The complaint

Mr T complains about the advice he received from Portal Financial Services LLP ('Portal') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme ('OPS') to a personal pension plan ('PPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr T is being represented by a third party but for ease I'll refer to all their comments as those of Mr T.

What happened

In 2015 Mr T received pensions advice from Portal. Mr T had approached Portal to discuss accessing tax-free cash (TFC) from his OPS for home improvements. He'd already spoken with his OPS trustees and had been told that the release of funds wasn't possible within his scheme until he reached 66 years of age. It was suggested he speak with an advisor if he wanted to look into other options.

Portal began to gather information about Mr T and his pension.

At that time, Mr T was 57 years old and was married with a dependent child. He told Portal he lived in property he owned worth approximately £190,000 with an outstanding mortgage of £20,000. He was employed and earned a minimum of £1,300 per month, often more. He was paying £252 a month towards his mortgage and said he had around £800 disposable income each month. Mr T also had a death in service benefit through his employer. He had no other assets or liabilities. His desired retirement age was recorded as 66. He was asked a number of attitude to risk questions ('ATR') and it was suggested he had a 'balanced' ATR.

Mr T had benefits in an OPS, which offered a Cash Equivalent Transfer Value of £101,049 at the time of advice. This gave a guaranteed pension of £7,815 per annum plus an additional lump sum of £13,323 from the age of 66. It also provided a 38.59% spouse's pension to Mr T's wife in the event of his death.

In addition to this Mr T held another benefit policy with a different provider that he understood was due to pay a lump sum when he retired. The precise details of this benefit weren't noted by Portal in the advice it provided to Mr T at that time.

On 20 March 2015 Portal wrote to Mr T and asked him to book a telephone appointment with one of its paraplanners so they could talk him through his pension options. In relation to the OPS, Portal had already completed a pension transfer value analysis (TVAS) of the fund. The letter included information from the TVAS, stating that the fund had a critical yield figure of 11.4%, which it explained was the amount the fund would need to grow by every year to match the benefits of Mr T's existing scheme.

The letter then identified some basic options available to Mr T 'right now':

- Option 1: Do nothing

- Option 2: Pension release – transferring benefits, releasing TFC and leaving the rest invested.
- Option 3: Take full benefits and retire with an income – take TFC and use the rest of the fund to produce an income which could include an annuity.

On 25 March 2015 Mr T had his paraplanner meeting with Portal where it gathered information about his circumstances and objectives. Portal then sent Mr T a post-sale options letter on 27 March 2015. This summarised some of the benefits of Mr T's OPS and outlined his options moving forward. Within this Portal said its recommendation was that Mr T didn't transfer out of his OPS. Included with this letter was an option form and an insistent client form. The option form asked Mr T to choose between:

- Option 1: Income Drawdown – Taking TFC of £25,262 and then reinvesting the residual amount until Mr T required an income. He would be treated as an insistent client.
- Option 2: Do Nothing – Our recommendation.

The letter stated Mr T only needed to complete the insistent client form if he wanted to proceed with the transfer.

On 31 March 2015 Mr T returned both of the signed forms indicating he wished to transfer his pension and take the TFC.

On 8 April 2015, Mr T was sent a suitability report by Portal. This noted that Mr T's primary aim was to make home improvements. The suitability report stated that Portal recommended Mr T leave his pension funds where they were. The report later noted *'that it is extremely unlikely that we will be able to match the required annual return.'* However, it said it was treating Mr T as an insistent client and, on this basis, it recommended he transfer his OPS benefits into a new PPP. This would enable him to take the maximum TFC.

Portal recommended a plan which it said invested in funds suitable for a balanced ATR. It also recommended Mr T take the additional option of a secured guaranteed minimum income (GMI) with the plan. This was projected to provide a yearly income of £3,550 if he deferred taking the income until the age of 66.

Mr T accepted the insistent client recommendation and a transfer was made in line with Portal's recommendations. Mr T then took a cash lump sum of TFC.

In July 2020 Mr T complained to Portal about the suitability of the transfer advice. He said that the transfer was not in his best interests and that he'd lost out as a result. He said wanting to access tax-free cash from his pension was not an objective. Rather, he was seeking to ease financial pressure caused by the fact he had taken time off work following a cancer diagnosis. Mr T said he couldn't recall ever having discussed his ATR with Portal and suggested that his lack of previous investment experience and personal circumstances meant he didn't have a balanced ATR as Portal concluded.

Mr T also complained that the insistent client forms were pre-drafted by Portal and didn't make clear what an insistent client was. Mr T couldn't recall being advised not to transfer and didn't think the full details of his OPS were explained to him. He said he simply signed the forms he was sent following his conversations with Portal. He suggested Portal should have refused to proceed with the transfer.

Portal didn't uphold the complaint. It said Mr T hadn't advised he had cancer, and instead told the paraplanner he was in good health. It said it had relied on the information provided by Mr T which it was entitled to do. Portal noted an ATR questionnaire was completed and, based on all the information Mr T provided, it believed 'balanced' was the correct ATR assessment for him.

Portal stressed Mr T had signed multiple documents that detailed what an insistent client was and had chosen to proceed with the transfer. Portal said the suitability report repeatedly stated that it didn't recommend Mr T do so. It also said the regulations didn't prevent it from processing transfers on an insistent client basis if clients were made aware of the risks and consequences of such actions.

Mr T remained unhappy and brought his complaint to our Service. Mr T's representative initially confirmed to our Service that on reflection, Mr T's cancer hadn't been mentioned to Portal. But Mr T later told our Service that it had. Mr T said the diagnosis resulted in him having to take some time off work and that as a result he had a reduced income at the time of advice.

One of our Investigators looked into things and partially upheld the complaint. They were of the view the insistent client process wasn't properly followed but thought that, given Mr T's circumstances, he would have transferred regardless in order to release the capital he required. In particular they said:

- The tone of the paraplanner call assumed the transfer would go ahead and didn't make clear the seriousness of going against clear advice.
- This call undermined the warnings later given in the documentation issued to Mr T.
- This plan was Mr T's only retirement provision and he was an inexperienced investor. In their view issuing a sales pack containing advice documents with instructions on where to sign was not sufficient in the circumstances.
- That being said, they felt Mr T had clear plans to access TFC and even questioned when the funds would be available in the paraplanner call.
- Mr T also confirmed he had later used the funds for home improvements.

However, the Investigator did have concerns with the recommended investment.
In particular, they didn't agree with Portal's assessment of Mr T's ATR. They were of the view Mr T's ATR was low and his funds ought to have been invested accordingly. They also didn't think the additional inclusion of the GMI option had been sufficiently explained to Mr T. They recommended Portal, in so far as is possible, put Mr T back into the position he would have been in had suitable advice been given. They felt Mr T ought to have been invested in the low risk fund from the same provider.

Mr T didn't make any further representations in response to the view.

Portal didn't agree with the view and raised a number of further points. These included:

- The insistent client process had been fairly followed.
- The insistent client form was clear on the benefits Mr T would be relinquishing and advised against the transfer. It was entitled to rely on Mr T's understanding of the document given he signed it.
- The relevant guidance regarding insistent clients was adhered to.
- The investment plan it recommended was suitable for both medium and lower risk investors as only 50% of the fund was exposed to equities with the rest exposed to fixed interest. It maintained its assessment of Mr T's ATR was reasonable but suggested that even if his ATR was lower, the recommendation remained suitable.
- Mr T didn't disagree with its assessment of his ATR.

As the parties couldn't agree, this complaint was passed to me to decide.

After reviewing the evidence, I felt it was likely that I'd reach a slightly different outcome to the Investigator. So, I shared my provisional findings with Portal and Mr T so they both had the opportunity to make any comments or provide further evidence. In brief, I agreed with our Investigator's findings that the Portal didn't correctly follow the insistent client process but that it was most likely Mr T would have transferred in any event. I also agreed that the investment advice from Portal wasn't suitable, but I felt Mr T ought to have been invested in a low-cost flexible pension in line with a cautious ATR, not necessarily with the same provider as suggested by our Investigator. So the calculations I felt Portal needed to make to put things right were slightly different.

Portal didn't provide any further evidence or comments in response to my provisional findings.

Mr T disagreed that he would have continued with the transfer had suitable advice been given. He said that had he been warned of the risks at that time, he would have remained in his OPS. He raised a number of points including:

- His home improvements were a want rather than a need – his home was fully functioning he just wanted to update certain rooms.
- His home improvements were not a significant motivating factor.
- Portal didn't challenge his objectives as it ought to have or present him with alternatives. Specifically, Portal didn't look at whether he could have voluntarily retired at age 55 and taken reduced benefits from his OPS.
- He was not provided with all the necessary information to make a decision, so the Ombudsman cannot be sure he would have continued with the transfer.

I'm now in a position to issue a final decision on this complaint.

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.

All parties agree that it wasn't financially viable for Mr T to transfer out of his occupational pension. So, my decision is going to concentrate on what I think are the key issues in this complaint. These are:

- Whether it was correct for Portal to treat Mr T as an insistent client.
- Whether the recommended product and associated investments were appropriate in the circumstances.

Before I begin, I'd like to make clear that from the evidence I've seen I'm not persuaded Mr T did tell Portal about his cancer. This isn't mentioned in any of the written correspondence from the time and it also isn't mentioned in Mr T's call with the paraplanner which I've listened to. Portal is also correct in saying Mr T suggested he was in good health during this call. Given the weight of evidence suggesting Portal wasn't aware and the fact Mr T's account on this issue has varied, on balance I think it's likely Portal wasn't given this information. Which means I haven't taken this into account when looking at the actions and decisions Portal made at the time of advice. However, I have considered this when thinking about Mr T's likely actions and his intentions.

Insistent clients

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were Conduct of Business Sourcebook ('COBS') rules in the regulator's Handbook which required Portal to *'act honestly, fairly and professionally in* *accordance with the best interests of its client'.* In addition, COBS required Portal to provide information that was clear, fair and not misleading. So, Portal's recommendation had to be clear and Mr T had to have understood the consequences of going against the recommendation.

In my opinion it ought to have been clear to Portal that Mr T had little knowledge or experience of financial matters based on the information available at the time of the advice. I say this because he told it so in response to the ATR questions. And I think this should've put Portal on notice that it had to be careful if it was to take matters through the insistent client route.

When considering whether it was correct for Portal to treat Mr T as an insistent client, the evidence that I consider key is that provided to Mr T prior to him signing the post-sale options letter. Whilst Portal has highlighted there was further information contained within the suitability report, by the time Mr T received this he'd already received Portal's 'advice' and made the decision to transfer. And so, I don't think this can be fairly relied on when deciding if Portal gave clear, fair and misleading information at the point of advice as per the requirements of the regulator.

Whilst it is true that Mr T could have withdrawn from the process at anytime and that he signed the relevant forms, it's reasonable for a retail investor, such as Mr T, to trust that they are being given fair advice which takes into account the relevant information. So, I don't think it's fair to suggest Mr T should have reconsidered his decision in light of the further information Portal provided after it had already asked him to choose how to proceed; particularly when there's no suggestion his circumstances had changed in the interim.

Having carefully considered the paraplanner call and the options letters sent to Mr T, I don't think the information he was provided was clear or fair and I think it was misleading. In my opinion Portal didn't sufficiently stress the seriousness of going against its advice and failed to provide sufficient information to enable Mr T to make an informed choice.

I have a number of concerns about the way the paraplanner call was handled.
The paraplanner did make clear that she was not providing advice. And I appreciate the paraplanner explained that part of her role was to provide Mr T with information about what could happen dependant on what option he chose to proceed with. That being said, throughout the call the paraplanner seems to have operated on the assumption the transfer would go ahead. And I think this is evident in how she phased the questions to Mr T and the comments she made in response. For example, when Mr T talked about the home improvements he wanted to make, the paraplanner commented that it would all be worth it in the long run, indicating the works (and the transfer) would go ahead. In addition, whilst the paraplanner made it clear that the advisor might recommend against the transfer, this comment was immediately followed by reassurances that Mr T could still proceed, with an explanation of how this could be done. This happened on more than one occasion in the call and at no point did the paraplanner stress the seriousness of going against advice.

So, I don't think the paraplanner gave Mr T the impression that going against the advice was particularly significant; if anything, I think Mr T would have been left with the impression the insistent client form was a formality.

I also think some of the questions the paraplanner asked Mr T were very leading.
For example, when asking Mr T questions about alternative ways he might fund the home improvements the paraplanner didn't ask if Mr T had considered a loan or remortgage. Instead she asked whether she was right in thinking that taking out a loan for £25,000 with the interest and repayments at Mr T's age was not an option he wanted to consider. Similarly, when asking about Mr T's existing credit cards and loans the advisor confirmed he

didn't have any and then commented that it was not like Mr T would want to gain those either because he would rather access his pension. This means that I don't think Mr T's responses to these questions can be fairly considered a true exploration of his thoughts on additional borrowing. I also think this would have given Mr T the impression that withdrawing TFC from his pension was the better option.

Overall, I think the paraplanner call seriously undermined the later warnings Mr T received about transferring his pension.

I'd also note that the initial letter set out the basic options for Mr T to consider with minimal advice or information. The opening question from the paraplanner, after checking Mr T had received the initial options letter, was to ask him what he was thinking of doing at that moment. Which seemingly invited Mr T to begin to choose how to proceed without having received sufficient information or any advice.

In addition, I don't think Mr T was provided with enough information across the call and the letters to make an informed decision. The post-sale options letter didn't clearly set out the information I'd expect it to. Whilst it gave an overview of the benefits of the existing OPS, there was missing information. For example, it didn't highlight the spousal pension available to Mr T; it didn't look into Mr T's reasons for wanting access to the funds; nor how else he might meet his needs; nor did it consider what his requirements in retirement would be and how this transfer and any draw down would impact this.

Some of the risks of transferring were included in the insistent client form Mr T was asked to complete, but I don't think these were fully explained. For example, the form didn't mention the funds could make a loss or that Mr T would be unable to transfer back into his scheme at a later date. And Mr T was only asked to complete this form if he decided to go ahead with the transfer in any event. So, I'm also not persuaded the risks that were highlighted were sufficiently prominent or that Mr T was encouraged to review these as part of the recommendation he received from Portal.

I don't think the wording and emphasis of the paperwork Mr T was given with the recommendation letter – including that the first option given to Mr T was to ignore Portal's recommendation – was fair to Mr T or in his best interest. I say that because I don't think it was in Mr T's best interest to go against Portal's recommendation. But the documents he was sent, made it very easy for him to do so. For all of these reasons, I don't think insistent client process Portal followed was fair.

I've then considered what I think it's likely Mr T would have done had he been given suitable advice. I appreciate Mr T has recently told me he wouldn't have transferred. I need to consider this against the other evidence I have, noting this comment has been made after Mr T has been told I intended not to uphold this aspect of his complaint.

Mr T has stressed that I, as the deciding Ombudsman, cannot be sure what would have happened. And I agree with him, it is impossible to know for certain what he would have done at that time had suitable advice been given. However, where evidence is incomplete or conflicting, my role is to decide, on the balance of probabilities, what I think is most likely.

Mr T has said his home improvements were a want rather than a need. And I've seen no evidence these works were urgently required. That being said, Mr T clearly wanted access to TFC to complete his home improvements and chose to do so despite documentation stating this was against Portal's advice. Mr T has also told our Service that following a recent cancer diagnosis, he was keen to get things sorted for his family in case anything happened to him. The evidence indicates he approached Portal after he'd spoken to his OPS trustees, and towards the end of the call with the paraplanner he was asking how long the release would take as he wanted to book in his builder who was quite busy. So, there was clearly strong motivation on his part to gain access to the TFC and this isn't something he could've achieved within his current scheme. Whilst Mr T has now suggested his home improvement objectives were not a significant motivating factor, this assertion is at odds with the evidence from that time. The fact he'd independently taken steps to secure the funds from his pension, to source a builder and to check their availability indicates significant motivation on his part.

However, I recognise motivation doesn't mean Mr T might not have been dissuaded from his chosen course of action by appropriate advice. So, I've thought about whether a clear explanation of the benefits and risks, and discussions about alternative options, might have persuaded Mr T against this course of action. However, I'm not persuaded that it would have. Whilst I accept that the home improvements were not urgent or necessary, Mr T 's behaviour indicates he considered them as such, which is understandable in the context of his ill health. I do think the other options for obtaining these funds weren't properly explored with him as they should have been. In fact, as outlined above, I think he was actively encouraged to discount taking out a loan by the paraplanner. That being said, in the context of Mr T's ill health and desire to set things in order for his family, I think it's unlikely he would have agreed to take on additional debt at that time or that he would necessarily have been able to. I say this noting Mr T was the sole earner in his household and he'd had to take time off work following the diagnosis. So, his illness had left him with an uncertain financial future in the lead up to his retirement. I'd also note Mr T told our Service he used the TFC left over following his home improvements to pay off bills and a car he had on finance, which shows he was keen to settle outstanding debt, not take on more.

Whilst Mr T has recently questioned why Portal didn't look into the possibility of him taking earlier retirement from his OPS, it would seem his motivation at that time was to secure a lump sum to enable the home improvements – something I don't think a reduced annual pension would've facilitated. I'd also note the evidence indicates he'd already approached his OPS trustees about an early withdrawal and had been told this wasn't possible. So, I'm not persuaded this was a viable alternative option.

Finally, I do also think it's of relevance Mr T didn't dispute our Investigator's view which suggested Mr T would have proceeded with the transfer regardless. If he felt strongly that he wouldn't have transferred, I'd have expected this to have been raised with our Service sooner. So, to some extent I do think this undermines his recent testimony that he would have acted differently.

For all of these reasons, despite the failings in the advice process that I've identified above, the only way for Mr T to access the TFC was by transferring out of the scheme and it seems more likely than not that his desire to access this was such that he would have continued in any event.

The investments and plan

Having established that I think it's more likely than not Mr T would have transferred from his OPS regardless, I've looked at the recommendation about where and how the funds were to be invested.

After carefully considering the evidence, I don't think a personal pension on its own was an unsuitable product as it allowed Mr T to access his TFC and gave him the ability to invest the remainder until such time as it was needed. However, I do have a number of concerns about the particular recommendation made by Portal:

- I don't think the plan, and in particular the GMI option, was sufficiently explained to Mr T - it was a very complicated product for an individual with limited investment experience or knowledge.

- I'm not persuaded Mr T had a genuine desire for a guaranteed pension and the fees associated this plan were much higher than other PPPs that would have been available to Mr T at that time.
- I disagree that Mr T had a balanced ATR, albeit I recognise the guarantees associated with the plan did have the effect of bringing down the overall risk posed by the investment portfolio, as long as the conditions were met.

In summary, I don't think this was a suitable investment strategy for Mr T - I'll explain why.

Dealing first with the costs, the PPP recommended by Portal cost 1.24% outright in addition to the fees charged by Portal, so I think there were cheaper products available to Mr T at that time. The additional GMI option was also recommended by Portal and incurred further fees of 1.2% which nearly doubled the cost of the plan. So the cost of plan was high. This alone doesn't necessarily make the product unsuitable if I was persuaded it was in line with Mr T's ATR and that he had a genuine desire for a guarantee, but I'm not.

The first mention of the GMI option was in the paraplanner call. Mr T was briefly asked about two different investment strategies. One he was told offered maximum flexibility, good growth potential over time and easily accessible funds. The other was the guaranteed minimum income plan which Mr T was told would mean he was protected from downturns in the market, but the costs of the guarantee would be a drag on his fund performance. Mr T was also told that if he transferred away, he'd only get the fund value. Mr T was then asked if he thought he'd prefer maximum flexibility and growth, or more guaranteed minimum benefits. Mr T said he thought he'd prefer guarantees.

I don't think the explanation or information given within this call was sufficient for an inexperienced investor like Mr T to fully understand what was being offered nor what the implications of such a choice were. Whilst some of the key features of the option were highlighted, this was done using technical language and in a generalised way. Mr T's response within the call was uncertain which adds weight to the fact he didn't fully understand what he was being asked to decide here. I think Mr T's response ultimately indicates a cautious ATR but isn't sufficient to show he wanted a guaranteed pension option, particularly in light of the increased costs. Simply because Mr T said he would opt for guarantees over maximum flexibility and growth, doesn't mean he had a genuine objective to obtain a guaranteed pension option at that time. In saying this I'd observe Mr T had guarantees associated with his OPS and was still willing to give these up.

I appreciate more information on this option was then included in the suitability report sent to Mr T. However, this was given at the point the product was being recommended. So, Portal never explored or explained what Mr T's PPP without this could look like. Whilst a breakdown of the fee information was included in the report, I'm not convinced an inexperienced investor like Mr T would have been able to utilise this information to make a fair comparison of the options available to him. I don't think Mr T would have known this plan carried higher fees than other products on the market and that this was largely a result of the guarantee offered. Reviewing the explanation within the suitability report, once again I would note it contained a lot of technical language and I don't think it would have been sufficiently clear to Mr T. This product also limited Mr T's options in the future as he risked losing his GMI if he decided to draw on his pension before age 66 – a real possibility given his health - and I'm not persuaded this was sufficiently explained either.

As outlined above, this was a complicated product, so I'd have expected Portal to take time to fully explain this to Mr T and ensure he understood. I don't think it did this. And overall, given the costs involved, I don't think the recommended PPP was suitable for him. I also don't think Portal provided clear or fair information on this option to enable Mr T to make an informed decision.

Considering Mr T's ATR, I have thought about what would have been a suitable investment strategy for him. As part of his complaint, Mr T has stated that he was a low risk investor, whereas the risk-profiling tool which Portal used classed him as having a balanced ATR, which is a higher risk profile. Portal's suitability report said it had also reviewed Mr T's capacity for loss. And that it considered he had a suitable capacity for the recommendation it had made.

Portal's suitability report broadly defines balanced investors as typically having moderate levels of knowledge about financial matters and may have some experience of investment, including investing in products containing risky assets such as equities and bonds. They are willing to take risk with part of their available assets if the potential reward is high enough and usually make up their mind on financial matters relatively quickly.

However, Mr T's answers to the Risk Profile Questionnaire he completed with Portal indicate a lower risk approach. The responses that showed caution and/or a lack of experience towards investment were:

- *People who know me would describe me as a cautious person – strongly agree*
- *Usually it takes me a long time to make up my mind on financial matters - agree*
- *I'm concerned by the volatility of stockmarket investments – agree*
- *I have little experience investing in property - agree*
- *I've little experience of investing in stocks and shares - agree*

The answers which showed a potentially higher risk appetite were:

- *I feel comfortable about investing in property - agree*
- *I associate the word 'risk' with the idea of 'opportunity' - agree*
- *I find investment matters easy to understand - agree*

And the following questions Mr T was recorded as having no strong opinion on:

- *I'd rather take my chances with higher risk investments than increase the amount I'm saving – no strong opinion*
- *I feel comfortable investing in the stockmarket – no strong opinion*
- *I generally prefer bank deposits to riskier investments – no strong opinion*
- *I generally look for safer investments, even if it means lower returns – no strong opinion*
- *I am willing to take substantial financial risk to earn substantial returns – no strong opinion*
- *I tend to be anxious about the investment decisions I've made – no strong opinion*

Having listened to the call it's clear to me that Mr T didn't really know how to answer many of the questions he had no strong opinion on. For example, when he was asked if he was comfortable investing in the stock market, he hesitated before saying he didn't know really. From the positive answers given, it's clear Mr T had limited investment and financial experience, and in this context it's easy to understand why he might have found it difficult to answer many of these ATR questions.

I appreciate the risk profile questionnaire itself considered that his answers did amount to a balanced ATR. Yet if you look at the answers themselves, Mr T's cautious responses outweigh the riskier ones. So, I don't think Mr T's answers do show he was a balanced investor. I say this also noting that when asked about his different pension options Mr T chose guarantees over maximum flexibility which also indicates a more cautious ATR.

The FCA has also made numerous comments over the years, including in guidance issued in March 2011 about assessing suitability, about how firms shouldn't rely solely on risk profiling tools to establish their client's ATR. The FCA said that firms should have a robust process for assessing the risk a customer is willing and able to take, which includes assessing their capacity for loss; appropriately interpreting customer responses to questions and not attributing inappropriate weight to certain answers; and ensuring that tools are fit for purpose with any limitations recognised and mitigated. For these reasons, I don't think simply relying on the questionnaire result was reasonable or in line with the FCA's guidance.

Looking at the other available evidence to help assess Mr T's ATR, Mr T had nine years before he intended to retire, so he had some time to tolerate some market volatility and recoup any losses. And based on what Portal knew at that time, Mr T was in good health and had a reasonable amount of disposable income each month. That being said, Mr T had no savings or assets other than his home to fall back on. He also had a dependant spouse and child. So, I think it ought to have been clear to Portal that he couldn't really risk losing this pension.

Portal seems not to have undertaken any assessment of Mr T's financial requirements in retirement. So, it's also not clear how reliant Mr T was on this fund for his and his wife's income in retirement. Whilst he had another type of benefit due to pay a lump sum, it's not clear how much this was for and Mr T's only other provision was his state pension. So I think it's fair to say Portal should have understood that this OPS was one of Mr T's main assets and a significant proportion of his pension provision. Mr T did confirm his wife was also eligible for a state pension, but he wasn't clear with the paraplanner if this was a full state pension. He also said his wife had been out of work taking care of their child for many years which was a possible indication she may not have been entitled to a full state pension. So, this may have meant Mr T and his wife were more reliant on his pension provision. Which is something Portal should have explored and taken into account.

All of this means I don't think Portal assessed Mr T's ATR correctly. Based on the evidence that is available, I think Mr T had a relatively low ATR. I say this keeping in mind Mr T's limited experience, cautious approach in his discussions with the paraplanner and how Portal defined a balanced ATR at that time.

I'm aware Portal is of the view this product would have been suitable for a low ATR regardless. The plan held a fixed exposure of 50% fixed interest investments and up to 50% exposure to equities. Equities are higher risk investments and a 50/50 split of riskier and lower risk investments is by its very nature a balanced investment portfolio, not a lower risk one. That being said, I do think the GMI could have mitigated the overall risk, providing Mr T didn't intend on transferring his funds elsewhere or accessing his pension early – as this removed the guarantee.

However, for the reasons outlined above, I'm not persuaded Mr T had a genuine desire for a guarantee. I'd also observe Portal didn't really seek to understand whether Mr T was intending to transfer his funds elsewhere in the future as it didn't sufficiently explore Mr T's circumstances and objectives in retirement. The GMI limited Mr T's options for the future because the increases weren't applied to the underlying fund value. So I think the return on the fund was likely to be lower than Mr T may have expected, particularly in view of the layers of fees applicable. I don't think Portal did enough to establish if this would be problematic for him. So, for all of these reasons I don't think Portal's recommendation was suitable.

It seems to me that Mr T was an inexperienced investor who trusted in and relied on the investment advice he received. So had Portal given investment advice more in line with Mr T's ATR and needs at that time, I'm of the view that Mr T would have accepted this. Given what I know of Mr T's intentions and circumstances, I think a low cost flexible pension that would have allowed Mr T to invest the rest of his funds in line with his cautious ATR should have been recommended.

In summary, my decision is that Portal didn't give Mr T suitable advice and it didn't provide clear fair and not misleading information to him. However, I think Mr T's desire to access his TFC was sufficient to conclude that he would have followed the insistent client process regardless. I think Portal's assessment of Mr T's ATR was not accurate and it didn't gather and consider the information I'd have expected it to before reaching this assessment or making its recommendation. I also don't think it fully explained the GMI option to Mr T in the way it should have to enable him to make an informed choice. For all of these reasons, I don't think the investment plan was suitable for Mr T. In my view, a low cost personal pension invested in a lower risk investment fund would have been in line with Mr T's ATR and would've met his needs whilst incurring less fees. I think Portal failed in its duty to ensure its recommendations were appropriate and I think these failings ultimately led to Mr T's loss.

Fair compensation

My aim is that Mr T should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr T would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr T's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr T fairly, Portal must:

- Compare the performance of Mr T's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- Portal should add interest as set out below:

- If there is a loss, Portal should pay into Mr T's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Portal is unable to pay the total amount into Mr T's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr T won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age.

- It’s reasonable to assume Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr T would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- If either Portal or Mr T dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr T receives appropriate compensation. It won’t be possible for us to amend this assumption once any final decision has been issued on the complaint.

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

Portfolio name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
PPP	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Portal should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I’ll accept if Portal totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I’ve decided on this method of compensation because:

- Mr T wanted Income with some growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It’s a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr T's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr T into that position. It does not mean that Mr T would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr T could have obtained from investments suited to his objective and risk attitude.

My final decision

I partially uphold the complaint. My decision is that Portal Financial Services LLP should pay the amount calculated as set out above.

Portal Financial Services LLP should provide details of its calculation to Mr T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 26 August 2022.

Jade Cunningham
Ombudsman