DRN-3339429

The complaint

Mr C complains about the advice Portal Financial Services LLP (Portal) gave in relation to his defined-benefit ('DB') occupational pension scheme, which was transferred to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

At the time Portal gave its advice it was operating under a different name. But, as it is now known as Portal I shall only use that name in this report.

Professional representatives helped Mr C to bring his complaint. But, for ease of reading, I'll refer to the representatives' comments as being Mr C's.

What happened

Mr C contacted Portal after seeing an advert on social media about releasing funds from his pension at age 55.

In September 2017 Portal completed a fact-find to gather information about Mr C's circumstances and objectives. Portal recorded that:

- Mr C was 55, married with two adult children.
- He lived in a rented property.
- He worked full time.
- He paid around £35 a month to pay for an overdraft of around £700.
- He had outstanding loans of around £10,000 which he was repaying at a cost of £240 a month.
- He was paying £80 a month to pay off a credit card balance of £1,800.
- He had a debt management arrangement of £7,000 which he was paying off at £100 a month.
- He had a disposable income of £50 a month.
- He was currently off work sick and took tablets for an illness. Portal recorded that Mr C was "*vulnerable*".

Portal also carried out an assessment of Mr C's attitude to risk, which it deemed to be "*moderately adventurous*". It also produced a pension transfer value analysis report which included cashflow models comparing how an alternative pension plan was likely to perform against the guaranteed benefits of his DB scheme.

On 26 September 2017 Portal wrote to Mr C. It said its recommendation was that he should not transfer away from his DB scheme. It said that was because a new pension plan was unlikely to grow at the required rate to match the benefits of his existing DB scheme and he would lose guaranteed benefits.

Portal's letter went on to say that if he wanted to go ahead with the transfer, against its advice, that would be something it could help him with. But in order to arrange that it would treat him as an "*insistent client*". It gave an overview of the benefit from his current DB scheme, including that it had a cash equivalent transfer value (CETV) of £168,319 from which he could take £42,079 as tax free cash (TFC). It included an *options form* which gave Mr C two choices:

- To disregard Portal's advice and continue with the transfer from the DB scheme as an insistent client.
- To accept its recommendation and remain in his employer's DB scheme.

The letter asked Mr C to tick the box next to his preferred choice. The box next to the first option – not to accept Portal's advice – said:

"*I understand your recommendation to leave my* [DB] *scheme where it is. However, I want you to continue reviewing my pension, setting up a flexi-access drawdown plan so that I can release £42,079 tax-free cash and reinvest the remaining £126,240*."

The letter said that if Mr C chose the first option he would also need to sign the enclosed insistent client form. That form set out that Mr C understood that:

- A new pension plan was "*unlikely to achieve the growth rate required of 5.50%*"
- He was aware that the critical yield [the yearly growth rate to match the benefits of the DB scheme, assuming Mr C took a lump sum tax free cash, if he were to buy an annuity] was 10.6%.
- He would be giving up the option of a tax free lump sum of £75,411 and a yearly pension of £11,312 at age 67.
- The DB scheme would also allow him the option of taking a lump sum of £24,943 and a yearly pension of £15,483 at age 67. A new plan would need to grow by 12.1% a year to match that.
- If he chose to transfer out of the DB scheme he could take tax free cash ('TFC') of £42,079 immediately and invest the remaining balance until his retirement age of 67. That option would give him a yearly income, in the form of an annuity, of £7,070.
- He understood that Portal's recommendation was not to transfer from his DB scheme and if he did so Portal would treat him as an insistent client.

The insistent client form also asked Mr C to explain in his own words why he wanted to go against Portal's recommendation and continue with the transfer from his DB scheme.

Two days later (28 September 2017) Mr C signed the options and insistent client forms. He said he wanted to continue with the transfer. He wrote that his reason for doing so was "*debt consolidation*".

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After Mr C returned those forms Portal spoke with him on the phone. It said, amongst other things, that it wanted to make sure he was "*aware of the advice that we gave*". Mr C said that he was aware and that it was clear he would be going against Portal's advice and it would be treating him as an insistent client. Portal asked him if he understood the approximate level of the guaranteed income he would be giving up. Mr C replied "*no, I'm not sure*". Portal told him that at age 67 his DB scheme could pay him an income of £15,483 a year, as well as TFC of £24,943. It told him that would be lost if he took TFC now of around £42,000. It asked if he was comfortable giving up these benefits and he said that he was. He said he did have an idea of what he was giving up as he "*had looked at it yeh*". Portal asked him if it was more important to him to pay off his debts at that time and he said that it was. Portal said it would send him a report that would highlight its advice and the documents for him to continue "*with the release of benefits*". It said as long as he remained comfortable with that he should sign and return the forms and it would get things moving so that he received his TFC and it could reinvest the balance.

On 10 October 2017 Portal sent Mr C a 26 page pension transfer suitability report. The two page cover letter said:

"Having considered your current situation and what you would like to achieve, we are delighted to recommend:

Transferring your pension to [a named SIPP provider] *pension plan.*

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

You will receive your tax-free lump sum of £42,079."

The letter went on to say that if Mr C agreed with Portal's recommendation then he should return the forms sent with the suitability report as quickly as possible.

Amongst other things the suitability report said that while its advice was that Mr C should not transfer out of the DB scheme it could arrange that for him on an insistent client basis. It said he could receive £42,079 TFC and that by doing so he could "*tackle a debt, go on holiday and put into your savings*". It said a new pension plan was unlikely to grow at a suitable rate to match the benefits from his DB scheme. It went through some of the things Mr C would be giving up by transferring out of his DB scheme. Portal said its fees for arranging the transfer were £9,915.99. It added that it would charge a 1% a year fee for advice and that the SIPP provider would also apply a charge. It said the CETV from his DB fund quote had expired and that the scheme administrators might charge a fee for providing a new transfer value. It repeated that it had advised Mr C not to transfer out of the DB scheme but said that as he'd decided to go against its advice it recommended the named SIPP and explained why it was making that recommendation.

Mr C signed the transfer forms three days later. But it wasn't until April 2018 when the SIPP provider confirmed that it had paid Mr C TFC of £35,935 from a total transfer value of £143,740.

In December 2020 Mr C complained to Portal about the suitability of the transfer advice because, amongst other things, he said:

- Portal didn't act in line with the regulator's principles or guidance.
- Portal's fee was conditional on the transfer going ahead so it was in its interest to recommend the transfer.
- Portal's advice was founded on the transfer going ahead and so wasn't truly independent.
- Portal didn't act in Mr C's best interests
- Portal created a conflict of interest.
- Portal's advice from the outset was based on a large sum of cash being available to Mr C, which led towards a decision to transfer without giving proper advice.
- Portal's advice didn't consider other methods of Mr C paying off debts.
- The advice was unclear.
- Portal didn't provide its suitability report until after Mr C had decided to go ahead with the transfer and had signed the insistent client form.

Portal didn't uphold Mr C's complaint. It said, amongst other things:

- Portal's initial assessment and recommendation was for Mr C not to transfer out of his DB scheme.

- It's fee was conditional on the transfer going ahead but its recommendation was not to transfer, which showed that it made its recommendation in Mr C's best interests.
- Mr C decided to go against its recommendation and confirmed he did want to transfer out of his DB scheme.
- Portal treated Mr C fairly at all times and acted in line with his objectives and the regulator's principles and guidance
- Portal's suitability report set out its fees and said those would be deducted from the "*residual fund*".
- It didn't believe there was any conflict of interest, Mr C's objectives were clear and its recommendation was not to transfer from his DB scheme.
- Mr C had spoken with Portal on the phone and it had confirmed the guarantees he would be giving up by transferring.
- it processed the transfer on Mr C's confirmation that he was going against Portal's advice and that he had acknowledged the risks he was taking in doing so.
- Portal's suitability report said that Mr C would be better off staying in his DB scheme.
- Portal advised Mr C to read its suitability report carefully. It clearly explained that Mr C had decided to go against its recommendation and if he had any questions to contact Portal with those.
- Portal acted in line with the regulator's guidance by advising Mr C not to transfer from the DB scheme but Mr C was anxious to clear his debts and had no other way to raise the funds.
- If Mr C had chosen to stay in the DB scheme then it wouldn't have sent the suitability report.

Mr C referred his complaint to our service. He said, amongst other things:

- Portal presented various documents and forms to sign in order to complete the pension transfer without fully explaining them.
- He felt Portal rushed the whole process without helping him to understand it.
- He didn't go against Portal's recommendation. He was in debt at the time and didn't have alternative funds. Portal gave him the opportunity to transfer his pension and take TFC to cover his debts. He went along with that advice and Portal didn't make him aware of the loss of benefits as a result.

One of our investigators looked into the complaint. She recommended the complaint be upheld. Amongst other things she said:

- Portal didn't follow the regulator's guidance in the insistent client process.
- Portal advised Mr C not to transfer out of the DB scheme but made it to easy for him to go against that recommendation.
- Mr C told Portal in a phone call that he didn't know what benefits he would be giving up. He told it he was comfortable transferring his pension without giving any reason why he felt the guaranteed benefits weren't important to him. The investigator said this reinforced her view that Mr C didn't fully understand the benefits he would be giving up by transferring.
- The benefits of the DB scheme weren't limited to the guaranteed sums Portal referred but Portal didn't assess these.
- The evidence doesn't show that Portal made any enquiries as to how urgent it was for Mr C to pay off debts.
- Portal didn't provide Mr C with advice about debt counselling or loan restructuring.
- Portal didn't make enquiries of the DB scheme to see if Mr C could take his benefits early.

- Portal didn't do enough to outline the risks to Mr C of transferring from the DB scheme.
- Mr C wasn't in a position to take risks with his pension as he had no other pension provision.
- Accessing his pension benefits should have been a last resort.
- While Portal's suitability report referenced the DB scheme benefits it also made a recommendation to transfer out of it.
- The DB scheme had an attractive pension for Mr C's wife in the event of his death and Portal should have advised Mr C clearly not to transfer out of the scheme.
- Our investigator believed that if Mr C had been given suitable advice he wouldn't have transferred out of the scheme.
- She said Portal should return Mr C to the position he would have been in but for its advice.
- Portal should pay Mr C £250 compensation to address his distress and inconvenience.

Portal disagreed, it said:

- It had made Mr C aware of the benefits he would lose by transferring out of the DB scheme and these were set out in its suitability report.
- The regulator's guidance our investigator had referred to was published after Portal gave Mr C advice and so didn't apply at the time. But Portal did get Mr C to write in his own words why he wished to transfer out of the DB scheme.
- Its letter of 26 September 2017 advised Mr C not to transfer out of the scheme.
- It had provided Mr C with the information he needed to make an informed decision.
- Mr C had confirmed it was clear to him that he was going against Portal's advice in transferring out of the scheme.
- Mr C was aware of what he would be giving up but said that paying off debts was more important to him.
- Its suitability report had advised Mr C on numerous occasions not to transfer out of his DB scheme.
- Mr C had "*every option*" to leave his DB pension in place. Portal did give him the choice to transfer but that was to ensure he was aware of all the options available to him.
- Mr C's debts were causing him severe distress and Portal noted he was taking medication for an illness.
- While Mr C didn't have previous investment experience it accurately established his attitude to risk.
- Portal consistently advised Mr C against transferring out of the DB scheme. But he chose to disregard its recommendation.
- The DB scheme did have spousal death benefits but Mr C went against Portal's recommendation not to transfer out of the scheme.
- In the event of Mr C's death his beneficiaries would receive 100% of his remaining pension fund from the SIPP.
- Mr C went against its advice and it proceeded on an insistent client basis.
- Portal advised Mr C several times not to transfer out of his DB scheme and explained why but Mr C made an informed choice to go against that advice on an insistent client basis.

The investigator replied. She said while the regulator introduced the insistent client rules she'd referred to after Portal gave its advice, that was simply reminding advising businesses of their existing obligations. She agreed that some of Portal's documents did highlight the guarantees of Mr C's DB scheme and that Portal had treated Mr C as an insistent client but

Portal still made a transfer recommendation. Also while Mr C's answers to his attitude to risk questions could be interpreted as his willingness to accept a high degree of loss he had no investment experience and no capacity to absorb losses.

The investigator wasn't persuaded to change her opinion, so the complaint was referred to me to make 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.

Both Mr C and Portal have made many points in bringing the complaint and in replying to it. And I've carefully considered everything on file. But in this decision I don't intend to address each and every issue or point raised. Instead I will focus on the issues that are at the heart of Mr C's complaint and the reasons for my decision.

At the time of Portal's advice Mr C was an active member of his DB scheme. This meant that, in order to leave it he had to tell the DB scheme administrators that he wanted to "opt-out" rather than transfer. But as both Portal and Mr C have referred to transferring out of the scheme (rather than opting out of it), I've used the same wording in this report. So where I refer to Mr C transferring out of the scheme that should be read as meaning to opt-out of it and transfer the associated benefits.

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.

Having done so, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator's position

The regulator, the Financial Conduct Authority ('FCA'), says in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Portal should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests.

In February 2016 the regulator provided guidance on its website about what steps it expected businesses to take when advising an insistent client. There are three key steps, which it set out on its website as follows.

1. *You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.*
2. *You should be clear with the client about the risks of their chosen course of action. If the advice includes a pension transfer, conversion or opt-out, there may be additional requirements. These may include ensuring the advice is provided by or checked by a pension transfer specialist, comparing the defined benefit (DB) scheme with the defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1).*
3. *It should be clear to the client that their actions are against your advice.*

The regulator said the advice should be set out clearly in the suitability report, and that it needed to be clear with its client about the risks of their chosen course of action and that he/she is acting against its advice. It also added that if the client used their own words to indicate that they want to act against its advice, this would normally be clear.

The regulator also published additional guidance on its website giving examples of good and poor practice. It gave the following example of good practice relating to suitability reports:

“The adviser gave a personal recommendation in clear and unambiguous terms regarding both the advice on whether or not to transfer and, if the client chose to transfer, the receiving product and the funds into which the client was advised to invest.

The adviser discussed the client's reasons and the risks of not accepting the personal recommendation. The adviser documented the reasons, the discussion and its outcome in a separate document to the original personal recommendation.

Robust warnings were given and documented.”

Whilst this was guidance, and not rules, I would’ve expected Portal to have been aware of this and ensured that the advice and process it followed was consistent with the regulator’s expectations.

Did Portal fairly treat Mr C as an insistent client?

Portal said that, as Mr C wanted to go against its advice and transfer out of the DB scheme it treated him as an insistent client and was fully compliant with the FCA’s guidance and principles when doing so.

I’ve looked carefully at Portal’s decision to treat Mr C as “*insistent*”, particularly in respect of the regulator’s position, to see whether I think Portal acted fairly.

Portal’s recommendation, both in its letter of 26 September 2017 and in its later suitability report was that Mr C should not transfer out of his DB scheme. But its 26 September 2017 letter which did not, in my view, provide full and complete advice, as it went on to say that Mr C could transfer out of the scheme if he wanted to and it could help him to do that.

So, Portal presented the possibility of transferring out of the scheme on an insistent client basis, alongside the basic recommendation not to transfer out of the scheme. And I think this made it far too easy for Mr C to simply decide that it was a suitable alternative to staying in the scheme, when Portal was aware that a decision to transfer out of the DB scheme was not in his best interests. Had it not given him that option at that time, instead providing the suitability report setting out its advice in its entirety, then it would have placed the onus on Mr C to contact Portal again to find out what he needed to do if he did genuinely insist on going against Portal’s recommendation and intended to transfer out of the scheme.

Further Portal didn't produce its suitability report until after Mr C had told it he wanted to be treated as an insistent client. But its letter of 26 September 2017 told him that by transferring out of the scheme he could enjoy a TFC sum of £42,079 immediately and he could reinvest the remaining pension pot. Similarly, the enclosed insistent client form summarised both the benefits he could expect to lose but also what he could possibly gain from transferring out of the DB scheme. But it presented that information to him in a raw state, that is without the analysis contained within its suitability report. I find that this undermined the process. That's because I don't see how Portal could expect Mr C to make an informed decision about going against its recommendation when it hadn't given him all the information he needed in order to make that decision. That is, it gave him some bare-bones information and expected him to make a determination that could start him down the road of the insistent client process without giving him enough detail to reasonably make that decision.

I’ve noted that, after Mr C returned the insistent client form, Portal spoke with him to confirm he knew what benefits he was giving up by acting as an insistent client and transferring out of his DB scheme. It’s notable that when Portal first asked Mr C if he knew what he was giving up he said he wasn’t sure. And it was only after Portal had summarised some of the benefits he’d be giving up that he said he’d looked at it. Having listen to the call it’s certainly not convincing that Mr C knew what benefits he’d be giving up.

Further, Portal only provided a snapshot of what Mr C could potentially be losing. For example it told him he’d be giving up a potential income of £15,483 a year together with TFC of £24,943. But that was only one potential option, another would have been for Mr C to take TFC of £74,411 alongside a yearly income of £11,312. But Portal didn’t refer to this. And it didn’t mention any of the other benefits that the DB scheme offered, such as a yearly pension for his wife if he were to die. It also doesn’t seem to have explored whether Mr C could’ve accessed his scheme at the time (as he was already aged 55) instead of transferring out. This could have provided Mr C with the sum he wanted to clear his most pressing debts. So it’s not clear that Mr C was aware of what he’d be giving up at that time or what alternatives were available to him.

Also, when the DB scheme administrators had given Portal information about the likely benefits available from the scheme, it told Portal that the sum was estimated only and wasn't guaranteed. It said that Mr C would have to ask for another quote at the time he decided to transfer and that sum would be guaranteed for three months. But Portal didn’t mention this possibility during their conversation, and, in the end, the CETV dropped by some £24,590 by the time the transfer was completed. But I don’t think Portal made this potential drop in value clear to Mr C before starting him down the insistent client route. And I believe this is something that, in order for Portal to give Mr C information that was full, clear and not misleading, needed to be clearly brought to his attention. But I haven’t seen evidence that was the case when it spoke with Mr C.

At that time Portal hadn't provided Mr C with its suitability report, it had only sent him a letter with limited information. And, while maintaining that its advice was not to transfer out of the scheme, Portal told him it could make the transfer happen anyway if that was what he wanted. But at that time it hadn’t given Mr C details about its proposed reinvestment strategy. It said that, as long as he remained comfortable with the transfer, then all he needed to do was to complete and sign the forms so he could go ahead with it. In other words the call ended with it being a nailed on done deal that Mr C was going ahead with the transfer, even though, at that point Portal hadn’t told him what he was transferring to.

A much clearer process would have been for Portal to provide its advice as a whole, taking into account Mr C’s objectives and attitude to risk. That advice should have considered the overall picture – both of transferring out of the DB scheme together with the choice of pension and Mr C’s desire to take his TFC. Portal should then have clearly set out in one document why transferring out of the scheme wasn’t in Mr C’s best interests. Instead, it first gave Mr C advice not to go ahead with the transfer – while at the same time dangling the possibility of a large lump sum to be taken imminently. It was only later that it gave him information about the proposed alternatives in its suitability report, which was after Mr C had already said he wanted to transfer out of the scheme.

It follows that I don’t think Portal communicated with Mr C in a way that was clear, fair and not misleading. And I don’t believe Portal gave him all the facts with which to make an informed decision about whether or not he wanted to proceed on an insistent client basis.

I’ve noted that Mr C told Portal – both over the phone and in writing – that he wanted to go against its advice and for it to treat him as an insistent client so that he could pay off debts.

It appears that was important to Mr C. And Portal has commented that Mr C's debts were contributing to his ill-health. But transferring out of the DB scheme and using the TFC was only one way to address this. And I've seen no compelling evidence, either in its phone call with him or in its suitability report that Portal sought to explore with Mr C what the relevant benefits of the alternatives to transferring out of the DB scheme were. For example Portal could have referred Mr C back to a debt charity whose services he'd used previously and to whom he was paying off a loan. Portal's fact-find indicates that Mr C's last debt management arrangement with that charity was sorted out three years earlier. And the amount owed overall was relatively small and repayments still affordable. So it seems likely that further debt consolidation could have made Mr C's debts more manageable. I've noted that Portal recorded that Mr C had told it that he didn't wish to take on further borrowing or pay additional interest, but debt consolidation wouldn't have meant taking on extra loans/paying more interest, instead it was likely to reduce it overall. But I can't see that Portal brought this to Mr C's attention.

Portal's role was to find out what Mr C's wants and needs were and why. Its role wasn't simply to do what he wanted without appropriate analysis and challenge of his motives for doing so with the implications of taking those actions with him. But I've seen no evidence of such a challenge even though that was in Mr C's best interests.

And in any event, I'm not necessarily persuaded that Mr C absolutely needed to pay off his debts at that time. While I can understand that being debt free was an attractive prospect to Mr C, it seems that the debts he had were well managed and that he was making the required repayments. And the benefits of not having to repay debts in the short-term had to be offset against potentially being thousands of pounds a year worse off in retirement, at a time when he would no longer be working and his only other income would be his state pension. So, had Portal tested this objective further, Mr C might have seen the option of clearing his debts as something that might benefit him in the short-term but that certainly wasn't worth giving up a guaranteed pension for. But, I don't think Portal fully explored what Mr C's wants and needs were. And I don't think it met its obligations to challenge Mr C's objectives in light of what he would be giving up.

Portal's suitability report did repeat that its recommendation was that Mr C should not transfer out of his DB scheme and it did highlight some of the risks and set out some of the benefits he'd be giving up by doing so. But it also included a recommendation to transfer out of the scheme. And it sent its 26 page suitability report alongside a two page cover letter. I can understand that Mr C most likely felt that the cover letter was a summary of the contents of the suitability report. The cover letter says:

"*Having considered your current situation and what you would like to achieve, we are delighted to recommend:*

Transferring your pension to an* [named SIPP] *pension plan.

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

✓ *You will receive your tax-free lump sum of £42,079*."

And it goes on to explain what Mr C needed to do, for example by completing forms, in order to make that happen. It also encouraged him to speak to his current employer to opt-out of the DB scheme "*as quickly as possible*". So all the information in that cover letter gives the impression that Portal was recommending that Mr C *should* transfer out of his DB scheme. So I don't think its advice was unambiguous. And I don't think it can fairly rely on its recommendation in its suitability report for Mr C not to transfer. That's because its recommendation relied on an estimated figure that wasn't guaranteed. Also it was followed up immediately with information about how Mr C could proceed anyway. And that he should act as quickly as possible to make the transfer happen. I think that sent mixed messages about what its genuine recommendation was. And the suitability report, while saying that a transfer wasn't recommended, went on to recommend a transfer to the SIPP.

So, as I've set out above, I think there were flaws in Portal's advice process which meant it didn't fully and accurately inform Mr C about his position. On balance, given these failings, I don't think it would be reasonable for me to conclude the process Portal followed meant that it's fair to truly regard Mr C as an insistent client. So I don't think it acted in his best interest.

Portal was in a good position to have analysed, tested, challenged and advised Mr C about what was in his best interests for retirement planning. It knows pension pots like Mr C's DB scheme were paid into with the intention of providing for retirement. But Mr C's chosen path was to give up that income in retirement for a shorter-term solution, rather than long-term planning. But Portal didn't challenge Mr C's reasons for doing that. And I don't think that applying an insistent client label to someone when they express that their preference is not to follow advice, is the same as applying the rigorous process of arriving at a fair determination of who an insistent client really is.

It follows that I don't think Portal did enough to fully advise Mr C of his options before it showed him down the insistent client road. So I don't think it treated him fairly.

I've also considered what's likely to have happened if Portal's advice not to transfer had been more robust and had followed a more effective process. And, had that been the case, I don't think Mr C would have insisted on transferring out of the DB scheme. I say this because Mr C had no investment experience and owing to his ill-health Portal had recorded that Mr C was "vulnerable". So if Portal had clearly presented that it wasn't in Mr C's best interest to transfer out of his DB scheme and contrasted the short-term benefits of doings so against the loss of income and benefits in retirement, as well as exploring alternatives with him such as debt restructuring or the possibility of taking his DB scheme benefits early, I think he'd have heeded Portal's advice not to transfer. It follows that, if Portal had provided him with clearer advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

In light of the above, I think Portal should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as Portal's advice has been a source of distress and inconvenience for Mr C, I think it's fair that it pays him £250 compensation.

Putting things right

A fair and reasonable outcome would be for Portal Financial Services LLP to put Mr C, as far as possible, into the position he would now be in but for Portal's unsuitable advice. I consider Mr C 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.

For clarity, while Mr C has taken his TFC he has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age, as per the usual assumptions in the FCA's guidance.

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 C's acceptance of the decision.

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

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

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.

Portal should also pay Mr C £250 compensation for his distress and inconvenience.

My final decision

Determination and money award: I uphold this complaint and require Portal Financial Services LLP to pay Mr C 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 C 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 C 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 C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts this decision, the money award becomes binding on Portal.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 11 August 2022.

Joe Scott
Ombudsman