DRN-3429461

The complaint

Mr B complains about the advice Portal Financial Services LLP ('Portal') gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme and also his personal pension plan ('PPP') 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's now known as Portal I shall only use that name in this decision.

Professional representatives have helped Mr B to bring his complaint. But, for ease of reading, I will refer to their comments as being Mr B's.

What happened

Mr B contacted Portal in 2017 about accessing his pension funds after seeing an advert on social media..

In July 2017 Portal completed a fact-find to gather information about Mr B's DB pension scheme, his circumstances and objectives. Portal recorded that:

- Mr B was 54, married with two adult children
- He expected to retire at 67.
- He was employed full time and earned about £3,300 a month net.
- Mr B's wife was also working and together they had a joint income of around £4,400 a month.
- They had a joint repayment mortgage on their home of £121,000 which was due to be paid off in 12 years' time and cost them £925 a month.
- They had a surplus income of between £1,500 and £1,850 a month.
- They had no savings or investments.
- He was a member of his current employer's pension scheme.
- They had loans totalling approximately £26,000 which they were repaying at a cost of around £545 a month. The loans were scheduled to be repaid within six years.
- Mr B needed a retirement income of at least £20,000 a year.
- Mr B wanted to access his tax-free cash (TFC) to help pay for his daughter's wedding and to pay off and reduce some debts.

Portal obtained a pension transfer value analysis report and also carried out an assessment of Mr B's attitude to risk, which it deemed to be "*moderately cautious*".

Portal prepared a suitability report which advised Mr B to transfer his DB pension benefits into a SIPP. Regarding Mr B's DB scheme, the report recorded that:

- It had a cash equivalent transfer value ('CETV') of £102,481.68
- It would allow him to take a full pension, at age 65, of £4,440. The critical yield (the growth rate required to match his DB benefits) was 7.2%.

- Alternatively Mr B could take a tax free sum of £21,601, at 65, together with a yearly pension of £3,240; the critical yield to meet those figures was 6.1%.
- The “growth rate” required to match the benefits in the SIPP was 1.9%.

Portal said that the reason for its recommendation for Mr B to transfer his DB scheme benefits to a SIPP were because it would allow him to achieve his objectives which it said were:

- To have greater flexibility to access his pension benefits.
- To release the maximum TFC from age 55.
- Have greater choice in terms of death benefits.
- Have ownership and control of his pension investments.
- To take an investment risk.
- Enjoy the flexibility that pension drawdown offers.

Portal added that it believed the recommended SIPP would deliver greater ongoing benefits than Mr B’s DB scheme. Portal said its fee, if Mr B went ahead with the transfer, was £3,074.45. Mr B went ahead with the transfer which Portal completed in August 2017.

Portal also gathered information about Mr B’s PPP which had a transfer value of £56,725. It had an annual management charge of 0.55%. It had annualised average growth over the previous 5 years of 10.24%.

In October 2017 Portal sent Mr B a second suitability report concerning transferring the PPP. It repeated much of the information from the July suitability report concerning Mr B’s circumstances and objectives. Portal recommended that Mr B should transfer his funds from his PPP into his SIPP. It said that by doing so Mr B could access TFC of £14,068 and that the SIPP would deliver greater ongoing benefits than his current provider. It said the fee for its advice, if Mr B went ahead with the pension switch, was £1,688.26.

I understand that since then, Mr B is no longer invested in the original SIPP.

Mr B complained in January 2021 to Portal about the suitability of the transfer advice because, amongst other things, he said:

- From the outset Portal focussed on releasing TFC rather than looking objectively at whether a transfer was in Mr B’s best interests.
- Mr B had to pay fees of around £4,700.
- Portal didn’t act in line with the regulator's principles or guidance.
- Its fee was conditional on the transfer going ahead so it was in its interest to recommend the transfer and its advice wasn’t truly independent.
- It created a conflict of interest.
- Portal’s advice was based on a large sum of cash being available to Mr B, which led towards a decision to transfer without giving proper advice.
- Its advice was unclear and unsuitable.
- It didn’t provide appropriate warnings about what Mr B would be giving up by transferring out of the DB scheme.
- Portal’s timing wasn’t appropriate as it told Mr B he was entitled to a sum of over £25,000 before it produced its suitability report.
- The recommended SIPP was unsuitable for Mr B, it lacked diversification and had no real prospect of matching the critical yield for Mr B’s DB scheme.

Portal didn’t uphold Mr B’s complaint. It said, amongst other things:

- It had explained its fees in its suitability reports and Mr B was under no obligation to transfer his pension funds.
- Its recommendations were not in pursuit of fees but were in Mr B's best interests.
- It would not make a recommendation if it was not in Mr B's best interests and didn't believe it had created a conflict.
- It acted in line with the regulator's principles and guidance.
- While Portal did advise Mr B about the availability of TFC it didn't build the whole case round this and it had made Mr B aware of the benefits and risks of transferring.
- Portal's advice was suitable as by transferring Mr B could achieve better growth as well as accessing cash to reduce debts and pay for his daughter's wedding.
- Portal's pension transfer analysis showed that Mr B could achieve greater benefits in his SIPP than from his DB scheme.
- The critical yield was not the appropriate comparison to measure growth and the growth rate required (the hurdle rate) was achievable at 1.9%.

Mr B referred his complaint to our service. One of our investigators upheld the complaint and required Portal to pay compensation, including a redress payment of £300 to address Mr B's distress and inconvenience. Concerning the transfer from the DB scheme the investigator said that:

- Portal sent Mr B documents that emphasised the need for him to act quickly to secure his TFC.
- Portal hadn't collated all of Mr B's income sources at retirement, for example it didn't mention Mr B's state pension entitlement or his expected income from his current employer's pensions scheme. It hadn't documented any consideration of how Mr B would achieve the £20,000 a year he needed in retirement.
- The critical yields Portal referred to in its suitability report would only match the benefits from Mr B's DB scheme. So the returns from the SIPP would need to exceed those rates every year, year on year, to deliver any actual financial benefit from transferring.
- Given the high critical yields and growth rates required transferring wouldn't seem to offer value for money.
- Mr B wasn't an experienced investor but the recommendation to transfer meant that Mr B was bearing all of the investment risk of his pension fund.
- Mr B was repaying his debts and they were due to be cleared before he retired. So those weren't causing him financial difficulty.
- Mr B has substantial disposable income each month and so he could have made overpayments of his debts to clear those sooner.
- Portal didn't record how much Mr B would need to contribute towards his daughter's wedding and Portal didn't consider alternative ways of funding it.
- Portal had recorded that Mr B wanted "*flexibility*" but Portal hadn't recorded why Mr B wanted or needed this flexibility or why it would be in his best interests.
- Portal didn't consider a life insurance policy as a way of providing further benefits in the event of his death.

Overall the investigator concluded that Portal's advice for Mr B to transfer out of his DB scheme was unsuitable.

Our investigator also considered Portal's advice for Mr B to transfer his funds from his PPP to the SIPP. The investigator also concluded that advice was unsuitable because:

- The total annual charges, for the SIPP were at least 1.7% a year. Compared to the 0.55% charge for Mr B's existing PPP.

- The past performance of Mr B's PPP over the last five years had annualised growth of 10.24%. This compared to growth of the recommended funds of 10.81%. But the additional growth in the SIPP was negated by the increased fees. So the transfer didn't appear to offer good value.
- Mr B's PPP offered a drawdown facility so there wasn't a need to transfer from it in order to access TFC.

Portal disagreed, amongst other things it said:

- It had enough contemporary evidence to show that the transfer was in Mr B's best interests.
- It had explained the guarantees from Mr B's DB scheme to him.
- Mr B wanted to leave his pension funds to his wife and daughters.
- Mr B preferred the flexibility of a drawdown pension rather than an annuity style income.
- By transferring from his DB scheme Mr B would be able to pay off a large portion of his debt, increase his monthly disposable income, and contribute to his daughter's wedding, while enjoying a higher level of fund growth.
- By repaying his debts Mr B would be able to increase his security in retirement.
- The SIPP had a significant chance of exceeding the required growth rate.
- Portal believed the hurdle rate of 1.9% was a more accurate comparison for growth than the critical yield.
- The proposed SIPP had an annualised return rate of 7.28% over the past ten years and so the growth rates required could be matched.
- It had discussed alternative options with Mr B but he had no savings or assets and he wanted to reduce his debts not increase them so remortgaging wasn't an option.
- Although the costs of the SIPP were higher than the PPP the better performance of the SIPP meant that Mr B would be better off by transferring his PPP into it.
- The SIPP had lower risk for higher returns which was why it had advised Mr B to switch his PPP to the SIPP.

Our investigator wasn't persuaded to change her view. Amongst other things she said:

- She believed Mr B was likely to be worse off in retirement after transferring his DB pension benefits.
- Portal hadn't explained why Mr B needed flexible access to his pension benefits instead of a guaranteed income. So she wasn't persuaded that the hurdle rate was of greater relevance than the critical yield.
- Mr B didn't have enough capacity for loss to justify the risks of transferring from his DB scheme.
- Portal's justification for transferring Mr B's PPP to the SIPP was based on the SIPP significantly exceeding the regulator's highest expected growth levels each year for 12 years and so wasn't a suitable recommendation.

As the investigator wasn't persuaded to change her opinion, 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 B and Portal have made many points in bringing the complaint and in replying to it. And I've considered carefully 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 B’s complaint and the reasons for my decision.

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.

Portal made two separate recommendations for Mr B to transfer pension benefits to a SIPP so I shall deal with each one in turn.

<u>Mr B’s DB pension scheme</u>

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 B’s best interests (COBS 19.1.6). And having looked at all the evidence available, I’m not satisfied it was in Mr B’s best interests. I’ll explain why.

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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The critical yield required to match Mr B’s benefits at age 65 was 7.2% if he took a full pension and 6.1% if he took TFC and a reduced pension. The relevant discount rate was 3.8% a year for ten years to Mr B’s DB scheme retirement age. 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% a year.

I've taken this into account, along with the composition of assets in the discount rate, Mr B‘s moderately cautious attitude to risk and also the term to retirement. There would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 6.1%, I think Mr B was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

Portal has provided cashflow models which it says show Mr B would have been able to meet his income needs despite the high critical yields. I’ve considered these, and I note that Portal has discounted the critical yield and instead looked at the “hurdle rate”. But I don't think that’s a fair comparison as the hurdle rate typically doesn’t allow for fund or adviser charges which aren't payable in the DB scheme, nor for increases in pension income over time, which is a guaranteed benefit from the DB scheme. The hurdle rate also doesn't consider the pension Mr B’s wife would have been entitled to in the event of his death or the fact that the DB scheme’s benefits were payable for the rest of Mr B’s life, no matter how long that was.

Portal’s also said that given the past performance of the SIPP it would expect the funds invested in it to comfortably match the growth rates required. But, as Portal said in its own documents, past performance is no guarantee for future performance. So I consider the discount rates and the regulator's standard projections to be more realistic in regard to the long-term likely growth, rather than projecting historic returns forward. In other words, the fact that the funds Portal recommended had performed well in the past didn't mean they would continue to do so in the future. Given the high critical yield, which was significantly more than the discount rate, I find it unlikely that Mr B would exceed those benefits if he transferred to the SIPP.

Also, Portal's fact-find shows that Mr B would require an income in retirement of £20,000 a year. But I've seen no evidence of an analysis of how Mr B would reach that figure. There's no reference within Portal's documents to Mr B's likely income from his current occupational pension scheme and how this would contribute to his needs at retirement. So it seems that Portal gave its advice without a full picture of Mr B's likely income needs in his retirement.

What I can say for certain is Mr B had the prospect of a guaranteed return from his DB scheme which would increase each year. A return he stood to lose some or all of by moving it into a SIPP which had no guarantees of any return whatsoever. Also, in going ahead with that transfer the funds would instantly be subject to a £3,074 transfer fee. Portal would charge him a further 1% each year for financial advice and the SIPP administrators would charge fees of around 0.89% of his fund value. Those are charges that would potentially continue to reduce the size of Mr B's investment but are charges that wouldn't have been deducted from his DB scheme benefits had he remained in that.

For the reasons set out above a transfer out of the DB scheme wasn't in Mr B's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Portal has argued 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

Portal's said that it used the hurdle rate rather than the critical yield as it was in line with Mr B's preference for a drawdown type pension rather than an annuity. That is, the SIPP would give Mr B the flexibility to take the cash from his pension pot as and when he wanted to. That might be the case but Portal's role was to find out what Mr B's wants and needs were and why. Its role wasn't simply to do what Mr B wanted without appropriate analysis and challenge of his motives for doing so, together with the implications of taking those actions. But Portal's provided no evidence of such a challenge.

Portal's recorded that Mr B wanted access to TFC as he intended to contribute towards his daughter's wedding and pay off/reduce some debts. But Portal hasn't established in its fact-find or suitability report why those things were so important to Mr B that he could chance giving up the guaranteed benefits of his DB scheme for. Portal had carried out an assessment of Mr B's spending and noted that, after deducting his regular outgoings, Mr B had a surplus of at least £1,500 a month. Mr B did have debts but those appear to have been well managed. And I can't see that Portal explored with Mr B why he felt he needed to give up the benefits of his DB scheme in order to release funds when he was meeting his financial obligations with some funds left over. It seems to me that in the first instance, Mr B ought to have been advised to overpay towards his debts or save any excess income to meet his objectives.

So while having flexible access to his pension might have been desirable to Mr B, I don't think he genuinely required flexibility to access the funds from his DB scheme. This is because I don't think he had a genuine need to access his TFC earlier than the normal scheme retirement age and leave his funds invested until a later date. This is because based on the evidence I've seen Mr B seemed to be managing his finances reasonably well with a disposable income left over each month. I've seen that Mr B said that paying off debts was important to him, and he also wanted funds to pay for his daughter's wedding. But Portal didn't establish how much he needed for the wedding nor if there were other ways of raising that cash. Portal was aware that Mr B had funds invested in his PPP and it is evident that he could have accessed those from age 55. But there's no evidence that Portal discussed with Mr B if a better course of action for him could be to use those funds for his shorter-term goals and to leave the guaranteed benefits of his DB scheme untouched.

Similarly Portal didn't explore other ways of addressing Mr B's debts. Transferring out of the DB scheme and using the TFC was only one way to address this. I've seen no compelling evidence that Portal sought to explore with Mr B what the relevant benefits of the alternatives to transferring out of the DB scheme were. I've noted that Portal recorded that Mr B had told it that he didn't wish to take on further borrowing, but, apart from using the funds from his PPP another alternative could have been debt consolidation. That wouldn't require Mr B to take on extra borrowing or pay more interest, instead it was likely to reduce it overall. But I can't see that Portal brought this possibility to Mr B's attention.

It's also worth noting that Mr B had no savings and had little in the way of investment experience. And, at most, he had a moderately cautious attitude to risk. So transferring his guaranteed benefits from a DB scheme to a SIPP which had the potential for losses, wasn't in his best interests.

Portal was in a good position to have analysed, tested, challenged and advised Mr B about what was in his best interests for retirement planning. It knows valuable pension pots like Mr B's DB scheme were paid into with the intention of providing for retirement. But Mr B's chosen path was to give up that guaranteed income in retirement for the chance of having flexible access to funds. But Portal didn't challenge Mr B's requirements for that flexible access. It simply accepted what he said about wanting to pay off debts and use funds for his daughter's wedding, rather than impressing on him the need for long-term planning. And without fully exploring and challenging Mr B's objectives I don't think that Portal was in a position to make a recommendation to transfer out of his DB scheme. So I don't think Portal treated Mr B fairly.

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 SIPP was likely an attractive feature to Mr B. But whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer his DB scheme to a SIPP because of this, the priority here was to advise Mr B 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 B was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B was married and so the spouse's pension provided by the DB scheme would've been useful to his wife if Mr B died before her. I don't think Portal made the value of this benefit clear enough to Mr B. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a SIPP was. Further, it's worth noting that Mr B's wife would have been entitled to the DB schemes death benefits for the rest of her life. Whereas the SIPP would simply return to her what was left after Mr B had taken his TFC and any other income from it. And that amount would likely be further reduced the longer Mr B lived for. So, depending on his lifespan and the funds he'd taken from his SIPP, the fund might not have a large – if indeed any – sum left at the time of Mr B's death. In any event, Portal should not have encouraged Mr B to prioritise the potential for higher sums being available at his death through a SIPP over his security in retirement.

Further, if Mr B genuinely wanted to leave a legacy for his wife and daughters, 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 extra life insurance, but there's no evidence it did so.

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

Control

I think Mr B's desire for control over his pension benefits was overstated. Mr B was not an experienced investor and I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr B – it was simply a consequence of transferring away from his DB scheme.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a SIPP would have sounded like attractive features to Mr B. But Portal wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

Ultimately, I don't think Portal's advice to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B 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. Portal shouldn't have advised Mr B to transfer out of the scheme just to repay debts that were affordable. And the potential to free up funds for his daughter's wedding wasn't worth giving up the guarantees associated with his DB scheme, particularly when Mr B also had a PPP that he could've taken TFC from at 55 instead.

So, I think Portal should've advised Mr B to remain in his DB scheme.

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

<u>Mr B's PPP</u>

The second suitability report which Portal gave to Mr B in October 2017 recommended that Mr B switch his pension from his PPP to the SIPP because:

- He had chosen to take TFC of £14,068 at age 55.
- The SIPP would deliver greater ongoing benefits.

Later in the suitability report, under a heading of "*our recommendation*" Portal said:

"…*we recommend transferring your pension, so you can access tax-free cash to help you achieve your objectives*."

Portal charged Mr B £1,688 for arranging the transfer. It also said it would continue to charge him 1% of the fund value for ongoing advice.

I don't think Portal's advice was suitable. Portal has clearly said that its first reason for Mr B to transfer was because he'd chosen to take TFC at age 55. But Mr B could have taken TFC from his existing PPP at age 55. He had no reason to transfer out of his existing PPP in order to access the TFC. But I can't see that Portal ever made this clear to Mr B. So, it's possible that Mr B thought that he'd need to transfer his PPP in order to have access to that cash when that wasn't the case.

Similarly, Mr B's PPP allowed him to access his cash flexibly by drawdown after his 55th birthday. So there was little in the way of benefit of transferring to the SIPP in order to do that, as that was a facility already available to him.

Portal also said the SIPP would deliver greater ongoing benefits than Mr B's current plan. Portal's documents show that, over the previous five years the SIPP had slightly outperformed Mr B's PPP – returning annualised growth of 10.81% compared to the 10.24% annualised growth the PPP had produced. So on the face of it the SIPP had returned higher growth of 0.57%. But that doesn't mean that the advice to Mr B to swich his pension was suitable.

In 2009 the then regulator, the Financial Services Authority, (now FCA) published a report and checklist for pension switching that is still applicable. That checklist identified four main areas where consumers had lost out. One such area applicable to Mr B's complaint is where the advice is to switch a pension to another product that is more expensive than the existing one.

In this case, Portal didn't ever set out in its suitability report what the total costs to Mr B of the SIPP would be. It did explain that it's initial fee for arranging the transfer would be £1,688. The suitability report also said that the SIPP had an admin fee of £75 a year if Mr B took funds from it. The fund administrators also charged an annual management fee of 0.42%. The suitability report added that "*Fund charges also apply to this plan*". The suitability report didn't set out what those were but said they were available in the literature given by the SIPP provider. As I understand it the actual level of those charges depends on the amount invested in the fund. So the charge could be subject to change as Mr B added money to it or deducted funds from the SIPP.

But, as well as those charges Portal was also charging Mr B 1% of the fund for ongoing advice. Portal said that advice would provide Mr B with "*peace of mind*" that his pension was working as hard as possible for him. So, when taking all those costs into account the total costs of charges for the SIPP were at least 1.7% of the fund value each year and could be as high as 2.11% after factoring in Portal's initial transaction fee of £1,688. That compares with a charge of 0.55% a year for Mr B's existing PPP. In other words by transferring to the SIPP Mr B was paying at least 1.15% more in charges than for his PPP. That is considerably more than the 0.57% greater growth that the SIPP had offered over the previous five years. In other words, while the investment funds had shown greater growth previously, it also came with higher costs that would see Mr B worse off in the long run. So I don't think Portal's advice for Mr B to transfer his PPP to a SIPP was suitable.

In response to our investigator's assessment of the complaint Portal provided us with some graphs and models which, it says, show that the SIPP would outperform the existing plan while offering lower risk. But Portal hasn't provided appropriate analysis alongside these models to show exactly what its comparing and why. For example its comparison of charges between Mr B's PPP and the SIPP shows a charge given by the SIPP administrators of 0.86% a year. It then indicates that after adding its initial transaction charge that would equate to an overall charge of 1.11%. It noted this was 0.56% higher than the PPP costs of 0.55% a year. It's model then compares that with the growth figures from the previous five years. And as the SIPP growth had outperformed the PPP in that period by 0.57%, it anticipated Mr B having a higher return from his SIPP of 0.01% a year or 0.12% by the end of the 12 years to Mr B's scheduled retirement.

But, I don't think those figures paint a complete picture. Putting aside any arguments that past growth is not an accurate measure for future growth, Portal's calculations don't include its 1% annual charge for its ongoing advice. And once that is factored in then the costs of the SIPP, when using the other figures in Portal's model are (2.11% - 0.55%) 1.56% a year higher for the SIPP than the PPP. So – accepting for a moment that the SIPP would outperform the PPP by 0.57% a year – the figures actually show that Mr B would be 0.99% a year worse off by transferring into the SIPP. But Portal didn't make that clear to him. And I don't think it gave Mr B enough information to make a fully informed decision about what was likely to happen to his funds if he transferred into the SIPP.

Further, Portal said that its models show that by transferring Mr B would enjoy lower "*volatility*" of assessment risk in return for higher returns. But even if I accept that's what the models show - and they're anything but clear - they certainly don't explain how the larger additional costs of the SIPP will be outweighed by a smaller increase in growth. And overall it hasn't done enough to satisfy me there was a clear potential for Mr B to be better off as a result of its recommendations, given the fees and charges he was incurring.

It follows that I don't think Portal treated Mr B fairly when it recommended he transfer his funds from his PPP to his SIPP. So I've set out below what Portal needs to do to try and return Mr B, as near as possible to the position he would otherwise have been in.

Also I believe that the poor advice Portal gave to Mr B to transfer his pension funds has been a source of distress and inconvenience for him. To address that I think Portal should pay him a further £300 compensation.

Putting things right

A fair and reasonable outcome would be for Portal to put Mr B, as far as possible, into the position he would now be in but for its unsuitable advice. I consider Mr B would have most likely remained in his DB scheme, and his PPP, if suitable advice had been given.

What should Portal do?

To compensate Mr B fairly, Portal must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

fair value – step one

If Mr B had been given suitable advice, I think he would have remained in the DB scheme. Portal must therefore calculate the value of the benefits Mr B lost as a result of transferring out of his DB scheme in line with the regulator's pension review guidance as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

The calculation should be carried out as at the date of my final decision, using the most recent financial assumptions at the date of this 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.

fair value – step two

Portal must compare the value of Mr B's PPP transferred to his SIPP with that of the notional value from the PPP to determine the fair value of Mr B's personal pension if suitable advice had been given. I consider that there was no reason for Mr B to have moved his personal pension. It was invested in a fund which met with his attitude to risk and was performing well – it also allowed for flexible drawdown.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The value of the PPP benefits transferred to the SIPP	Surrendered	Notional value from previous provider	Date of investment	Date Mr B transferred his funds out of the SIPP	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Notional Value

This is the value of Mr B's investment had it remained with the previous provider until the end date. Portal should request that the previous provider calculate this value.

If the previous provider is unable to calculate a notional value, Portal will need to determine a fair value for Mr B's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Portal totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

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.

The payment resulting from all the steps above is the 'compensation amount'. 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.

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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr B wanted Capital growth with a small risk to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

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

- The FTSE UK Private Investors Income total return index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

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

My final decision

Determination and money award: I uphold this complaint and 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 would 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 would 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 would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B 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 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 final decision.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 August 2022.

Joe Scott
Ombudsman