

The complaint

Mr D complains about advice he was given to transfer the benefits from his defined-benefit (DB) occupational pension scheme (OPS) to a self-invested personal pension (SIPP). He says the advice was unsuitable for him and believes this has caused him a financial loss.

Portal Financial Services LLP is responsible for answering this complaint. So, to keep things simple, I'll refer to "Portal".

What happened

Portal has refused to provide its view on the merits of this complaint because it says the claims management company representing Mr D isn't properly authorised to carry out this type of work. Accordingly, Portal has not responded to our requests for information and has since ceased to communicate with our Service at all about the complaint.

However, our Service has recently given a great deal of consideration to the issues Portal has raised. We've seen a number of similar complaints and our approach is that the company representing Mr D is legally able to do so. I have carefully checked everything we have in this particular case too, and I'm certain the company representing Mr D is able to represent him. We've explained this to Portal and also made it very clear what we expect from it in response.

Because Portal has continued not to supply the information we've asked for several times in this case, I am proceeding on the basis of the information I do have.

The information I have shows that Mr D asked Portal for regulated financial advice about his pension and retirement needs. My experience is that Portal most likely completed a 'fact-find' to gather information about Mr D's circumstances and objectives, although as I've said, this hasn't been sent to us. I also think it would have gone on to produce a 'suitability report' – again this hasn't been supplied. A summary of his circumstances at the time would have been broadly as follows:

- Mr D was 55 years old, divorced with one dependent child and another at university. He said he had acquired some debt of around £30,000 which he wanted to pay off if possible.
- After being a member of his OPS for around 13 years, Mr D had been classed as a deferred member since around 1995. The Cash Equivalent Transfer Value (CETV) of Mr D's OPS was £115,754 in 2017. Mr D said his OPS had a normal retirement age of 65.
- At the point of when the advice was provided to him, Mr D had an aspiration to gradually reduce his working days each week in the years ahead. He also planned to take some tax-free cash from this pension if possible and place the rest into a fund for later use.
- Mr D implied he had limited investment experience and a low attitude to risk (ATR).

- Mr D had another pension he was still contributing to with his then employer, as of 2017, and I've assumed his state retirement age to be 67.

Mr D complained to Portal that the advice was unsuitable and had caused him losses and he referred his complaint to our Service in 2020. One of our investigators looked into the complaint and said we should uphold it. As the complaint couldn't be resolved informally, it's come to me for a final decision.

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, I've decided to uphold the complaint.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. Portal should therefore have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests (COBS 19.1.6).

I've seen evidence of Mr D having paid £7,280 to Portal for regulated financial advice in April 2017. For further verification, I can see he provided his authority for his OPS funds to be transferred out to the SIPP - and I note there's an audit trail of his £115,754 being transferred from the OPS to the SIPP, all at around this same time. I've seen evidence of Mr D subsequently accessing tax-free cash and placing the remainder in a drawdown fund with a third-party provider.

So, although our access to information about this pension transfer has been hampered by Portal's refusal to respond to information requests, I think there's substantial and verifiable evidence here showing Mr D acted on advice to him from Portal to transfer out of his OPS.

Financial comparisons and viability

I've considered the starting point cited by the regulator, which is that DB transfers are unlikely to be suitable. This is based on an understanding that DB schemes are more often than not, at their most valuable in the form they were set up. In the case of most consumers, transferring rarely affords the opportunity of investment returns on a CETV that will provide better benefits. Portal haven't provided any information on the investment returns that were needed to match or improve on the existing benefits. And to be clear, Portal has had the opportunity to make this argument, but it has not, as I've explained above. So I'm unable to determine that transferring on the grounds of improved benefits in retirement made this transfer suitable.

Flexibility and income needs

As Portal hasn't supplied important documents from the point of sale, I looked at what I know about Mr D's likely needs and his retirement aspirations.

Mr D says he told Portal he'd like to access his pension savings partially to reduce some debt. He also planned to reduce his working days moderately in the years ahead which may have reduced his ongoing income. However, I think it's fair to say Mr D's plans about retiring weren't fixed; he was only 55 years old and still had some family responsibilities and expenses in the short-term. I can't see there was any aspiration to stop working completely for some time yet in his case.

In addition to this, I haven't seen anything showing that Mr D needed money to such an urgent extent as to make all other considerations, such as his longer-term retirement security, much less important. There's no suggestion, for instance, that his housing situation was at risk at that time. Nor was he incapable of managing his debts in a way that didn't involve transferring out of his OPS and thus losing all the benefits he would have had in the years ahead. I've seen nothing showing his life expectancy was considered so short as to make transferring out urgent for Mr D.

I can certainly see how the prospect of a lump sum from his pension at the age of 55, and a subsequent income or drawdown, might have seemed useful to Mr D. But Portal's job wasn't to simply transact what Mr D might have *thought* he wanted at the time, it was to look carefully at his overall situation and provide advice accordingly – advice that was in his best interests. By being recommended to transfer out, Mr D was being exposed to the risk of having less income later in life. Because Mr D was only 55 at the time of the advice, and looking at his overall circumstances, I think this just added to the fact that it was simply too soon to make any kind of decision about transferring out of the DB scheme.

Accordingly, I don't think it was a suitable recommendation for Mr D to give up all the guaranteed benefits the OPS came with when he most likely didn't know what his needs in later life would be. Typically, these schemes come with long-term guarantees and benefits and are index linked. If Mr D later had reason to transfer out of his OPS he could have done so closer to retirement age.

So, I can't see evidence that Mr D had a strong need for cash and a variable income at this point, when considering what he'd also have to forgo to get these.

Death benefits

This issue is often cited by advisors as of importance to consumers like Mr D who I note was divorced. I don't know if the advice focussed on death benefits but I have considered whether this area could have made a difference to what Mr D wanted to do. It's obviously possible that death benefits and the ability to pass on wealth could have been an attractive feature to Mr D. However, a pension is primarily designed to provide income in retirement and Portal ought to have made that clear.

Whether the death benefits here were improved following a transfer depended on how much remained in the pension fund at the point of Mr D's passing. Given average life expectancy, and the size of his fund, I think it was always likely that this fund would be largely depleted prior to Mr D's death, thus providing little or no death benefits at all. I find it unlikely that Portal made this clear.

Control or concerns over financial stability of the DB scheme

Other considerations I thought about were the possibility that Mr D wanted to consolidate his pensions or manage them himself. However, there's no evidence of this. Everything I've been told points to Mr D not having the desire or experience to do this. I've also been told he had another pension which wasn't consolidated with others. So, even if this issue was raised, I don't think that this was a genuine objective for Mr D – it was more likely to be a consequence of Portal having him transferred out of the DB scheme.

I've been given no information that the financial security of the OPS was in danger but even if it was I would have expected Portal to have explained about the Pension Protection Fund.

Summary

I've explained our approach to these issues, particularly the explanations our Service has given to Portal and what we expect to see in return. I've noted, too, our investigator's comprehensive attempts to engage with Portal, to provide information and to offer an opportunity to respond to our emerging views.

Portal's role here was to really understand what Mr D needed and recommend what was in his best interests. Ultimately, I don't think the advice given to Mr D was likely to have been suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring out, he was taking on investment risk, and facing the potential of reduced pension benefits as a result. In my view, there were no other particular reasons which would justify a transfer and outweigh this.

As I explained at the beginning of this decision, the regulator issued a clear presumption of unsuitability for pension transfers like this. This means Portal ought to have started from the position of advising Mr D against the transfer. It should only have recommended a transfer if his position clearly made it suitable. I have explained why it was most likely not suitable and Portal has failed to evidence anything to the contrary.

So, having considered all the circumstances, I've concluded that it's unlikely that Mr D's situation would have made it in his interests to transfer out. Portal refused to send us the recommendation it gave to Mr D, but it ought to have explained in very clear terms why such a transfer was *not* in his interests. If Portal had carried out its responsibilities properly, I think it's more likely that Mr D wouldn't have transferred his deferred OPS benefits.

Putting things right

A fair and reasonable outcome would be for Portal to put Mr D, as far as possible, into the position he would now be in but for Portal's unsuitable advice. I consider Mr D would have most likely remained in his DB scheme if suitable advice had been given.

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 D's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr D'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 D 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr D within 90 days of the date Portal receives notification of an 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 D.

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.

I've explained how Portal has substantially delayed this complaint process by refusing to respond to our requests for information and evidence. In my view, this is likely to have caused additional and unnecessary anxiety, upset and stress to Mr D. In light of this, it should pay him £300 for the distress and inconvenience this has caused.

My final decision

Determination and money award: I uphold this complaint and require Portal Financial Services LLP to pay Mr D 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 would additionally require Portal Financial Services LLP to pay Mr D any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Portal Financial Services LLP to pay Mr D 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 D the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr D.

If Mr D accepts this decision, the money award becomes binding on Portal Financial Services LLP.

My recommendation would not be binding if he doesn't accept my decision. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 July 2022.

Michael Campbell
Ombudsman

