

The complaint

Mr W complains about the advice given by Portal Financial Services LLP (Portal) to transfer the benefits from his two defined-benefit ('DB') occupational pension schemes to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr W approached Portal in 2016 to discuss his pension and retirement needs. He had four occupational schemes. Two of these were defined contribution ('DC') schemes and two DB schemes. I've called the DB schemes DB1 and DB2.

Mr W has asked that the Financial Ombudsman Service look at his complaint in respect of the two DB schemes only.

Portal's welcome letter, sent in late 2016, said it would contact his occupational schemes to find out how much tax-free cash he could release. In May 2017 it said that he could release £14,026 from his two DC schemes and DB1.

Portal completed a fact-find to gather information about Mr W's circumstances and objectives. I understand there were two telephone appointments in June 2017. Portal also carried out an assessment of Mr W's attitude to risk, which it deemed to be 'moderately cautious'.

The fact find also showed that Mr W was:

- Aged 55, and he was married with two children,
- Employed with a gross salary of £23,000.
- Had an outstanding mortgage of £9,000 and around £10,000 in unsecured loans.
- He didn't have any savings or investments.

The point of sale information showed said that Mr W wanted to:

- Release tax-free cash to make home improvements and repay debt.
- Have greater flexibility, ownership and control over his pensions.
- Maximise the tax-free cash he could take.
- Have greater choice and flexibility about his death benefits.

Mr W says that the fact finding process concentrated on how much tax-free cash he could release from his pensions. He wasn't asked about his future income or retirement needs in any detail.

In June 2017, Portal advised Mr W to transfer the values of his two DC schemes and DB1 into a SIPP. The transfer value of the DB1 scheme was just over £33,000. Mr W took the maximum tax-free cash and he invested the remainder. He invested the proceeds into the Dimensional Global Short Dated Bond Fund (Fixed Interest), the Dimensional World Equity Fund, and a small amount of cash.

The suitability report said the reasons for this recommendation were to release tax-free cash to make home improvements and repay debt. This transfer process was completed in September 2017.

Portal continued to look at Mr W's retirement options and in September 2017 it contacted him about DB2. It initially informed Mr W of how much tax-free cash he could take from DB2. But in late September 2017, Portal informed Mr W that he should not transfer the DB2 scheme benefits as the rate of growth needed to match the DB scheme benefits wasn't achievable. But Portal said that Mr W could proceed with the transfer on an insistent client basis.

Portal then sent Mr W a further letter on 29 September 2017. This said "Since our conversation we have completed our initial phase of research and analysis **and we strongly recommend that you do not transfer** your DB2 pension and instead leave it where it is because of the guarantees/benefits that you will be giving up". The letter then immediately followed this up by saying;

"What happens if you still want to go ahead and transfer your funds?

This is absolutely your decision. Everyone's circumstances are different and if you decide you still want to transfer your DB2 pension to a new scheme to release tax-free cash then this is something we can help you with. In this instance we would need to treat you as an insistent client throughout your pension review."

The letter also included an 'options form' for Mr W to complete. The first option given was for Mr W to "Disregard our recommendation and continue as an insistent client". With the second being to accept Portal's recommendation and end the pension review.

An 'insistent client form' was also included for Mr W to complete. This comprised three declarations for Mr W to tick and agree to. These declarations;

- Acknowledged the critical yield was unlikely to be achieved and included a brief summary of the projected benefits due under his existing scheme at age 65 that he'd be giving up.
- Set out briefly what he'd receive instead by transferring – the tax-free cash figure and the potential income he might be able to obtain post retirement – and that he'd have no entitlement to any further tax-free cash.
- Acknowledged that transferring was against Portal's recommendation.

There was also a section for Mr W to explain in his own words why he wanted to be an insistent client.

Mr W completed and returned the forms saying he wished to proceed as an insistent client, In the section of the form to explain in his own words why, Mr W wrote "I would like to payoff finance on car. And pay off my mortgage early due to worries over job security and home improvements needed...."

Portal then sent Mr W a suitability report on 19 January 2018. And Mr W proceeded with the DB transfer. The transfer value of the DB2 scheme was around £71,500 and Mr W took tax-free cash of around £17,500. He invested the remainder in the same funds as before.

Mr W complained in 2020 to Portal about the suitability of the transfer advice because:

- There was a conflict of interest as the transfers needed to complete before Portal would be paid for the advice.
- The advice focussed on releasing tax-free cash and didn't consider Mr W's needs properly
- It didn't provide sufficiently clear and understandable advice about Mr W's options, much of it was generic and it didn't provide clear warnings about making the transfers.
- The transfers weren't suitable, Mr W could have met his aims other ways and he should not have been advised to transfer DB1.
- He wasn't an insistent client and it wasn't reasonable for Portal to treat him as one. It shouldn't have facilitated the transfer of DB2.

Portal didn't uphold Mr W's complaint. It said:

- There wasn't a conflict of interest and Portal was acting within the regulations of the time.
- The advice was suitable for Mr W and it didn't concentrate on the tax-free cash available.
- It advised Mr W not to transfer DB2 as it was his main pension provision.
- But Mr W didn't have any other means of repaying his debts and so it was reasonable that he transferred DB1 and DB2.
- It was reasonable to treat Mr W as an insistent client. The choice to transfer DB2 was his alone.
- The funds he invested in were reasonable and met his attitude to risk.

Mr W referred his complaint to our service. An investigator upheld the complaint and recommended Portal pay compensation. He said that both transfers were not in Mr W's best interests. So, Portal shouldn't have advised Mr W to transfer the value of DB1. And he didn't think that Mr W was an insistent client, and so Portal shouldn't have transferred the benefits of Mr W's DB2 scheme.

Portal disagreed, saying:

- It was clear that Mr W wanted to access his pension benefits in order to clear some debts and make home improvements. This was very important to him.
- He confirmed that he wanted the flexibility that a drawdown arrangement would give him.
- Whilst the critical yield was high the hurdle rate, or the rate if Mr W took drawdown, was reasonable.
- Mr W transferred his DB2 scheme benefits against Portal's recommendation.
- Portal gave Mr W reasonable information about the insistent client process. He proceeded after considering this. Portal says it followed best practice for insistent clients.

The investigator wasn't persuaded to change their 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.

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.

Suitability of advice

Portal has said that the advice it gave was suitable. It says the transfer of DB1 was appropriate. It did not recommend that Mr W transfer DB2, but that he insisted on doing so. And so, after he insisted, it recommended a provider and investments which it feels were right for him. But for the reasons I'll explain, which are largely the same as those explained by our Investigator, I don't agree that Portal's actions were appropriate or fair.

COBS 2.1.1R required Portal to "*act honestly, fairly and professionally in accordance with the best interests of its client*". And, as part of that, COBS 9.2 required Portal to take reasonable steps to make sure its recommendation was suitable for Mr W. To achieve this, COBS 9.2.2R said Portal had to obtain enough information from Mr W to ensure its recommendation met his objectives, that he could bear the related investment risks consistent with these objectives and that he had the necessary experience and knowledge to understand the risks involved in the transaction.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

- 1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme;*
- 2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
- 3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
- 4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading 'Suitability', COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests."

In short, Portal needed to begin by assuming a transfers from Mr W's occupational pension schemes (OPS) were not suitable, then consider Mr W's specific circumstances and objectives. It needed to assess the options available and look at what was in his *best* interests. It needed to provide a comparison of what the situation would be if he opted to transfer his pension from his OPS and what it would be if he didn't, making clear the

differences and risks. And it needed to make sure that Mr W understood all of this information so that he could make an informed decision. All while ensuring it acted honestly, fairly and professionally.

The transfer of Mr W's DB1 scheme benefits.

Portal advised Mr W to transfer his DB1 scheme benefits. I've firstly looked at whether the advice to do this was reasonable.

Financial viability

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

For DB1 the critical yield required to match Mr W's benefits at age 65 was 8.7% if he took a full pension and 6.8% if he took tax-free cash and a reduced pension. The critical yield to match the benefits available through the scheme at age 57 was quoted as 39.6% per year if Mr W took a full pension and 16.1% per year if he took tax-free cash and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, was 3.7% per year for 9 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr W's "moderately cautious" attitude to risk and also the term to retirement. There would be little point in Mr W giving up the guarantees available to him through his DB1 scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 6.8% for DB1, I think Mr W was likely to receive benefits of a substantially lower overall value than the DB1 scheme at retirement, as a result of investing in line with his attitude to risk.

Portal has provided cashflow models and I've considered these, but Portal's models show that his DB scheme benefits would run out some time after his age 80 if the lower growth rate assumptions are used.

Also, as Portal will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

For this reason alone, a transfer out of the DB1 scheme wasn't in Mr W's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Portal has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

I don't think Mr W required flexibility in retirement. This is because, based on the evidence I've seen, I don't think he had a genuine need to access his tax-free cash earlier than the

normal scheme retirement age and leave his funds invested until a later date. I say this because whilst Mr W did seem to have some debts, there is no compelling evidence that they were causing significant difficulty at the time. Mr W says that he was managing these and he was coping with repaying them. There is no indication this would change. Mr W says the alternatives weren't properly explored.

I also can't see evidence that Mr W had a strong need for variable income throughout his retirement. This doesn't seem to have been discussed.

The focus of the advice seems to be allowing Mr W to access his tax-free cash. But, as far as I can see, no compelling reasons were given as to why he would need – rather than want – to do this. And what taking his benefits now would mean in respect of his future income doesn't seem to have been looked at.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr W. But whilst I appreciate death benefits are important to consumers, and Mr W might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr W about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Portal explored to what extent Mr W was prepared to accept a lower retirement income in exchange for higher death benefits. In fact this doesn't seem to have been discussed in any detail.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr W was married and had two children (it's unclear how long they would be dependent for) and so the spouse's or dependent's pension provided by the DB scheme would've been useful to his spouse and dependents if Mr W predeceased them. I don't think Portal made the value of this benefit clear enough to Mr W. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left, particularly if Mr W lived a long life. In any event, Portal should not have encouraged Mr W to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr W genuinely wanted to leave a legacy for his spouse or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Portal should've instead explored life insurance.

Suitability of investments

Portal recommended that Mr W invest in risk bearing funds as above. As I'm upholding the complaint on the grounds that a transfer out of his DB1 scheme wasn't suitable for Mr W, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr W should have been advised to remain in the DB1 scheme and so the investments in the funds wouldn't have arisen if suitable advice had been given.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr W. And I don't think that insurance was properly explored as an alternative.

I don't doubt that access to the tax-free cash, the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive

features to Mr W. But Portal wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr W was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr W shouldn't have been advised to transfer out of the scheme just to repay debts that were affordable. These were worth giving up the guarantees associated with his DB scheme.

And as Mr W's representative has said these debts were relatively modest and he should have been advised to look at other means of repaying them if this was urgent. Such as a secured loan on his property. Or transferred the DC schemes only.

I don't think Mr W would have proceeded with this transfer if Portal had advised him that the transfer wasn't suitable.

Overall, I don't think Mr W should have been advised to transfer the benefits of his DB1 scheme. And I don't think this is altered by the fact that it was the smaller of his OPS schemes.

The transfer of Mrs W's DB2 benefits

The letter Portal sent to Mr W on 12 September 2017 was headed "We have all the information we need from your current pension providers, which is great news." And the first paragraph included the statement "we can confirm that the maximum tax-free amount you could now access from your pension is £17,402." It went on to say a call would have to now take place to understand Mr W's circumstances and that options would be discussed including "of course, the amount of tax-free cash you wish to take." And it also said, in fact emphasising in bold, that the transfer value "is guaranteed for a limited period of time only" and if this needed to be re-calculated "This could delay how long it will take to receive your tax-free cash."

Whilst Portal had looked into Mr W's circumstances at this point it (in respect of his other schemes) it hadn't fully considered his DB2 scheme. But it was already strongly emphasising the release of tax-free cash – involving a change to Mr W's current pension arrangements – how much could be released and suggesting a need for urgency. I think the contents of this letter suggests the approach already being skewed to a particular outcome. I don't think this was in line with the requirement to start by assuming the transfer was unsuitable.

And I don't think the emphasis placed on this outcome, before Portal had looked into the DB2 transfer fully, was fair to Mr W or could be said to demonstrate Portal was acting in his best interests. And I think the content of this letter was likely to affect Mr W's thinking and reasonably lead him to think at that stage Portal was suggesting this option.

Portal had completed a fact finding call. But the emphasis of the information recorded in the fact find was, in my view, the release of (maximum) tax-free cash above all else. There is very little by way of information about Mr W's income needs in retirement. Indeed, the only mention of this seems to be one question saying "How much in today's money will you need when you retire?" which was answered "unsure". The primary purpose of a pension is to provide benefits in retirement. So, the lack of any real consideration of Mr W's retirement needs make it difficult to say that enough essential information was obtained to make a suitable recommendation. And the repeated emphasis within some of the questions around

the need for tax-free cash could very well have led Mr W into thinking that this what Portal thought was best.

The bigger issue in my view though is the correspondence that then followed this. The next correspondence Portal sent Mr W was a letter on 29 September 2017 called "Important news about taking money early from your pension" – again placing emphasis on withdrawing money from the pension. This went on to say that, after completing its "initial phase of research" Portal "strongly recommend that you do not transfer". So, this is the document which summarised Portal's advice and personal recommendation to Mr W. And in my view, should've made it clear that it had understood enough about Mr W's circumstances for Portal to believe its advice was suitable. And provided comparisons, or detailed information, in order for Mr W to make an informed opinion. But there was no further reason given in the letter itself for this recommendation or why Portal had reached this conclusion.

There was an attachment to the letter called "Overview of your pensions". And this gave the only additional explanation of the recommendation by saying "If you transfer out of this scheme now then any new pension would need to grow at a rate of 5.5% per year to at least match these benefits (the technical term for this rate is the critical yield). We just do not think this is achievable". Suggesting this was the reason for the recommendation made. But again, there was no further explanation or reasoning.

I think Portal was correct that the required critical yield was unlikely to be achievable. And it's worth mentioning here that the critical yield showing on Portal's transfer analysis (TVAS), where a full match of Mr W's scheme benefits is taken is 13.5%, or 11.3% if tax-free cash it taken. And this meant that a transfer was not financially viable. But this isn't the only thing I'd have expected Portal to take into account before making a personal recommendation. The critical yield is important, and a strong indicator of whether retirement benefits are likely to be better or not by transferring. But this isn't the only consideration for whether advice is suitable.

There can be reasons that it is in a consumer's best interests to make a transfer, even if their retirement benefits will be lower. And I'd have expected to see some consideration of these as Portal was making a personal recommendation to Mr W. And for these considerations to be explained to Mr W so that he could make an informed decision, But Portal's recommendation contained no reference to Mr W's objectives or circumstances. It was reiterated that his pensions were worth a certain amount, from which he could take 25% tax-free cash. But there was no exploration or commentary relating to how much of this was needed or why.

And this was despite the fact find recording that Mr W only had £7,000 of debt he wanted to repay. Even if used the tax-free cash to repay his mortgage his total debt was a relatively modest £16,000. It was recorded that he wanted a 'front fence'. But it's not clear if any of this was a genuine need.

There was also no assessment provided at that point setting out what alternative ways of raising the required money had been considered, or why these had been discounted. The options of raising money through credit weren't commented on at this stage. And so, don't appear to have formed any part of Portal's reasoning when it said it recommended not to transfer.

There also doesn't seem to have been any consideration to Mr W taking benefits under his existing scheme at that time. As I've said, I acknowledge a TVAS was carried out. But none of the information I've seen indicates this was shared with Mr W. Neither of the letters sent in September 2017 make any reference to the information within the TVAS, beyond the critical

yield, or to it being included for review. And I haven't seen any other evidence that it was shared. So, I can't reasonably say that Mr W had the opportunity to review this document.

In any event though, Portal didn't look at the potential for immediate retirement. Mr W was 55. And in the 'scheme information' section of the TVAS report, it was noted that 55 was the earliest retirement age allowed by the scheme. So, it appears he was eligible to take benefits under the DB scheme at that point. But that doesn't appear to have been talked about at any stage of the advice process. Indeed, the TVAS report looked at what Mr W would be able to take at age 58, as well as the assumed scheme retirement age of 65. But I've seen no reason for this or why instead it didn't cover what could be taken at age 55.

The TVAS report indicated that at age 58 Mr W would've been able to take tax-free cash of £17,001 under the DB scheme and then receive a guaranteed escalating income of £2,550 per year. If he'd taken benefits at age 55, these figures would likely have been lower. But I think it is reasonable to assume that the tax-free cash would've been enough to provide the amount Mr W wanted, or very near it. And he'd have then received a guaranteed escalating income. But again, I've seen no evidence that this option was considered or discussed with Mr W. And I'll reiterate I'm not persuaded that there was a real pressing need for the tax-free cash.

The "Overview of your pensions" document portal included with the letter did mention that the projected benefits Mr W could potentially take by staying in his existing scheme until age 65 were a pension of £3,996 per year and tax-free cash of £26,638. But there was no comparison within the recommendation between this and what Mr W may potentially receive by transferring (aside from immediate tax-free cash).

Without any of this information, or indeed any real reasoning being provided in writing for why Portal didn't recommend Mr W transfer, I don't see that Mr W could reasonably have understood why this was apparently Portal's advice. So, I don't think Portal provided full and clear advice to Mr W. And as a result, I don't think he was in a position to make an informed decision – about the transfer or about being an insistent client. And so, I don't think the advice given by Portal, was suitable.

Insistent Client

Despite the advice being, in my view, incomplete and unsuitable, I think Portal then also directed Mr W towards disregarding it anyway. Immediately after saying it didn't recommend transferring, in the next paragraph of the same letter, Portal promoted the option of still releasing money from Mr W's pension as being something it could assist with. I don't think that was appropriate or in Mr W's best interests – particularly if Portal truly considered not transferring to be suitable.

Portal also enclosed forms, with the same letter for Mr W to complete, in order to go against this advice. And indeed, the options letter listed disregarding advice as the first option available to Mr W. I also don't think this was appropriate. If Portal's advice was not to transfer, I believe it should've given this advice and the reasons why and left it to Mr W to consider this further. If he had then contacted it to see if it could still help, then it'd have been fair to share this information. But to promote this option at the point it did seriously undermined the recommendation it says it was making.

I do acknowledge that the forms Portal provided included a section for Mr W to complete in his own words to explain why he wanted to transfer. And I can see he did so, saying he understood the effects of doing so. But given the lack of any reasoning with the recommendation made and there being no evidence of any other comparison being provided to this, I don't think Mr W was in an informed position or could in fact fully understand the

apparent risks. So, I think this statement holds less weight and I think was likely only made because Mr W believed he could access some additional funds.

After Mr W 'insisted' on proceeding, Portal sent him a suitability report. Firstly, I'm of the opinion that a suitability report should've been provided along with the advice not to transfer, before the option of proceeding on an insistent client basis was discussed. But in any event, I think the suitability report provided didn't go far enough to allow Mr W to make an informed decision and the covering letter was misleading.

The suitability report said several times that Portal had already recommended that Mr W not transfer his policy and leave it where it was because of the benefits he'd be giving up. But it contained no further reasoning why it recommended this – so doesn't read like a personalised recommendation.

The only part of the report that provided any additional depth on the things that ought to have been considered and formed part of the original advice was in the 'Additional important information' section – not even the body of the report itself – where a small amount of additional detail was provided in respect of alternative funding options. It said using a loan, re-mortgage, disposable income or assets had been discounted as not financially viable.

But I don't think this demonstrates a genuine consideration of these options in any depth. There is no commentary on why Mr W didn't want to take on a loan or re-mortgage.

The fact find shows that expenditure wasn't looked at. It showed that Mr and Mrs W had a loan of £7,000 and a mortgage of £9,000. But it was recorded that they 'managed their finances'. It was also recorded that repaying these would give them 'peace of mind' but nothing more than this.

And so, I don't think the suitability report, even when it was provided, was sufficiently detailed as a recommendation not to proceed. And even after receipt of this, retrospectively after Mr W had already indicated he'd proceed on an insistent basis, I don't think he had been provided with enough information to make an informed decision about doing so.

The focus of the suitability report was also largely on the new provider that Portal was now recommending as well as the portfolio mix it was suggesting and why it was doing so. And the covering letter that accompanied the report clearly said that Portal was "delighted to recommend...Transferring your pension...". This I think supports what Mr W has said – that his understanding was Portal was in fact recommending the transfer. At the very least it significantly muddled the waters. Which I think on balance likely led Mr W to believe that Portal felt the transfer was appropriate. And made it next to impossible for him to make an informed decision.

Portal was required to ensure that it treated Mr W fairly and that it acted in his best interests. And I'm not persuaded that it did treat Mr W fairly when it went to such lengths to assist Mr W to identify as an 'insistent client'.

I don't think the process was geared towards Mr W making an informed, considered assessment of the reasons why he shouldn't be transferring – as if it was I feel that would have involved Portal providing the full recommendation to Mr W, allowing him to consider this on his own and then revert to Portal if he still wished to proceed.

On the contrary, I would go as far as to say that Portal's process was designed to facilitate the transfer, with significant emphasis placed on the release of funds and how this could be achieved from the outset. I don't think that providing Mr W with a means of proceeding against the advice, without establishing why the apparent requirements were truly necessary

and why alternatives weren't appropriate, demonstrates that Portal had his best interests in mind.

Overall, I think this shows that Portal made it altogether far too easy for Mr W to agree that he was an 'insistent client' rather than allowing him time to think about the advice not to go ahead with the transfer. And so, I don't think he truly could make an informed decision about this.

Would Mr W have acted differently?

I don't know if Mr W has used his tax-free cash to fix his fence and repay some debt – in line with the intentions noted. But again, I believe the discussions around how he would use this money were more what he might do if funds were available – something which Portal prominently emphasised as an outcome from the outset – rather than something he needed. And even if he did use the funds in the way that he had discussed with Portal, I don't think this confirms that this was truly a *need* or that he would always have transferred his OPS and taken tax-free cash even if Portal had used a more appropriate process.

Taking this into account, I think, as an inexperienced investor, had Mr W been provided with more appropriate and robust advice around why the transfer was not suitable, he wouldn't have gone ahead. I know Portal maintains that it said the transfer was against its recommendation – which overall was in my view correct. But the process Portal used, including the suitability report ultimately issued after Mr W had been directed to the 'insistent client' route, lacked sufficient clarity, reasoning and rigour – for all the reasons set out above.

And, in my view, meant Mr W wasn't able to make an informed decision. If he had been provided with more appropriate information and reasoning, so that he fully understood the risks and long-term implications involved in transferring his OPS and investing as he did, and hadn't been directed towards the 'insistent client' route, I think he would have acted differently and retained his deferred benefits. As a result, I think Mr W's complaint should be upheld.

Our Investigator recommended that Portal also pay Mr W £300 for the distress caused by the unsuitable advice. I don't doubt that Mr W has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Summary

In light of the above, I think Portal should compensate Mr W for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for Portal's unsuitable advice. I consider Mr W would have most likely remained in both his DB schemes 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, Mr W has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, 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 W's acceptance of the decision.

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

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

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 W £300.

My final decision

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

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

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 26 August 2022.

Andy Burlinson
Ombudsman