DRN-3428912

**The complaint**

Mr B has complained about advice he received from Portal Financial Services LLP ('Portal') in relation to a defined benefit occupational pension scheme ('OPS'). Portal processed the transfer of Mr B's OPS benefits on an 'insistent client' basis to a personal pension.

Mr B is being represented by a third party but for ease of reading this decision I'll refer to all representations as being made by Mr B.

**What happened**

Mr B was in communication about his pension with Portal in 2017. On 4 September 2017 Portal sent Mr B a letter titled *"We are ready to complete your pension release review"*

Within the letter Portal stated:

*"We have all the information we need from your current pension provider, which is great news. And we can confirm that the maximum tax-free amount you could now access from your pension is £28,936."*

The letter also stated:

*"The critical yield for this plan is 9.10%*

*This figure represents the growth your new pension plan would need to achieve each and every year to match the benefits you could have received if you had stayed with your current provider. When calculating this figure the assumption is that you use your new pension plan to buy an annuity when you reach the retirement age set by your current provider."*

The letter explained that more details would be discussed in the *"paraplanner appointment"*

On 11 October 2017 Portal conducted a fact find and the information was recorded by one of Portal's paraplanners.

The information showed that Mr B was 57 years old, self-employed, had dependent children and wanted to release tax free cash (TFC) from his pension to either purchase business premises closer to home or re-vamp his existing workspace. He also wanted to clear outstanding credit card debt. The information gathered covered Mr B's financial commitments which included a credit card balance and overdraft he was paying approximately £230 towards monthly towards. It was recorded that Mr B had very little disposable income each month.

The paraplanner also completed an *"investment risk profiling questionnaire"*. The information recorded helped Portal assess Mr B's attitude to risk (ATR) which was recorded as *"adventurous".* This was the highest risk Mr B could have been assessed at.

On 16 October 2017 Portal sent Mr B a letter titled "*Important news about taking money* *early from your pension"*

The letter stated:

*"Thank you for taking the time to have a chat with us about your pension and why you want to take money from it early.*

*Since our conversation we have completed our initial phase of research and analysis and we **strongly recommend that you do not transfer** your (previous provider) pension and instead leave it where it is because of the guarantees/benefits that you will be giving up. For more details on these guarantees and benefits please read the enclosed Overview of your pensions.*

***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 (previous provider) 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 went on to say:

***"What you need to do now***
*You now have a number of options which are described in full in the enclosed Options form, including how much tax-free cash you could take in total depending on which option you choose.*

- *Please read our Overview of your pension and think carefully about why we are recommending you do not transfer your (previous provider) scheme and the benefits you will be giving up if you disregard this recommendation.*
- *Please then read the enclosed **options form**, selecting the one that you think is right for you and returning the form to us in the prepaid envelope provided.*
- *If you decide to go ahead with the transfer of your (previous provider) scheme then please also complete the **insistent client form** and return this to us in the same envelope."*

The enclosed form had options for Mr B to select to either stay in the OPS or move his funds to *"flexi-access drawdown"*. The form also required Mr B to tick several boxes to confirm his understanding of the critical yield and the pension he could receive by moving his funds to the drawdown as well as confirming he was going against Portal's advice.

Mr B signed the form on 18 October 2017. He chose the option *"flexi-access drawdown"* and ticked the required boxes. He also wrote that his reasons for taking TFC were that he wanted to treat his young family to good times that they could remember, give his new business a cash injection and pay off some debt.

On 26 October 2017 Portal produced a suitability report which outlined Portal's findings in relation to the information that it had gathered. The report confirmed the information from its previous correspondence. It said the critical yield required for a personal pension to meet the same benefits as Mr B's current OPS was 9.1%. Accompanying this report was a letter titled *"your pension recommendation is enclosed"*

The letter stated the following:

*"Thank you for all of the information you have provided regarding your pension. Having considered your current situation and what you would like to achieve, we are delighted to recommend:*

***Transferring your pension to Aegon"***

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

- ✓ *You will receive your tax-free lump sum of £28,936.*
- ✓ *We will manage your remaining pension fund, with the aim of maximising its performance.*
- ✓ *We will review your pension annually, to make sure it is on track to delivering as intended."*

The letter also included a pre-typed *"declaration form".* In summary the form stated that Mr B's main priority was to release TFC in order to *"buy premises closer to home"* , that the option he had taken to move away from his OPS meant that he would be losing benefits, and that this option was not recommended by Portal. The suitability report stated:

***"Our Recommendation***

*We have already recommended that you do not transfer your (previous provider) pension policy and instead leave your pension funds where they are because of the benefits you will be giving up if you transfer. However, you have decided to disregard this recommendation and are aware that as a result we must now treat you as an insistent client. As an insistent client you have asked us to recommend how best to access your pension funds and we propose that you transfer your plan to a Aegon Arc plan."*

The report summarised Mr B's circumstances as previously outlined in the fact find document and briefly looked at alternative ways he could access cash.

The following options were considered:

Loan: this option was disregarded as Mr B did not want to take on any further lending or pay any interest.

Re-mortgage: this option was disregarded as Mr B did not own his own home.

Disposable income: this option was disregarded as the income he had available would not meet his objectives

Assets: this option was disregarded as Mr B did not want to use his existing assets.

The report went on to summarise the risks of Mr B transferring his pension before arriving at its conclusion. In the *"conclusion"* section it stated:

*"We have already recommended that you do not transfer your (previous provider) pension policy and instead leave your pension funds where they are because of the benefits you will be giving up if you transfer. However, you have decided to disregard this recommendation and are aware that as a result we must now treat you as an insistent client. You have confirmed to us that you wish to proceed as an insistent client and as such asked us to recommend how best to access your pension funds. We propose that you transfer your current pension arrangements to Aegon Retirement Choices platform, as a flexi-access income drawdown pension. This will enable you to release the £28,936 you want to help you achieve your stated objectives."*

Portal then recommended funds for Mr B's pension to be invested into based on his *"adventurous"* ATR. Mr B signed the pre-printed declaration and returned it to Portal on 28 October 2017and the transfer went ahead based on this recommendation.

Our Investigator considered Mr B's complaint and thought it should be upheld. She didn't think Mr B had sufficient knowledge and understanding of the risks involved with the transaction – because Portal had not made this clear enough. So, she didn't think Mr B should've been classed as an insistent client. And she didn't think the recommendation made was suitable.

Portal didn't agree it said it had followed fair and correct processes that explained Mr B would be acting against its advice if he continued with the transfer of his pension. It also said that in addition to the paperwork that was completed at the time it had spoken to Mr B on the phone on 19 October 2017 and he again confirmed he wanted to proceed with the transfer against its advice.

As Portal didn't agree with our Investigator's view this complaint has been passed to me to decide.

**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.

*Suitability of advice*

Portal has said that the advice it gave was suitable because it did not recommend to Mr B that he should transfer his pension. Instead he insisted on doing so. After he insisted, it recommended a provider and investments which it felt were right for him.

But I disagree. I don't think 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 B. To achieve this, COBS 9.2.2R said Portal had to obtain enough information from Mr B 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.

In addition, 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."*

So, Portal needed to begin by assuming a transfer from Mr B's OPS was not suitable, then consider Mr B'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 B understood all of this information so that he could make an informed decision. All while ensuring it acted honestly, fairly and professionally.

A letter was sent to Mr B on 4 September 2017 titled *"we are ready to complete your pension release review"*. The first paragraph of the letter states: *"We have all the information we need from your current pension provider, which is great news. And we can confirm that the maximum tax-free amount you could now access from your pension is £28,936."*

So, the first thing mentioned was releasing money from the pension. Not a review or more general service, but instead making a specific change to the current position of Mr B's pension. This was before a detailed fact find had been completed to understand Mr B's circumstances or needs.

I accept there had been some contact prior to this letter – with an initial enquiry having been registered prior to Portal gathering information about Mr B's existing pension scheme and Mr B also signed a form that allowed Portal to gather information about his existing OPS. But I think the letter indicates, before a meaningful fact find had been completed, the discussion being skewed towards a particular outcome.

Portal carried out a fact find on 11 October 2017. But there doesn't appear to have been any information gathered about Mr B's income needs in retirement. The question "*How much in today's money will you need when you retire?"* is answered *"unsure"*. I think it would be difficult, without an attempt having been made to understand this, for any recommendation to be entirely suitable for Mr B's circumstances, bearing in mind the primary aim of a pension is to provide income in retirement. There is also nothing in the fact find to indicate that Mr B had any other retirement provisions in place – so it's likely he had limited capacity for loss with his OPS. But this isn't reflected in the risk assessment.

The requirement noted for Mr B needing TFC was for him to buy a business property closer to home or if this wasn't possible, re-vamp his existing working space. He also wanted to clear some credit card and overdraft debt. But I think buying a property for the amount of TFC that would have been available to Mr B was optimistic at best and no further detail about this plan was provided, there was also no details given about the cost of revamping Mr B's existing working space which I assume would be significantly lower than the cost of buying a property. Which I think suggests Mr B hadn't fully planned what he was going to be using the TFC for.

In addition to this Mr B confirmed he was managing his existing debt and was not in arrears. So, while it would have been nice to clear his debts, from the information provided I don't think Mr B had a need to.

In my opinion, the discussions around TFC seemed to be about how Mr B would spend the money if it was available, rather than what he needed and whether giving up guaranteed lifelong benefits, and opting out his OPS was in his best interests. Mr B already had an existing working space for his business and was managing his debt.

I'm sure releasing TFC would have been something Mr B would like to have been able to do, but I don't think this shows Mr B had an urgent need to access TFC. And again, this followed the earlier correspondence that had already been skewed toward the outcome of taking TFC.

Portal recorded Mr B's attitude to risk as *'adventurous'* based on the information recorded in the fact find, which is the highest risk that could be recorded, but I don't think some of questions and answers given support this.

Question 1 stated:

*"Think about the level of return you might want over 5 years and the extent to which you would be prepared to see different average returns. Which statement best fits your attitude."*

Mr B ticked the statement:

*"I would like to aim for very high returns of 9% per annum, even though the average return over 5 years might differ significantly, and might even be negligible: stock market investing is long-term"*

I don't think this response supports that Mr B was willing to take the highest level of risk with his investments. He was only 57 years old at the time and not looking to retire until he was 66 years old. The choice of answers did not highlight the likelihood of Mr B's investment not achieving such ambitious returns and instead focused on the next five years which would not have been a concern to Mr B.

Question 2 stated:

*"Think about your attitude to risk of investment losses in a poor year and gains in good years. Which statement best fits your attitude?"*

Mr B ticked the statement:

*"I am really not concerned with short-term swings in value. These could be 15-20% in a poor year (and possibly more). What matters to me are the returns I can earn longer-term (not concerned with losses short term – more concerned with long term)"*

Again, I don't think this response supports that Mr B was willing to take the highest level of risk with his pension. He had some time until he was thinking of retiring at 66 years of age so I would expect him to be most concerned with his return at the time he was planning to retire. The option he ticked suggests the investment is likely to grow over the longer term that applied to Mr B's circumstances.

The last two of the six questions were based on Mr B's investment experience. It is clear from the answers he gave that he had little to no investment experience whatsoever.

Overall I don't think that the questions asked with the options available for Mr B to choose from provided an understanding of Mr B's true ATR, and I am unable to see how Portal came to the conclusion that Mr B's attitude to risk was the least cautious of anyone looking at options to transfer their pension. Even if I assumed Mr B had a higher attitude to risk, he didn't have the required capacity for loss to take such risks with his pension. The OPS pension was Mr B's only provision for retirement, and in addition to this if Mr B was to invest in higher risk investments for the first few years after transferring his pension, he was still very unlikely to achieve the critical yield required to match the benefits of the OPS.

I don't think the focus of the initial correspondence and the fact find was what was in Mr B's best interests. It seems to have been largely around how much TFC could potentially be taken and what this might be used for – not whether that was appropriate. And I think that could very well have misled Mr B into thinking that releasing TFC was what Portal thought was best.

On 16 October 2017, Portal followed up from the fact find with the letter to Mr B titled *"Important news about taking money early from your pension"*. The letter briefly explained that Portal did not recommend that Mr B should transfer his pension as he would be losing guaranteed benefits in the first paragraph, to immediately offering him the option to release TFC in the second and transfer his pension, albeit as an insistent client.

The document included an insistent client form with boxes for Mr B to tick to signify he understood the critical yield figures and that if he went ahead with the transfer he would be giving up a guaranteed reduced pension of £3,686 after taking TFC at age 65, and that he might expect to receive £4,050 per annum at age 65 after taking immediate TFC.

Mr B was also required to tick a box confirming that transferring his current scheme was against the advice of Portal, and complete a small section explaining why he wanted to access TFC early.

Mr B wrote in summary that he wanted access to TFC to treat his young children, pay off some debt, that his business could do with an injection of cash, and that he wanted to be able to use his money while he was alive rather that it be spent in his memory at a later date.

The letter and attached form gave little consideration to other ways Mr B could potentially raise the funds to meet his objectives, if indeed he did have a genuine need to do so, other than directing him to third party organisations like citizens advice for help with debt management. For example, I've not seen anything to suggest any information was gathered about whether Mr B could've potentially taken benefits from his OPS scheme early – given he was already over the age of 55 at the time of the advice. Portal may argue that Mr B would have declined this option but based on what I've seen it doesn't appear to have even been considered, discussed, or outlined.

I think Portal's conclusion that the critical yield made the transfer unsuitable was correct. But given the lack of any significant comparison or information for Mr B to consider, I don't think Portal provided full and clear advice to Mr B, such that it left him in a position to make an informed decision about the transfer or about being an insistent client.

Immediately after saying that transferring would be against its recommendation, Portal promoted the option of still releasing money from Mr B's pension – the focus being that this was something it could help with provided he signed an enclosed form to proceed on an insistent client basis. It also encouraged this form to be returned.

I don't think it was reasonable to ask Mr B to complete and return this form potentially accepting that he would to be treated as an insistent client and having made the decision to transfer out of his OPS before a suitability report and advice based on the report was even produced.

At the point Mr B was required to complete and return the form it appears to be a pre-drawn conclusion that Mr B would be going ahead with the transfer.

A suitability report was issued on 26 October 2017 just seven days after Portal received Mr B's signed form agreeing to be treated as an insistent client. This is quite a fast turnaround time for the insistent client form to be returned and then a full further assessment of Mr B's circumstances to be carried out to determine a suitable investment strategy – which is what Portal recommended.

In response to our Investigator's view of this complaint Portal told us it spoke to Mr B on 19 October 2017 and he confirmed he wanted to continue against its advice. I have listened to the call recording but again I feel it concentrated mostly on releasing TFC. While some of the things Mr B was giving up were explained, no real comparison was given between what he had with his OPS and what the new pension would be providing. The call again also took place before the suitability report was sent to Mr B asking him to confirm his decision to transfer his pension before seeing a detailed report about whether transferring his pension was a suitable option for him.

The suitability report repeated that the transfer was against Portal's recommendations. And it included some further risk warnings that, amongst other things, releasing funds early could reduce Mr B's income in retirement, taking TFC at this stage would mean no further TFC could be taken later, and by transferring away from the OPS Mr B would most likely be unable to reverse this decision.

But the report also went on to recommend a specific provider and specific funds that Mr B's pension should be invested in. The covering letter sent with the suitability report also stated: *"your pension recommendation is enclosed"*, and that following the recommendation would mean Mr B would have access to TFC of £28,936. The letter further stated, *"If you agree with our recommendation then please sign the forms enclosed and return them to us in the pre-paid envelope provided".* I think these statements suggest Portal thought it was a good idea that Mr B should transfer his existing pension.

The covering letter included a further declaration for Mr B to complete which repeated the acknowledgements in the insistent client declaration that he had previously returned. But this document had a pre-typed statement requiring Mr B to simply sign to show he was fully aware of all the risk he would be taking transferring his pension. This statement was not in Mr B's own words and I don't think it demonstrates he was fully aware of all the risks involved.

Even with the content of this form in mind I think there was significant enough doubt and contradiction in the correspondence Mr B was sent over a relatively short space of time for him to believe that Portal was in fact recommending a transfer.

The suitability report did touch on alternative methods that may have been available to raising the funds Mr B wanted to meet his objectives, namely taking a loan, using his existing disposable income and using his available assets. But these were all disregarded with what seems like little consideration. For example, I cannot see that the cost of a loan was explored, and I think if Mr B really needed to raise funds more consideration should have been given to raising funds using his existing assets rather than risking his pension. A simple one line of information was attached to the alternative options meaning much more weight was given to the option of Mr B releasing TFC by transferring his pension.

I don't think the suitability report was sufficient as a recommendation not to proceed, and I don't think Mr B's objectives were robustly tested by Portal. They did not seem urgent considering Mr B was managing his debt, had assets to the value of £15,000, and already had a workspace.

I think it was unlikely Mr B would be able to purchase a property with the TFC he was able to release. So, I think it's possible he could have met his more realistic objectives of clearing his debt and revamping his workspace in other more suitable ways if this was truly something Mr B had a need to do. In any event Portal should have made much clearer how worse off Mr B was likely to be in retirement if he transferred out of the OPS. I think the correspondence in general muddied the waters, which I think on balance likely led Mr B to believe Portal felt the transfer was appropriate.

Taking everything into account I don't think the advice given by Portal was suitable.

*Insistent client*

Portal argues that it was correct to class Mr B as an insistent client. I've already detailed a number of flaws with the process that Portal followed. And overall, I have concerns with the process used and whether Mr B was in fact an insistent client.

Portal says the information provided in the letter of 16 October 2017 is in line with the guidance provided by the FCA. On receiving this letter Mr B decided to go against Portal's advice and proceeded on the basis that he would be treated as an insistent client.

But the letter and declaration Portal has referred to was sent to Mr B before he received Portal's full suitability report, and it promoted the opportunity for Mr B to proceed on an insistent client basis. The letter included an insistent client form, and while it's not in dispute that Mr B signed the form the options Mr B was asked to agree to only required him to place a tick in a box to confirm his understanding. The section Mr B was asked to write himself only asked why he wanted to access funds early against the advice that had been given. I don't think enough importance was given to the fact Mr B was going against professional advice despite it not being in his best interests.

In any event, Mr B simply wrote what he would be spending the funds on and that he wanted access to the funds while he was alive. While the pension was designed to provide an income in Mr B's retirement which would have made his later life more comfortable.

Although Portal have said the declaration was in Mr B's own words his response did not cover why he wanted to ignore professional advice and proceed with an unsuitable transfer. I can't see that Portal asked Mr B to confirm the reasons behind transferring his pension being so important. It also didn't question whether his objective of purchasing a property with the TFC was realistic.

So, Mr B didn't have all of the information he needed to make an informed decision – the form did highlight the critical yield figures and that Mr B would be giving up a guaranteed pension. It also gave limited information about what he might achieve should he proceed with the transfer. But I think it was unreasonable to ask Mr B whether he wanted to be treated as an insistent client or not before providing the suitability report.

Only after receiving Mr B's confirmation that he wished to proceed did Portal send Mr B the formal suitability report. And while the report stated that transferring would be against Portal's recommendation, this was followed by the recommendation to transfer out of the OPS to a personal pension in the same report. Which, as I've said above, I think undermined the recommendation not to transfer.

I don't think the process was geared towards Mr B 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 B, 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 B with a means of proceeding against the advice, without establishing why he wanted to go against it, why the apparent requirements were truly necessary and why alternatives weren't truly more 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 B 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.

*Would Mr B have acted differently?*

Mr B said he wanted to access TFC to clear a small credit card and overdraft debt as well as purchase/re-vamp a workspace and make some memories with his children. But again, I believe the discussions were around what he would have liked to use this money for rather than him needing to release funds. As mentioned previously, there is no detail given around the costings of purchasing a new property, or even revamping Mr B's existing workplace, and he seems to have been managing his debts at the time. With the information available I don't think Mr B had a true *need* for the funds, or that he would always have transferred his OPS and taken TFC if Portal had used a more appropriate process.

Taking this into account, I think, as an inexperienced investor, had Mr B been provided with more appropriate and robust advice around why the transfer was not suitable, I don't think he'd 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 B 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 B 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 B's complaint should be upheld.

On balance, if the transfer hadn't taken place, I think Mr B would've retained his OPS benefits until drawing them at age 65 and I think that without Portal's failings, Mr B wouldn't have gone ahead with the transfer. So, the funds wouldn't have been invested as they were.

So, I think it is appropriate to hold Portal responsible for any of the losses Mr B has incurred.

Our Investigator recommended that Portal put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I think the award the Investigator recommended is fair.

**Putting things right**

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. Portal must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its *Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.*

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B'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 B 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 compensation amount must where possible be paid to Mr B 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 B.

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

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.

**My final decision**

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

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

If Mr B accepts my decision, the money award is binding on Portal Financial Services LLP. My recommendation is not binding on Portal Financial Services LLP. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 August 2022.

Terry Woodham
**Ombudsman**