

The complaint

Mr Q has complained about advice he received from Portal Financial Services LLP ('Portal') in relation to a defined benefit occupational pension scheme ('OPS'). Portal processed the transfer of Mr Q's OPS benefits on an 'insistent client' basis to a personal pension.

Mr Q is being represented by a third party but for ease of reading this decision I'll refer to all representations as being made by Mr Q.

What happened

Mr Q was in communication about his pension with Portal in 2015.

On 20 October 2015 Portal sent Mr Q a letter titled *"We are ready to complete your pension release review"*

Within the letter Portal stated:

"We have all the information we need from your current pension provider, which is great news. And we can confirm that the maximum tax-free amount you could now access from your pension is £9,322.25."

The letter also stated:

*"Critical yield: 26.10%
A critical yield applies to this pension plan. This figure represents the growth your new pension plan would need to achieve each and every year to match the benefits you could have received if you had remained in your existing pension plan."*

Mr Q was invited to call Portal to make an appointment to have his review.

On 30 October 2015 Portal conducted a fact find by telephone and the information was recorded by one of Portal's paraplanners.

The information showed that Mr Q was 56 years old, unemployed and wanted to release tax free cash (TFC) from his pension to help pay towards his daughter's wedding, home improvements, and to pay off other financial commitments. The information gathered also included Mr Q's financial commitments which included a credit card balance he was paying £65 towards monthly, and a rent payment of £480 each month. It was recorded that Mr and Mrs Q had disposable income of around £230 per month.

The paraplanner also completed a *"risk attitude profiling questionnaire"*. The information recorded helped Portal assess Mr Q's attitude to risk (ATR) which was recorded as *"balanced"*.

On 3 November 2015 Portal sent Mr Q a letter titled *"Important information about accessing your pension early."*

The letter stated:

*“You currently have a pension with (previous employer) which has a transfer value of £37,289, from which you could release a total amount of £9,322 as a tax free lump sum. However, as the critical yield (the growth rate required to match your guaranteed benefits) with this provider is 26.1% it would be **against our recommendation** to do this. Furthermore, you would be waiving your entitlement to a guaranteed pension of £2,359 per annum and tax free cash sum of £6,098 which is payable at retirement age 60.*

If you still wish to go-ahead with pension release, we can still help you with this. As this is against our recommendation, we now need you to complete and return the ‘insistent client form’ confirming you are aware of the benefits you would be giving up.”

The enclosed form had options for Mr Q to select to either stay in the OPS or move his funds to “income drawdown”. The form also required Mr Q to tick several boxes to confirm his understanding of the critical yield and the pension he could receive by moving his funds to the drawdown as well as confirming he was going against Portal’s advice.

Mr Q signed the form on 7 November 2015. He chose the option “income drawdown” and ticked the required boxes. He also wrote that his reasons for taking TFC were that he was “not out of work” and to finish off his garden, pay off his credit card and give some money towards his daughter’s wedding.

On 12 November 2015 Portal produced a suitability report which outlined Portal’s findings in relation to the information that it had gathered. The report confirmed the information found in the TVAS. It said the critical yield required for a personal pension to meet the same benefits as Mr Q’s current OPS was 26.1%. Accompanying this report was a letter titled “please read – my pension recommendation is enclosed”

The letter stated the following:

“I am pleased to enclose a copy of your suitability report that includes my recommendation as of today’s date, if you follow my recommendation you will:

- *Transfer your pension plan(s) to an (provider) drawdown plan, whereby you will receive your tax free cash lump sum of circa £9,322.*
- *Access to further advice when you decide to take an income from these funds.”*

The letter also included a pre-typed “declaration form”. In summary the form stated that Mr Q’s main priority was to release TFC in order to meet his objectives, that the option he had taken to move away from his OPS meant that his existing benefits were unlikely to be matched, and that this option was not recommended by Portal. The suitability report stated:

“My Recommendation

I recommend that you do not transfer your existing pension plan and leave your pension funds where they are. However, you have elected to disregard my recommendation and you are aware that I will now treat you as an insistent client. As an insistent client, you have asked that I make a recommendation on how you may utilise your pension funds.

Accordingly, I have provided further information within this report to assist you to transfer the pensions summarised in the next section to an (Provider) Personal Pension.”

The report went on to summarise Mr Q's circumstances as previously outlined in the fact find document and then briefly looked at alternative ways he could access cash.

The following options were considered:

Taking a loan: this option was disregarded due to Mr Q not wanting to take on any further lending, and that he had no way of servicing the agreement.

Re-mortgaging: this option was disregarded as Mr Q was renting and did not own his property.

Using disposable income: this option was disregarded as part of the reason Mr Q wanted to release TFC was to pay off debts so he could benefit from more disposable income.

Using existing assets: This option was disregarded as Mr Q did not have sufficient assets to raise the funds required.

The report went on to summarise the risks of Mr Q transferring his pension before outlining its recommendation. In the recommendation section it stated:

"Our Recommendation

We recommend that you do not transfer out of your existing pension because of the benefits that you will lose. However, you have elected to proceed against my recommendation with the pension release. Although we can assist you with this, we will treat you as an 'insistent client'.

Whilst I have not recommended that you transfer your current policy, you have confirmed to me that you wish to proceed as an Insistent Client as you wish to make home improvements, fund your daughter's wedding and pay off financial commitments.

*As such I have considered a wide range of pension providers and recommend that your existing policy with **(provider)** be transferred to an **(provider)** Personal Pension.*

By following this recommendation, you will:

- Meet your stated objectives.*
- Be able to take up to 25% of your pension as a Tax Free Cash Lump Sum to meet your needs, you have selected to take £9,322.*
- You will also have the ability to take out capital from your fund when required, without any limit, until your fund has been depleted.*

Portal then recommended funds for Mr Q's pension to be invested into based on his "balanced" ATR. Mr Q signed the pre-printed declaration and returned it to Portal on 17 November 2015 and the transfer went ahead based on this recommendation.

Our Investigator considered Mr Q's complaint and thought it should be upheld. She didn't think Mr Q had sufficient knowledge and understanding of the risks involved with the transaction – because Portal had not made this clear enough. So, she didn't think Mr Q should've been classed as an insistent client. And she didn't think the recommendation made was suitable.

Portal didn't agree so this complaint has been passed to me to decide.

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.

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 said that the advice it gave was suitable because it did not recommend to Mr Q that he should transfer his pension. Instead he insisted on doing so. After he insisted, it recommended a provider and investments which it felt were right for him.

But I disagree. I don't think Portal's actions were appropriate or fair.

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 Mr Q. To achieve this, COBS 9.2.2R said Portal had to obtain enough information from Mr Q to ensure its recommendation met his objectives, that he could bear the related investment risks consistent with these objectives, and that he had the necessary experience and knowledge to understand the risks involved in the transaction.

In addition, 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;*
- 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, or opt-out, a firm should start by assuming that a transfer 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 or opt-out is in the client's best interests."

So, Portal needed to begin by assuming a transfer from Mr Q's OPS was not suitable, then consider Mr Q's specific circumstances and objectives. It needed to assess the options

available and look at what was in his *best* interests. It needed to provide a comparison of what the situation would be if he opted to transfer his pension from his OPS and what it would be if he didn't, making clear the differences and risks. And it needed to make sure that Mr Q understood all of this information so that he could make an informed decision. All while ensuring it acted honestly, fairly and professionally.

A letter was sent to Mr Q on 20 October 2015 titled "*we are ready to complete your pension release review*". The first paragraph of the letter states: "*We have all the information we need from your current pension provider, which is great news. And we can confirm that the maximum tax-free amount you could now access from your pension is £9,322.25.*"

So, the first thing mentioned was releasing money from the pension. Not a review or more general service, but instead making a specific change to the current position of Mr Q's pension. This was before a detailed fact find had been completed to understand Mr Q's circumstances or needs.

I accept there had been some contact prior to this letter – with an initial enquiry having been registered prior to Portal gathering information about Mr Q's existing pension scheme and Mr Q also signed a form that allowed Portal to gather information about his existing OPS. But I think the letter indicates, before a meaningful fact find had been completed, the discussion being skewed towards a particular outcome.

Portal carried out a fact find on 30 October 2015. But there doesn't appear to have been any information gathered about Mr Q's income needs in retirement. The question around this on the form has simply not been answered. I think it would be difficult, without an attempt having been made to understand this, for any recommendation to be entirely suitable for Mr Q's circumstances, bearing in mind the primary aim of a pension is to provide income in retirement. There is also nothing in the fact find to indicate that Mr Q had any other retirement provisions in place – so it's likely he had limited capacity for loss with his OPS. But this isn't reflected in the risk assessment.

The '*requirement*' noted for Mr Q needing TFC was for home improvements, pay some of his daughter's wedding and pay off other financial commitments. But Mr Q was renting the property he was living in so it is unlikely he would have had an urgent need to carry out improvements to it. It appears this would have been a "nice to have" rather than an urgent need, as it is explained later that Mr Q wanted to finish off work on his garden. Mr Q also only appears to have had one outstanding debt at the time which was a relatively low amount on a credit card of around £1,300. But Mr Q was paying a monthly amount of £65 towards this debt at the time which appears to have been manageable considering Mr and Mrs Q still had monthly disposable income. Again, helping towards his daughter's wedding, I'm sure would have been something Mr Q would like to have been able to do, but I don't think this shows Mr Q had an urgent need to access TFC.

In my opinion, the discussions around TFC seemed to be about how Mr Q would spend the money if it was available, rather than what he needed and whether giving up guaranteed lifelong benefits, and opting out of his OPS was in his best interests. And again, this followed the earlier correspondence that had already been skewed toward the outcome of taking TFC.

Portal recorded Mr Q's attitude to risk as balanced, based on the information recorded in the fact find. But I don't think some of the answers given support this.

To the statement "*people who know me would describe me as a cautious person*" Mr Q answered, "*Strongly agree*".

To the statement *"I generally look for safer investments, even if it means lower returns"* Mr Q answered *"Agree"*.

To the statement *"I generally prefer bank deposits to riskier investments"* Mr Q answered *"Agree"*.

To the statement *"I've little experience of investing in stocks and shares"* Mr Q answered *"Strongly agree"*.

Mr Q is noted as having strongly agreed that he had little experience in investing, people would describe him as cautious and that he generally looked for safer investments. He also agreed to the statement that he preferred bank deposits to riskier investments. Not to mention the limited capacity for loss I've already noted.

So, I don't think the focus of the initial correspondence and the fact find was what was in Mr Q's best interests. It seems to have been largely around how much TFC could potentially be taken and what this might be used for – not whether that was appropriate. And I think that could very well have misled Mr Q into thinking that releasing TFC was what Portal thought was best.

On 3 November 2015, Portal followed up from the fact find with the letter to Mr Q titled *"Important information about accessing your cash early"*. The letter briefly mentioned the critical yield required from a private pension to meet the benefits under his existing scheme to be 26.1% and that he would be giving up a guaranteed pension of £2,359 per annum and TFC of £6,098, but besides this there were no comparisons in the letter for Mr Q to consider. Instead the letter immediately explained Mr Q's option of having Portal help him release TFC, albeit as an insistent client.

The document included an insistent client form with boxes for Mr Q to tick to signify he understood the critical yield figures and that if he went ahead with the transfer he would be giving up a guaranteed pension of £2,359 and TFC at age 60, and that he might expect to receive £769 per annum at age 66 after taking immediate TFC.

Mr Q was also required to tick a box confirming that transferring his current scheme was against the advice of Portal, and complete a small section explaining why he wanted to access TFC early.

Mr Q wrote *"I am not out of work and want use the money to finish off my garden, pay off my credit card, and give some money towards my daughter's wedding"*. He also ticked the required boxes before returning the form to Portal.

The letter and attached form gave no consideration to any other ways Mr Q could potentially raise the funds to meet his objectives, if indeed he did have a genuine need to do so, other than directing him to third party organisations like citizens advice for help with debt management. For example, I've not seen anything to suggest any information was gathered about whether Mr Q could've potentially taken benefits from his OPS scheme early – given he was already over the age of 55 at the time of the advice. Portal may argue that Mr Q would have declined this option but based on what I've seen it doesn't appear to have even been considered, discussed, or outlined.

I think Portal's conclusion that the critical yield made the transfer unsuitable was correct. But given the lack of any significant comparison or information for Mr Q to consider, I don't think Portal provided full and clear advice to Mr Q, such that it left him in a position to make an informed decision about the transfer or about being an insistent client.

Immediately after saying that transferring would be against its recommendation, Portal promoted the option of still releasing money from Mr Q's pension – the focus being that this was something it could help with provided he signed an enclosed form to proceed on an insistent client basis. It also encouraged this form to be returned, at which point it said it would send out application forms and a suitability report detailing its advice.

I don't think it was reasonable to ask Mr Q to complete and return this form accepting he was to be treated as an insistent client and having made the decision to transfer out of his OPS before a suitability report and advice based on the report was even produced.

At the point Mr Q was required to complete and return the form it appears to be a pre-drawn conclusion that Mr Q would be going ahead with the transfer.

A suitability report was issued on 12 November 2015, just five days after Mr Q signed and returned the form agreeing to be treated as an insistent client on 7 November 2015, and just two days after it was stamped as being received on 10 November 2015. This is quite a fast turnaround time for the insistent client form to be returned and then a full further assessment of Mr Q's circumstances to be carried out to determine a suitable investment strategy – which is what Portal recommended.

The suitability report repeated that the transfer was against Portal's recommendations. And it included some further risk warnings that, amongst other things, releasing funds early could reduce Mr Q's income in retirement, taking TFC at this stage would mean no further TFC could be taken later, and by transferring away from the OPS Mr Q would most likely be unable to reverse this decision.

But it didn't give any context to the transfer not being recommended – particularly in relation to Mr Q's specific circumstances. There was no additional comparison of the benefits that Mr Q would be entitled to under his OPS in comparison to those potentially available under a personal pension – indeed other than the value of the OPS pension and the guaranteed pension per annum, the OPS benefits were not summarised at all within the suitability report.

The report also said if Mr Q continued to pay his debt through monthly contributions, rather than taking TFC he *"will have a total repayment of £14,962.13 calculated at a market average rate of 10.55% APR on the debt, with a pension value of £60,664 based on 5% growth at retirement."* But if he took TFC and used that to pay off his debt and paid the money he would've been putting towards the debt into his pension *"you will have total contributions into your pension of £17,954.56 (this has been grossed up due to tax relief) and a pension value of £65,414 based on 5% growth at retirement."* This indicated to Mr Q that he'd potentially be better off in broad terms by transferring – which undermined previous statements by Portal to the contrary. So, I think generally these statements are misleading.

This statement is further misleading as the only debt I can see recorded against Mr Q at the time of the advice was a small credit card balance of around £1,300 that he was making regular monthly payments towards. So, I am unable to see where these debt figures have come from. Even if this debt figure was accurate, Portal has made assumptions about the interest rate when it could have requested the actual rates giving a more accurate assessment.

I think this further shows that Mr Q was not given clear enough information to enable him to make an informed decision.

The report went on to recommend a specific provider and specific funds that Mr Q's pension should be invested in. The covering letter sent with the suitability report also stated: *"Please read - my pension recommendation is enclosed"*, and that following the recommendation

would mean Mr Q would have access to TFC. The letter further stated, *"I believe I have made a recommendation suitable for your situation"*. I think these statements suggest Portal thought it was a good idea that Mr Q should transfer his existing pension.

The covering letter included a further declaration for Mr Q to complete which repeated the acknowledgements in the insistent client declaration that he had previously returned. But this document had a pre-typed statement requiring Mr Q to simply sign to show he was fully aware of all the risk he would be taking transferring his pension. This statement was not in Mr Q's own words and I don't think demonstrates he was fully aware of all the risks involved.

Even with the content of this form in mind I think there was significant enough doubt and contradiction in the correspondence Mr Q was sent over a relatively short space of time for him to believe that Portal was in fact recommending a transfer.

The suitability report did touch on alternative methods of raising the funds Mr Q needed to meet his objectives, namely taking a loan or using his existing disposable income. But the explanation around taking out a loan made little sense and the actual cost of such a loan was not explored. Mr and Mrs Q did have disposable income and a low amount of debt, so it is possible a loan could have been serviced by their disposable income allowing Mr Q to keep the benefits offered by his OPS and still reach some, if not all, of the objectives he had set. There was also no meaningful comparison between using the alternative methods and taking the risk of transferring Mr Q's pension provisions.

I don't think the suitability report was sufficient as a recommendation not to proceed, and I don't think Mr Q's objectives were robustly tested by Portal. They did not seem urgent considering his manageable and reasonably small credit card debt, and what I consider "nice to have" objectives. I also think it may have been possible to meet Mr Q's objectives in other more suitable ways. I think the correspondence in general muddled the waters, which I think on balance likely led Mr Q to believe Portal felt the transfer was appropriate.

I don't think the investments recommended to Mr Q were appropriate. As I've said previously, I don't think the answers Mr Q gave in his fact find support the view that he had a balanced ATR, which was the basis his investments were selected on.

Taking everything into account I don't think the advice given by Portal was suitable.

Insistent Client

Portal argues that it was correct to class Mr Q as an insistent client. I've already detailed a number of flaws with the process that Portal followed. And overall, I have concerns with the process used and whether Mr Q was in fact an insistent client.

Portal says the information provided in the letter of 3 November 2015 is in line with the guidance provided by the FCA and includes its recommendation. On receiving this letter Mr Q decided to go against Portal's advice and proceeded on the basis that he would be treated as an insistent client.

But the letter and declaration Portal has referred to was sent to Mr Q before he received Portal's full suitability report, and it promoted the opportunity for Mr Q to proceed on an insistent client basis. The letter included an insistent client form, and while it's not in dispute that Mr Q signed the form the options Mr Q was asked to agree to only required him to place a tick in a box to confirm his understanding. The section Mr Q was asked to write himself only asked why he wanted to access funds early against the advice that had been given. I don't think enough importance was given to the fact Mr Q was going against professional advice despite it not being in his best interests. In any event, Mr Q simply wrote what he

would be spending the funds on and that he was currently “not out of work” which becomes clear in other paperwork to be a mistake as Mr Q was unemployed at the time of the advice.

Although Portal have said the declaration was in Mr Q’s own words his response did not cover why he wanted to ignore professional advice and proceed with an unsuitable transfer, it also contained inaccurate information about his employment status. I can’t see that Portal asked Mr Q to confirm the reasons behind transferring his pension being so important, and it didn’t question the information given about his employment after receiving his limited and inaccurate response.

So, Mr Q didn’t have all of the information he needed to make an informed decision – the form did highlight the critical yield figures and that Mr Q would be giving up a guaranteed pension. It also gave limited information about what he might achieve should he proceed with the transfer. But, I think it was unreasonable to ask Mr Q whether he wanted to be treated as an insistent client or not before providing the suitability report.

Only after receiving Mr Q’s confirmation that he wished to proceed did Portal send Mr Q the formal suitability report. And while the report stated that transferring would be against Portal’s recommendation, this was followed by the recommendation to transfer out of the OPS to a personal pension in the same report. Which, as I’ve said above, I think undermined the recommendation not to transfer.

I don’t think the process was geared towards Mr Q making an informed, considered assessment of the reasons why he shouldn’t be transferring – as if it was, I feel that would have involved Portal providing the full recommendation to Mr Q, allowing him to consider this on his own, and then revert to Portal if he 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 Mr Q with a means of proceeding against the advice, without establishing why he wanted to go against it, why the apparent requirements were truly necessary and why alternatives weren’t truly more appropriate, demonstrates that Portal had his best interests in mind.

Overall, I think this shows that Portal made it altogether far too easy for Mr Q to agree that he was an ‘insistent client’ rather than allowing him time to think about the advice not to go ahead with the transfer.

Would Mr Q have acted differently?

Mr Q said he wanted to access TFC to clear a credit card, complete his garden (on a rented property) and help pay towards his daughter’s wedding. But again, I believe the discussions were around what he would have liked to use this money for rather than him needing to release funds. As mentioned previously, Mr Q had a disposable income and was managing his small credit card balance with monthly payments. I don’t think Mr Q had a true *need* for the funds, or that he would always have transferred his OPS and taken TFC if Portal had used a more appropriate process.

Taking this into account, I think, as an inexperienced investor, had Mr Q been provided with more appropriate and robust advice around why the transfer was not suitable, I don’t think he’d have gone ahead. 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 Mr Q 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 Mr Q wasn’t able to make an informed decision. If he had been

provided with more appropriate information and reasoning, so that he fully understood the risks and long-term implications involved in transferring his OPS and investing as he did, and hadn't been directed towards the 'insistent client' route, I think he would have acted differently and retained his deferred benefits. As a result, I think Mr Q's complaint should be upheld.

On balance, if the transfer hadn't taken place, I think Mr Q would've retained his OPS benefits until drawing them at age 60 and I think that without Portal's failings, Mr Q wouldn't have gone ahead with the transfer. So, the funds wouldn't have been invested as they were. So, I think it is appropriate to hold Portal responsible for any of the losses Mr Q has incurred.

Our Investigator recommended that Portal put Mr Q, as far as possible, into the position he would now be in but for the unsuitable advice. I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr Q, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational 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*.

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 Q's acceptance of the decision.

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

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

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

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.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I require Portal Financial Services LLP to pay Mr Q the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Portal Financial Services LLP to pay Mr Q any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Portal Financial Services LLP to pay Mr Q any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Portal Financial Services LLP pays Mr Q the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr Q.

If Mr Q accepts my decision, the money award is binding on Portal Financial Services LLP. My recommendation is not binding on Portal Financial Services LLP. Further, it's unlikely that Mr Q can accept my decision and go to court to ask for the balance. Mr Q may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 1 August 2022.

Terry Woodham
Ombudsman