

## **The complaint**

Mrs R's representatives complain that advice given by Portal Financial Services LLP ("Portal") to transfer the benefits from her occupational pension scheme to a self-invested personal pension (SIPP) wasn't in her best interests.

Mrs R is represented in this complaint by one of Mrs R's daughters and her partner, referred to as "the representatives".

## **What happened**

Mrs R was employed full-time as a civilian in the Police and was a member of her local government defined benefit (final salary) occupational pension scheme (OPS). Her normal retirement age was 65.

Mrs R had returned to work following an extended absence due to illness and was considering reducing her hours. So she sought advice from Portal about whether she could access the benefits in her OPS and release the tax-free cash (TFC).

Portal wrote to Mrs R in January 2015 setting out her options in respect of her OPS which were:

- Do nothing – leave her pension where it was;
- Transfer the benefits releasing a tax-free lump sum of £18,412, leaving the remainder invested;
- Take full benefits, releasing up to £18,412 TFC and retire with an income;

Portal suggested once she'd read the letter Mrs R should arrange a telephone appointment with an adviser to talk through the options.

During the call on 9 February 2015 the Portal adviser completed a fact find in which Mrs R's circumstances were recorded as:

- Aged 60, married with no dependent children
- In good health but taking medication for minor medical conditions, her weight was around 12 stone;
- Working full-time earning around £18,525, her husband was unemployed;
- Renting a property costing £450 per month
- Credit card debt of £750 costing £40 per month to service;
- No assets and net household disposable income of £100 per month;
- A potential forthcoming inheritance;
- The transfer value of her OPS was £73,650
- Her objective was recorded as needing TFC of £18,412 for "*home improvements and improve living quality*"

Mrs R didn't intend to retire yet and wanted to keep working for a few more years. Given the critical yield of 16.4% necessary to achieve the same benefits, Portal's suitability letter dated 15 February 2015 reflected Mrs R's circumstances as set out above and concluded the

transfer from a defined benefit (DB) pension scheme wasn't in her best interests. But it agreed to facilitate the transfer on an "*insistent client*" basis, even though it was against their advice, and provided the forms to enable her to do so.

Mrs R signed the insistent client options form on 11 February and the insistent client declaration on 19 February 2015, so the transfer of £73,650 to a self-invested personal pension (SIPP) with provider N went ahead. She took just under £18,904 as her pension commencement lump sum (TFC) and the remainder was invested in a flexi-access drawdown plan, the illustration for which suggested it would provide an annual income of £3,761 before tax. Portal had assessed Mrs R as having a "balanced" attitude to risk defining such investors as having a "*moderate level of knowledge about financial matters*".

A year later Mrs R wished to take a lump-sum withdrawal of £20,000 (gross), described as a "*pension strip*" from the SIPP to enable her to reduce her working hours and pay off debts. A further fact find was completed by a different Portal adviser in April 2016. This recorded Mrs R's circumstances as:

- Aged 62, married with no dependent children;
- In good health but with asthma recorded as a medical condition and her weight was now 8 stone;
- Working full time earning £19,000, husband unemployed;
- Renting a property costing £450 per month
- Unsecured loans totalling £5,000 costing £196 per month to service;
- No assets and household net disposable income of £100 per month

The balance of her SIPP was recorded as just under £52,284. Portal produced a pension strip report which explained the withdrawal would be taxed, but likely within the 20% bracket. And as Mrs R's husband was in receipt of welfare benefits they recommended the couple find out whether this additional income would affect his entitlement. Mrs R signed a declaration of 14 April 2016 to say she understood this withdrawal would mean her paying more than £4,000 tax in 2016/17 as she was working. She went ahead with the withdrawal and received £18,202 in June 2016. From December 2016 Mrs R took regular monthly withdrawals from her SIPP of £800 - £1,000.

Sadly Mrs R's husband passed away in September 2019 aged 65. It was when going through the couple's paperwork the family discovered Mrs R had transferred her pension which they don't think Portal should have allowed her to do. As the fund is almost depleted they think she'd have been better off staying in the OPS for a guaranteed income in retirement.

According to her family Mrs R's memory had been deteriorating for some time and she's now been formally diagnosed with dementia and is resident in a care home. Mrs R's representatives complained to Portal in February 2020. Portal didn't uphold the complaint. They said the risks and disadvantages of the transfer had been clearly explained to Mrs R. She'd been warned it wasn't in her best interest but wanted to go ahead anyway to access the TFC.

So Mrs R's representatives brought her complaint to this service where one of our investigators upheld it. Portal disagreed so it was passed to me for a decision.

I issued a provisional decision in this case in February 2022. Although I'd come to the same outcome as our investigator, I thought it fair to share some additional information provided by Mrs R's representatives which hadn't previously been seen by Portal.

In my provisional findings I said (in summary)

- I didn't think Portal should have refused to advise Mrs R. Although her relatives were aware her memory had been deteriorating since around 2014 she was still working and had no diagnosis of dementia. Indeed this only happened once she'd been moved to a care home, so Portal had no reason to think she lacked capacity to make an informed choice;
- I didn't share the representatives' concern that the advice took place by telephone rather than face to face or didn't formally involve her husband. And despite the concern that Portal hadn't taken steps to confirm Mrs R's identity, it didn't appear there was any dispute the advice had been given to Mrs R herself rather than someone else;
- I accepted that Portal's advice to Mrs R had been that the transfer wasn't in her best interests and they didn't recommend it. Their advice clearly stated that "*as the critical yield (growth rate required to match your guaranteed benefits) is 16.4% it would be **against our recommendation** to do this. Furthermore, you will be waiving your entitlement to a guaranteed pension £4,539 per annum and tax free cash sum of £6,983 which is payable at retirement age 65*".
- But I wasn't persuaded by Portal's argument that they only included the "insistent client" declaration form with the recommendation as a "*precautionary approach*" and "*just in case*" Mrs R wished to proceed to reduce any unnecessary delays.
- I didn't think Mrs R met the definition of an insistent client as although she had signed the declaration and I could see she might be tempted to access her pension to obtain a higher amount of TFC, I wasn't persuaded she fully understood the long-term implications to her income in retirement of giving up the guaranteed benefits from her OPS;
- I wasn't satisfied Portal had taken steps to ensure it didn't fulfilled its obligations didn't "steer" Mrs R towards following an insistent approach. The insistent client form gave option 1 (income drawdown after taking a tax-free lump sum of £18,412) ahead of option 2 (do nothing);
- I felt Portal offering to "*help*" Mrs R with the transfer and providing the form before she saw the suitability letter is likely to have reassured her about the transaction and encouraged her towards proceeding without fully appreciating the implications.
- The evidence suggested Portal hadn't met the regulator's expectation that Mrs R give a personal explanation *in her own words* to confirm she understood she was acting against Portal's recommendations but had a compelling reason for doing so.
- The timing meant Mrs R had little time to consider her decision fully. There was only just over a week between the initial consultation and Mrs R taking the huge step of opting out of the final salary pension scheme she'd paid into for 15 years.
- I felt Mrs R is likely to have been tempted by the prospect of taking the TFC given the state of her finances. Despite working full time the household monthly disposable income was only £100, and her husband had been unemployed for some time. The fact-find recorded she had £750 of credit card debt which she was making modest payments towards. But clearing debt is not the reason for the transfer recorded on the fact find. I wasn't persuaded that "*home improvements*" was a plausible reason for the transfer given she lived in a rental property. It came to light Mrs R and her

husband had previously been owner-occupiers, but they couldn't afford the mortgage. So the property was purchased by a company from which they then rented it for £450 per month. This didn't change my view as I still felt it unlikely she'd pay for home improvements to a rented property.

- At the time of the advice Mrs R didn't intend to stop working, although she was thinking of going part-time, and while it wasn't clear if she had reduced her hours, she was an active member of her OPS. So transferring would involve opting out of the scheme meaning she'd lose the increased retirement income arising from any additional employee and employer contributions she'd have made prior to taking benefits. I hadn't seen evidence this had been explained to Mrs R.
- Portal had assessed Mrs R as having a "*balanced*" ATR although it's not clear how that was determined. But I'd seen no evidence to show Mrs R had the necessary "*moderate level of knowledge about financial matters*" to meet that definition. And Portal hadn't followed up on the assessment of Mrs R's capacity for loss although the evidence it already had suggested her assets were close to zero, her investment horizon was quite short as she was only a few years from her normal retirement age. And she could expect very little financial support from a spouse or family member, given Portal knew her husband was unemployed, and household monthly disposable income was only £100.
- In summary I didn't think it was sufficient of Portal to simply say the transfer wasn't in Mrs R's best interests but then immediately agree to facilitate it for her, given her financial unsophistication and her very limited means. So as I concluded Mrs R shouldn't have been treated as an insistent client, it follows that I didn't think Portal should have assisted her with the transfer of her pension benefits from the OPS. I therefore thought Portal should put things right for Mrs R by applying the regulator's guidance on redress of this nature.
- I went on to briefly consider the subsequent withdrawal ("pension strip") of £20,000 gross in 2016. I noted the fact find at this time was carried out by a different adviser who didn't appear to have compared the information with that obtained only a year earlier. Had they done so I thought Mrs R's substantial weight loss might have prompted further questions. And it was significant that Mrs R's unsecured debts had grown from a credit card balance of £750 to two loans totalling £5,000 which may have been partly for debt consolidation. Yet the monthly household disposable income remained at £100.
- The reason for the withdrawal was recorded as "*to reduce hours at work and to pay off debt*". The fact find again stated Mrs R had no assets and little disposable income. I could see the implications of this additional withdrawal had been explained to Mrs R and she wanted to go ahead despite the additional tax implication. And the pension strip adviser sign-off dated 18 April 2016 said as Mrs R's husband was in receipt of welfare benefits Portal **strongly** recommended they seek advice from the benefits office to find out how they will be affected. Several warnings were given including that the withdrawal would cause Mrs R to "*suffer financial poverty in future retirement*". But the root of the risk to Mrs R's future retirement income was the transfer away from the guaranteed lifelong benefits of the OPS. So given that I'd already decided Portal shouldn't have assisted Mrs R with the transfer I didn't think I needed to consider this advice further.

So my provisional decision was to uphold the complaint and I went on to explain how I thought Portal should put things right.

### *Responses to my provisional decision*

Portal didn't respond by the deadline or tell us they needed more time.

Mrs R's representatives made the following points in summary:

- They believe Mrs R was contacted by Portal – they don't think she had the necessary experience to have sought advice;
- They didn't think Mrs R's weight was correct in the second fact find – she'd been ill for some time and her weight had plummeted to 4 stone 8 pounds;
- Mrs R's recorded income of £18,412 seemed low;
- They confirmed Mrs R received an inheritance from her father who passed away in 2016, she hadn't received it in 2015;
- They didn't think Mrs R's husband had claimed state benefits;
- They reiterated Mrs R's memory had been deteriorating since 2013/14 but her husband had done nothing about it and her family lived too far away;
- They wanted to know if the redress calculation would also refund the adviser's fees;
- They asked if the redress could be paid to Mrs R's two daughters following her dementia diagnosis. They don't have power of attorney for Mrs R, but one is an Appointee;

### **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.

The points made by Mrs R's representatives in response to the provisional decision are largely matters of background which don't affect the outcome of the complaint as they weren't known to Portal at the time of the advice. But for completeness I'll address them here.

- The 2015 fact find didn't say Mrs R had received an inheritance. Under the "*Plans/Funding for Retirement/Other*" section the adviser has made a note of a "*potential inheritance*" alongside "*State pension, husband's pensions*". So when asked about her income in retirement I think Mrs R must have mentioned she expected to receive an inheritance in the future (meaning from her father).
- The idea of the redress calculation is to put the consumer in the position they'd be in had things happened as they should have. So this means the redress will be paid to Mrs R, preferably into her personal pension but if that's not possible then to her as a cash sum after a deduction for tax. We cannot pay the redress to Mrs R's representatives. And as the investigator has explained an appointee doesn't have the same legal powers as an attorney and only applies to welfare benefits;
- The calculation does take the adviser's fee into account as it's likely to have been deducted from the transfer value of the OPS before it was invested in the SIPP, rather than paid by Mrs R separately.

Having considered everything again I see no reason to depart from my provisional conclusions. Which is that I uphold this complaint and require Portal Financial Services LLP to put things right as set out below.

## **Putting things right**

A fair and reasonable outcome would be for the business to put Mrs R, as far as possible, into the position she would now be in but their error in facilitating the transfer away from her OPS even though they assessed it as unsuitable. Had they done so Mrs R would've remained in the occupational scheme.

Portal Financial Services LLP 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 guidance will factor in the benefit Mrs R has had of the PCLS and the subsequent withdrawals.

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 Mrs R's representative's acceptance of the decision.

Portal Financial Services LLP may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs R'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 Mrs R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs R's SIPP. 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 Mrs R 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 Mrs R's 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 Mrs R within 90 days of the date Portal Financial Services LLP receives notification of her representative's 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 Financial Services LLP to pay Mrs R.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

**My final decision**

I uphold this complaint. Portal Financial Services LLP should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 22 March 2022.

Sarah Milne  
**Ombudsman**