration of these as Portal was making a personal recommendation to Miss W. And for these considerations to be explained to Miss W so that she could make an informed decision, But Portal's recommendation contained no reference to Miss W's objectives or circumstances. It was reiterated that her pensions were worth a certain amount, from which she could take 25% TFC. But there was no exploration or commentary relating to how much of this was needed or why. And this was despite the fact find recording and supporting that only approximately £8,000 of this was a genuine need.

There was also no assessment provided at that point setting out what alternative ways of raising the required money had been considered, or why these had been discounted. The options of raising money through credit weren't commented on at that stage. And so, don't appear to have formed any part of Portal's reasoning when it said it recommended not to transfer.

There also doesn't seem to have been any consideration to Miss W taking benefits under her existing scheme at that time. As I've said, I acknowledge a TVAS was carried out. But none of the information I've seen indicates this was shared with Miss W. Neither of the letters sent on 6 and 23 October 2017 make any reference to the information within the TVAS, beyond the critical yield, or to it being included for review. And I haven't seen any other evidence that it was shared. So, I can't reasonably say that Miss W had the opportunity to review this document.

In any event though, it didn't look at the potential for immediate retirement. Miss W was 55. And in the 'scheme information' section of the TVAS report, it was noted that 55 was the earliest retirement age allowed by the scheme. So, it appears she was eligible to take benefits under the DB scheme at that point. But that doesn't appear to have been talked about at any stage of the advice process. Indeed, the TVAS report looked at what Miss W would be able to take at age 57, as well as the assumed scheme retirement age of 65. But I've seen no reason for this or why instead it didn't cover what could be taken at age 55.

The TVAS report indicated that at age 57 Miss W would've been able to take TFC of £10,303 under the DB scheme and then receive a guaranteed escalating income of £1,505 per year. If she'd taken benefits at age 55, these figures would likely have been lower. But I think it is reasonable to assume that the TFC would've been enough to provide the amount Miss W needed to assist her daughter – which appears to be her genuine area of need. And she'd have then received a guaranteed escalating income. But again, I've seen no evidence that this option was considered or discussed with Miss W.

The "Overview of your pensions" document portal included with the letter did mention that the projected benefits Miss W could potentially take by staying in her existing scheme until *age 65 were a pension of £2,496 per year and TFC of £16,640. But there was no comparison within the recommendation between this and what Miss W may potentially receive by transferring (aside from immediate TFC).*

Without any of this information, or indeed any real reasoning being provided in writing for why Portal didn't recommend Miss W transfer, I don't see that Miss W could reasonably have understood why this was apparently Portal's advice. So, I don't think Portal provided full and clear advice to Miss W. And as a result, I don't think she was in a position to make an informed decision – about the transfer or about being an insistent client. And so, I don't think the advice given by Portal, was suitable.

Insistent Client

Despite the advice being, in my view, incomplete and unsuitable, I think Portal then also directed Miss W towards disregarding it anyway. Immediately after saying it didn't recommend transferring, in the next paragraph of the same letter, Portal promoted the option of still releasing money from Miss W's pension as being something it could assist with. I don't think that was appropriate or in Miss W's best interests – particularly if Portal truly considered not transferring to be suitable.

Portal also enclosed forms, with the same letter for Miss W to complete, in order to go against this advice. And indeed, the options letter listed disregarding advice as the first options available to Miss W. I also don't think this was appropriate. If Portal's advice was not to transfer, I believe it should've given this advice and the reasons why and left it to Miss W to consider this further. If she had then contacted it to see if it could still help, then it'd have been fair to share this information. But to promote this option at the point it did seriously undermined the recommendation it says it was making.

I do acknowledge that the forms Portal provided included a section for Miss W to complete in her own words to explain why she wanted to transfer. And I can see she did so, saying she understood the effects of doing so. But given the lack of any reasoning with the recommendation made and there being no evidence of any other comparison being provided to her, I don't think Miss W was in an informed position or could in fact fully understand the apparent risks. So, I think this statement holds less weight and I think was likely only made because Miss W believed this was the only way she could access some additional funds.

After Miss W 'insisted' on proceeding, Portal sent her a suitability report. Firstly, I'm of the opinion that a suitability report should've been provided along with the advice not to transfer, before the option of proceeding on an insistent client basis was discussed. But in any event, I think the suitability report provided didn't go far enough to allow Miss W to make an informed decision and the covering letter was misleading.

The suitability report said several times that Portal had already recommended that Miss W not transfer her policy and leave it where it was because of the benefits she'd be giving up. But it contained no further reasoning why it recommended this – so doesn't read like a personalised recommendation.

The only part of the report that provided any additional depth on the things that ought to have been considered and formed part of the original advice was in the 'Additional important information' section – not even the body of the report itself – where a small amount of additional detail was provided in respect of alternative funding options.

It said using a loan, re-mortgage, disposable income or assets had been discounted as not financially viable. And said this was because Miss W didn't own a property or other tangible assets, didn't have enough disposable income and didn't want to take on lending or pay *interest. But I don't think this demonstrates a genuine consideration of these options in any depth. There is no commentary on why Miss W didn't want to take on a loan – something she says she was in fact considering and had looked into. And on disposable income, the reason why Miss W had none at the point of the advice was completely omitted.*

Again, the fact fine demonstrated she in fact had approximately £730 of disposable income, but all was utilised for miscellaneous purposes. But it was also noted that these miscellaneous purposes were supporting her daughter. That was also the purpose of releasing funds. Yet no consideration was given, or at least recorded in the advice so that Miss W could see it had been thought about, to whether the lump sum she wanted to obtain for her daughter would in turn have meant she didn't have to provide ongoing monthly support. Or at least could've reduced this, providing disposable income to support a loan or other credit.

And so, I don't think the suitability report, even when it was provided, was sufficiently detailed as a recommendation not to proceed. And even after receipt of this, retrospectively after she had already indicated she'd proceed on an insistent basis, I don't think Miss W had been provided with enough information to make an informed decision about doing so.

The focus of the suitability report was also largely the new provider that Portal was now recommending as well as the portfolio mix it was suggesting and why it was doing so. And the covering letter that accompanied the report clearly said that Portal was "delighted to recommend…Transferring your pension…". This I think supports what Miss W has said – that her understanding was Portal was in fact recommending the transfer. At the very least it significantly muddied the waters. Which I think on balance likely led Miss W to believe that Portal felt the transfer was appropriate. And made it next to impossible for her to make an informed decision.

Portal was required to ensure that it treated Miss W fairly and that it acted in her best interests. And I'm not persuaded that it did treat Miss W fairly when it went to such lengths to assist Miss W to identify as an 'insistent client'.

I don't think the process was geared towards Miss W making an informed, considered assessment of the reasons why she shouldn't be transferring – as if it was I feel that would have involved Portal providing the full recommendation to Miss W, allowing her to consider this on her own and then revert to Portal if she still wished to proceed.

On the contrary, I would go as far as to say that Portal's process was designed to facilitate the transfer, with significant emphasis placed on the release of funds and how this could be achieved from the outset. I don't think that providing Miss W with a means of proceeding against the advice, without establishing why the apparent requirements were truly necessary and why alternatives weren't appropriate, demonstrates that Portal had her best interests in mind.

Overall, I think this shows that Portal made it altogether far too easy for Miss W to agree that she was an 'insistent client' rather than allowing her time to think about the advice not to go ahead with the transfer. And so, I don't think she truly could make an informed decision about this.

Would Miss W have acted differently?

As I've summarised, I think the advice was unsuitable and the process followed didn't allow Miss W to make an informed decision about whether to be an insistent client. But even so, I need to think whether she would always have gone ahead and transferred – if clear advice had been provided and an appropriate process followed. To do this, I've considered the *objectives that were stated during the advice process, how pressing I consider these were, and how that would've impacted Miss W's actions.*

The fact find completed by Portal is in my view clear that there were genuine reasons for Miss W needing a lump sum to assist her daughter. I won't go into these in any further detail, other than to reiterate it suggests Miss W was concerned for her daughters safety due to her domestic situation and, for her own peace of mind, Miss W wanted to provide a lump sum to change this. And Miss W has confirmed this was the case.

Miss W's representatives have said that Portal should've explored Miss W's daughter's financial situation to see how pressing Miss W's need was. But I don't agree. That goes beyond what I'd reasonably have expected of Portal here. And again, Miss W has confirmed the purpose of obtaining funds was to support her daughter, for the reasons detailed in the suitability report and mentioned above. So overall, I'm satisfied obtaining a lump sum was a genuine and pressing need for Miss W.

But I don't think she required the full amount of the TFC that was obtained by transferring. From the information I've seen, Miss W appears to have been clear with Portal that she had a genuine need for a lump sum of £8,000. But I don't think she had a pressing need for the remainder. Buying a new car with the remainder was noted in the fact find, But I don't think this was a necessity and rather a suggestion of what she might choose to do with any surplus above her need.

So, given I think Miss W needed a sum of £8,000, I'm satisfied she'd have always taken steps to obtain this. But I don't think this means she'd have always gone ahead with the transfer that took place here.

Miss W's representatives have indicated she was considering taking a loan and could get one. And they say this is the option she would have taken if Portal had provided appropriate advice. But I'm not sure I agree this is most likely. Although I think Portal needed to do a lot more to explore this option, I think given Miss W's recent IVA, the interest rate and cost of the loan would quite likely have been prohibitive. And given the recent IVA, its likely she'd have preferred to avoid further significant indebtedness.

As I've said though, Miss W was 55 at the point she took advice from Portal. And according to information it has provided, appears to have been eligible to take benefits under her DB scheme at that time. And I think it appears likely doing so and releasing TFC would've provided her with the sum she urgently needed. I think if Portal had acted correctly and discussed this option with Miss W, this is what she would likely have done. I say this because it would've met her objective and then provided an ongoing additional annual income which it appears would've been useful to her, given what Portal recorded about her having no disposable income.

The TFC released this way would've been less than Miss W was able to release by transferring. But as I've said, I'm satisfied she only had a need for a smaller amount. And I think Miss W would've been willing to accept this given it meant her retirement income would then be guaranteed. Especially given her later action in drawing down her pension fund, when she became concerned about the investment risks associated with the new pension arrangements Portal recommended.

I accept the income she'd have received as a result would've been less than she would've received by waiting until the normal scheme retirement age. But I think this would likely still have been preferable to Miss W to the alternatives of either paying significant interest on a loan or placing her retirement fund and eventual benefits at some risk by transferring and investing.

Portal has suggested Miss W didn't want an income from her pension at that stage. But there is no real detail in the information provided that supports that conclusion. And I think on balance, if it had been put to her that this income was guaranteed for the rest of her life, albeit at a reduced level, and that she could still contribute to her current work place pension until she retired to improve her retirement provisions, she'd have taken this option.

And so, if Portal had provided more appropriate and robust advice around why the transfer was not suitable, I don't think Miss W would have gone ahead. Instead I think, had her circumstances and options been thoroughly illustrated and explored, she'd have taken benefits under her DB scheme at the time, as this would've allowed her to meet her objectives without risking the guaranteed portion of her retirement income.

I know Portal maintains that it said the transfer was against its recommendation – which overall was in my view correct. But the process Portal used, including the suitability report ultimately issued after Miss W had been directed to the 'insistent client' route, lacked sufficient clarity, reasoning and rigour – for all the reasons set out above. And, in my view, meant Miss W wasn't able to make an informed decision. If she had been provided with more appropriate information and reasoning and hadn't been directed towards the 'insistent client' route, I think she would have acted differently. As a result, I think Miss W's complaint should be upheld.

Our Investigator recommended that Portal also pay Miss W £250 for the distress caused by the unsuitable advice. I don't doubt that Miss W has been caused distress and concern – particularly so when she felt compelled to drawdown her pension fund due to the significant risk she perceived. And I'm conscious this wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

In light of this I said I was intending to recommend that Portal compensate Miss W for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And I thought, had she been given full and clear information, Miss W would've immediately taken benefits from her DB scheme, at age 55, including taking the maximum available TFC. So, I felt the redress calculations should be based on this assumption.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Miss W's representative said that she, and they, had nothing further to add.

Portal did not respond to my provisional decision by the deadline given.

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.

Having done so, as neither party have provided any further comments for me to consider, I see no reason to depart from my provisional findings. So, for the reasons summarised above, I think the advice provided by Portal was incomplete, overall unsuitable and the process it followed was not appropriate and didn't allow Miss W to make an informed decision. So, I think Portal should compensate Miss W.

Putting things right

A fair and reasonable outcome would be for the business to put Miss W, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Miss W would have most likely remained in the DB scheme. Portal must therefore undertake a redress calculation in line with the regulator's pension review guidance 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.

For clarity, I think Miss W would have taken benefits under the DB scheme immediately at the time of the advice, when she was aged 55, and drawn down the maximum available TFC under the scheme at that point. And the redress calculations should be based on these assumptions.

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 Miss W's acceptance of the decision.

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

If the redress calculation demonstrates a loss, we'd usually recommend the compensation be paid into Miss W's pension plan if possible. But I understand Miss W's plan may well now be closed. So, in the circumstances, I think the compensation payment should be paid directly to Miss W as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Miss W within 90 days of the date Portal receives notification of her 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 Miss W.

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.

In addition to the 'compensation amount' Portal should also pay Miss W £250 for the distress caused.

My final decision

For the reason's I've explained I uphold Miss W's complaint.

To resolve matters I order Portal Financial Services LLP to take the action set out in the 'Putting things right' section of my decision, set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss W to accept or reject my decision before 19 August 2022.

Ben Stoker
Ombudsman