

The complaint

Mr R complains about Portal Financial Services LLP's ('Portal') advice concerning the transfer of benefits from his defined-benefit ('DB') occupational pension scheme and also his personal pension plan 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 R to bring his complaint. But, for ease of reading, I will refer to their comments as being Mr R's.

What happened

Mr R contacted Portal in 2017 about accessing his pension funds after seeing an advert on social media. Mr R had two separate pension funds. He was a deferred member of his former employer's DB scheme. He also had a personal pension held with another pension provider.

Portal asked for information about Mr R's two pension funds. It obtained a transfer value analysis report concerning Mr R's DB scheme. In June 2017 Mr R spoke with Portal; he told it the provider of his personal pension kept writing to him asking if he wanted to cash his pension in with it. Portal recorded that Mr R was happy to "*stay with*" Portal and that it was "*conducting an analysis*" and would be in touch with his options.

On 1 August 2017 Portal sent Mr R a letter setting out his options. That said Mr R could have maximum tax free cash ('TFC') of £12,594 and set out the values of his existing pension pots. It asked him to call so it could complete his pension review.

Portal spoke with Mr R and completed a fact-find to gather information about his circumstances, objectives and attitude to risk. Portal recorded that:

- Mr R was 55, living with his partner and had no dependents.
- He earned £16,350 a year and took home around £1,200 a month net.
- He paid board of £300 a month.
- He had an outstanding loan of £8,000 which he was paying around £262 a month towards.
- He had a credit card balance of £300 which he was paying approximately £30 towards per month.
- He had disposable income of around £400 a month.
- His DB scheme had a cash equivalent transfer value ('CETV') of £20,047, which had been reduced by £4,155 because the scheme fund was in deficit.
- The DB scheme would allow him to take a full pension, at age 65, of £1,306 - without taking TFC. The critical yield (the growth rate required to match that benefit) was 13.3%.

- Alternatively Mr R could take TFC of £6,030, at 65, together with a yearly pension of £904; the critical yield to meet those figures was 11.5%.
- Mr R's personal pension had a transfer value of £30,332.53, from which he could take TFC of £7,583.
- He had a cautious attitude to risk.

On 8 August 2017 Portal sent Mr R its first suitability report concerning transferring his pension pots. Its recommendation was that Mr R *should* transfer both of his pensions to a named SIPP. It said that Mr R's objectives were to:

- Go on holiday
- Tackle a debt
- Put into/create an emergency fund

Portal said that Mr R had chosen to take TFC of £12,594 and that by transferring his pension funds the SIPP would:

"deliver greater ongoing benefits than your current provider".

It added that Mr R would also benefit from:

- Greater flexibility in accessing his pension funds
- Maximising TFC
- Greater choice and flexibility in terms of death benefits
- "Ownership and control" of his pension fund
- He was "willing to take an investment risk".

Mr R phoned Portal on 22 August 2017. Portal recorded that he told it that as well as the £12,594 TFC, he also wanted to take taxable cash of £28,650 – up to the higher rate tax margin – which he could use to put down as a deposit on a home.

Portal then wrote to Mr R again on 13 September 2017. It said he'd told it he wanted to take TFC of £12,594 and a gross taxable lump sum of £28,650. It said:

"...we strongly recommend that you do not access your [DB] pension early by taking more than your tax free cash entitlement and instead leave it where it is because of the guarantees/benefits that you will be giving up."

Portal added that if Mr R wanted to go ahead with the transfer he could do so but it would treat him as an insistent client. It attached an "options form" and asked Mr R to tick the box against his preferred choice which was from:

- To go against Portal's recommendation by transferring his pensions and taking TFC of £12,594 and a gross taxable lump sum of £28,650.
- Disregarding Portal's recommendation and take £12,549 TFC and another taxable sum to be completed by Mr R:
- To accept its recommendation, which was:

"transfer to a flexi-access drawdown plan, take tax free cash of £12,594 from both of my pension plans and a taxable lump sum of £22,749 from my [personal] pension scheme. I will transfer the residual amount of my [DB] plan into a flexi-access drawdown..."

- Stop the pension review completely.

Portal's letter added that if Mr R went against its recommendation he would also need to complete the attached "*insistent client form*" acknowledging that he was going against its recommendation.

Two days later, on 15 September 2017, Mr R signed the insistent client form saying that he wanted to take £12,594 and a gross taxable lump sum of £28,650. He acknowledged that in doing so he would have to pay £5,730 more in tax.

On 26 September 2017 Portal sent Mr R a second suitability report. The cover letter it sent with it said that Portal was "*delighted to recommend*" that Mr R should transfer both his pensions to a named SIPP. And, if he agreed with its recommendation Mr R would receive TFC of £12,594 and a taxable lump sum of £28,650 with Portal managing and reviewing his remaining invested funds.

Amongst other things, the suitability report said that Portal had already recommended that Mr R should not "*access*" his DB fund:

"early by taking more than your tax free cash entitlement and instead leave your pension funds where they are because of the benefits you will be giving up"

The report added that as Mr R wished to go ahead Portal would treat him as an insistent client.

The report also said the SIPP was unlikely to meet the required critical yield to match the benefits of his existing DB scheme. But the report added that as Mr R didn't wish to buy an annuity the growth rate required was 4.6%. It said its recommendation was based on that growth rate. It set out some of the "*potential risks*" of transferring his funds. It told Mr R the CETV offered by his DB scheme had expired on 13 July 2017 and the scheme administrators might charge him a fee to recalculate it.

The report noted that the full CETV was £24,202 but that the scheme administrators had reduced this to £20,047 to reflect that the scheme was currently underfunded. Portal added that its adviser fee – which was 7% of the total fund transferred – was £3,523.24. It said the SIPP would charge him £75 a year if he took any money out of it. The SIPP provider would apply a yearly management charge of 0.48% and that "*fund charges*" would also apply as set out in the SIPP documents. Portal would also charge Mr R 1% of the remaining fund value for ongoing financial advice.

On 10 October 2017 Mr R signed the forms to go ahead with the transfer. His personal pension was transferred into the named SIPP in November 2017. Later that month the DB scheme administrators provided a revised CETV. The quote said that Mr R's full value was £23,800 but because of a scheme deficit it would only offer a CETV of £19,819. Portal acquired another pension transfer analysis report, that was done for the full CETV of £23,800.

On 1 December 2017 Mr R signed a declaration to say that he was happy to transfer his DB funds to the SIPP. The declaration said that the "*transfer value has increased to £23,800.78 and the critical yield was 10.2%.*" In January 2018 the SIPP received a sum of £19,819 from his DB scheme.

In December 2020 Mr R complained to Portal about the suitability of its advice. Amongst other things he said:

- Portal didn't follow the regulator's guidance and didn't act in his best interests.
- Its advice was confusing, contradictory and misleading.

- It said that it was recommending not to transfer his pension funds and was treating him as an insistent client but then made a recommendation to transfer.
- It didn't explain what an insistent client was or the consequences of that.
- It decided to treat Mr R as an insistent client after speaking with him, which wasn't best practice.
- It should have given clear advice not to transfer.
- Mr R's objectives of going on holiday, repaying a debt and having an emergency fund were *wants* rather than *needs*.
- Portal didn't obtain a written statement from Mr R saying in his own words why he should be treated as an insistent client.
- Mr R lost guaranteed benefits from his DB scheme.
- It didn't make it clear that the recommended SIPP would have had to perform particularly well to match the benefits of the DB scheme.
- Mr R could have accessed funds from his personal pension without paying Portal a fee.
- The DB scheme would allow Mr R to take benefits from it at age 55 but there was no evidence that Portal explored this option.
- Mr R didn't understand the suitability report as Portal didn't go through it with him.
- The DB scheme had guaranteed death benefits for his partner which he lost by transferring out of it.
- The SIPP would have to grow substantially to meet the required critical yield of 11.5%.
- Mr R didn't wish to take a risk with his pension.
- Portal didn't advise Mr R of the benefits he would lose by transferring.
- The SIPP would need additional growth to match the charges that came with it, unlike the DB scheme which didn't have any charges.

Portal didn't uphold Mr R's complaint. Amongst other things it said:

- Portal did *not* advise Mr R to transfer out of his DB scheme. Its recommendation was that Mr R should leave his DB scheme where it was because of the guarantees attached to it and because of the level of the critical yield.
- It made Mr R aware of the potential risks of going against its advice and what he would be giving up by transferring from the scheme.
- It considered the growth rate required to be too high and couldn't advise Mr R to transfer from the DB scheme so treated him as an insistent client.
- Mr R had told it that he also wished to take a further taxable lump sum which increased the requirement to treat him as an insistent client.
- Portal had followed the insistent client process correctly.
- Mr R was under no obligation to go ahead with the transfer if he didn't understand the suitability report and he should have contacted Portal if that was the case.
- If Mr R hadn't gone ahead Portal would not have charged him.
- Given Mr R's cautious attitude to risk and relatively low capacity for loss it could not *"feasibly advise you to transfer your final salary pension."* It said its advice was *"very clear"* that Mr R should leave his DB plan in place.
- It was clear in its communications *"throughout the process that the advice was not to proceed and to do so would be on an 'insistent client' basis"*.
- It had phoned Mr R in September 2017 to ensure he understood the guarantees he was giving up and the tax implications.
- The amount available in Mr R's personal pension was below the £41,244 Mr R required to meet his objectives; so Portal couldn't have recommended Mr R take the money from his personal pension plan alone as it wouldn't meet his objectives.

- It had made Mr R aware of the benefits, including death benefits, he would lose by transferring out of his DB scheme.
- It believed Mr R would have gone ahead with the transfer regardless of its involvement.
- Given the size of Mr R's requested withdrawal from his funds the remaining funds would not produce a substantial income in retirement.
- It was implausible to think Mr R would not have realised the risks of depleting his pension fund.
- It had set out its adviser fee in its suitability report.
- While Mr R didn't have to pay charges for his DB scheme he was bound by the scheme rules which had little flexibility. As the SIPP and the DB schemes are different it was not possible to make a direct comparison of the fees between the two. Instead the SIPP was compared against other products available on the market.
- Mr R agreed to the charges when he signed and returned the relevant transfer application forms.

Mr R referred his complaint to our service. An investigator upheld the complaint concerning the DB transfer and required Portal to pay compensation. In short she didn't think that Portal fairly considered Mr R to be an insistent client. She also didn't think Mr R would have gone ahead with the transfer without Portal's involvement. She added that Portal didn't explore what benefits Mr R could take from his DB scheme immediately and put that option to him.

Portal didn't agree with our investigator's assessment of the complaint. Amongst other things it said:

- Mr R was clear that he wanted to go against Portal's recommendation.
- He completed the insistent client form in September 2017 after the first suitability report because he also wanted to access taxable funds. The first suitability report issued in August 2017 was a recommendation to access TFC only.
- Portal followed the regulator's guidance in going through the insistent client process.
- It believed Mr R would have gone ahead with the transfer anyway.
- It wouldn't have continued with the insistent client process if it felt that Mr R had shown a clear lack of understanding of it.

The investigator wasn't persuaded to change her opinion. But she updated her assessment to include an analysis of Mr R's complaint about the transfer of his personal pension. In short she said she didn't think Mr R would have transferred his personal pension if he wasn't also transferring from his DB scheme. And she said she didn't think Portal had made the risks of transferring from his personal pension clear. So she said Portal should compensate Mr R for any loss as a result.

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook ('COBS').

Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of BUSINESS's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those given by the investigator.

The regulator's position

The regulator, the Financial Conduct Authority ('FCA'), says in COBS 19.1.16 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 R's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. Indeed Portal also identified that it wasn't in Mr R's best interests in response to the complaint and said that was why it treated him as an insistent client. That is a consumer who wishes to act against its advice.

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

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

The regulator said the advice should be set out clearly in the suitability report, and that it needed to be clear with its client about the risks of their chosen course of action and that he

is acting against its advice. The regulator also added that if the client used their own words to indicate that they want to act against an advising firm's advice, this would normally be clear.

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

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

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

Robust warnings were given and documented."

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

Portal's advice and its decision to treat Mr R as an insistent client

In reply to Mr R's complaint Portal said it had advised him not to transfer out of his DB scheme. But, as Mr R wanted to go against its advice it treated him as an insistent client. It said it was fully compliant with the regulator's guidance when doing so.

I've looked carefully at Portal's recommendations and its decision to treat Mr R as "insistent", particularly in respect of the regulator's position, to see whether I think Portal acted fairly.

Despite what it's said in its responses to Mr R's complaint, it's not the case that, "*throughout the process*" Portal advised Mr R not to transfer out of his DB scheme. Indeed Portal's initial recommendation, made in its 8 August 2017 suitability report was that Mr R *should* transfer out of his DB scheme. It said that this would.

"deliver greater ongoing benefits than your current provider."

Portal recognised this was its advice when it responded to our investigator's initial assessment of the complaint. At that time it agreed that its initial recommendation had been for Mr R to transfer and take maximum TFC.

Following that recommendation Mr R rang Portal, on 22 August 2017. Portal recorded that he told it that, as well as taking TFC of £12,594, he also wanted to take a taxable amount of £28,650. It seems that Mr R had chosen that sum, £28,650, as that is the most he could take without his income going into the higher tax bracket. Portal didn't think it was in Mr R's best interests to take the taxable lump-sum. On that basis it decided to treat him as an insistent client. But, it continued to recommend that he should transfer out of his DB scheme.

When Portal wrote to Mr R on 13 September 2017, it appended an options form to its letter, asking Mr R to tick the box next to the option he wanted to go ahead with. The first two options involved Mr R going against Portal's advice. But the third, which was for Mr R to accept Portal's recommendation said:

"I want to transfer to a flexi-access drawdown plan, take tax free cash of £12,594 from both of my pension plans and a taxable lump sum of £22,749 from my [personal] pension

scheme. I will transfer the residual amount of my [DB scheme] plan into a flexi-access drawdown."

That is very clearly a recommendation that Mr R *should* transfer out of his DB scheme. It also says Mr R should take a taxable lump sum of £22,749. So Portal's argument that it hadn't recommended Mr R *should* transfer out of his DB scheme is not supported by the facts. It had very clearly made recommendations that Mr R should transfer out of his DB scheme both in its first suitability report and then in its options form on 13 September 2017.

The insistent client form it also sent with that letter said:

"I understand that [Portal's] recommendation is not to access my [DB scheme] pension early by taking more than my tax free cash entitlement. By disregarding this recommendation and instructing [Portal] to continue I understand that I am going against this recommendation and I am therefore an insistent client."

I find that anything but clear. In saying that Mr R should not take "*more than his tax free cash*" Portal implied that it was recommending he take his TFC, which is the same thing as a recommendation to transfer out of his DB scheme, as Mr R couldn't access TFC from the scheme without transferring.

Also the 13 September 2017 letter said that while it was against its advice for Mr R to take TFC and a taxable lump sum, it could help him to do that if he wanted to. So, Portal presented the possibility of transferring out of the scheme and taking a taxable lump sum on an insistent client basis, alongside the basic recommendation which appears to have been to only take TFC. Since Mr R complained Portal now argues that its actual advice was to leave his DB funds where they were. But if that was the case its advice was anything but clear, in fact it was misleading.

Further, if Portal did intend to advise Mr R to stay in the DB scheme, or to not take a taxable lump sum, it made it far too easy for him to disregard that advice by acting on an insistent client basis. Portal now argues that transferring out of the DB scheme was not in his best interests because the critical yield could not be met. But it plainly made an initial recommendation to transfer out of the DB scheme. And its follow up communication after that wasn't clear. It still appeared to be recommending Mr R transfer and take TFC. The implication being that it was only treating Mr R as an insistent client because he also wanted to take a taxable lump sum. So, it was Mr R's desire for the taxable sum that was against Portal's recommendation, not simply transferring out of the DB scheme. But even then Portal said it would help him to both transfer out and take a taxable sum anyway.

So, as well as giving muddled advice I think there were flaws in the manner in which Portal applied the insistent client process. What Portal should have done was given Mr R the amended report with clear and unambiguous advice not to transfer out of the DB scheme or to take a taxable lump sum. That would have placed the onus on Mr R to contact it again to find out what he needed to do if he did genuinely insist on going against its recommendation.

In addition, apart from the flaws in Portal's process, its communication was anything but clear. Its second suitability report and the declaration it asked Mr R to sign in order to proceed both say that Mr R should not transfer out of the DB scheme because of the benefits he would be giving up. But this is clearly at odds with the option it gave Mr R in its letter of 13 September 2017, which said Mr R should transfer out of the scheme. It's also notable that there's no reference to its recommendation that Mr R should take taxable cash of £22,479 anywhere in the second suitability report. Portal clearly referred to this on the options form it sent to Mr R on 13 September 2017. But it didn't explain why it had referred to this sum in its suitability report.

Further under a heading of “*Our Recommendation*” the second suitability report says:

“We have already recommended that you do not access your [DB scheme] early by taking more than your tax free cash entitlement and instead leave your pension funds where they are because of the benefits you will be giving up. However, you have decided to disregard this recommendation and are aware that as a result we must now treat you as an insistent client.”

But that recommendation is contradictory. It says that portal had recommended that Mr R should not take “*more than your tax free cash entitlement*”, which implies that it was recommending that Mr R should take his TFC. That’s something that Mr R could achieve by transferring out of his DB scheme. And that would match with Portal’s recommendation in its first suitability report. But then in the same sentence it says that Mr R should leave his funds where they were because of the benefits he would be giving up. So the same sentence says Mr R should both transfer out of his DB scheme and stay in it. I can understand if Mr R was confused by this, as I think most readers of it would be.

Portal only decided to treat Mr R as an insistent client when he said he wanted to take taxable cash as well as TFC. So the clear implication is that Portal thought it was in his best interests to transfer out of the DB scheme but to limit the level of that transfer to TFC. And I can understand that, from Mr R’s perspective, the only difference between Portal’s initial recommendation and his own preference for taking the taxable sum, was that he’d have to pay tax on it.

Portal’s second suitability report did say that its recommendation was that Mr R should leave his DB funds where they were, and it did highlight some of the risks and set out some of the benefits he’d be giving up by doing so. But it’s recommendation was curiously worded at best. And the report also included a recommendation to transfer out of the DB scheme. Further it sent its 26 page suitability report alongside a two page cover letter. Mr R most likely felt that the cover letter was a summary of the contents of the second suitability report. The cover letter says:

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

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

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

- ✓ *You will receive your tax-free lump sum of £12,594.*
- ✓ *You will receive your gross taxable lump sum of £28,650.”*

The cover letter goes on to explain what Mr R needed to do, for example by completing forms, in order to make that happen. So all the information in that cover letter gives the impression that Portal was recommending that Mr R *should* transfer out of his DB scheme. So I think its advice was ambiguous. And I don’t think it can fairly rely on its recommendation in its second suitability report for Mr R not to transfer. That’s because its recommendation was muddled. It also relied on an out of date figure that wasn’t guaranteed. And it was followed up immediately with information about how Mr R could proceed anyway. I think that sent mixed messages about what its genuine recommendation was. And the second suitability report, while saying, rather unclearly, that a transfer wasn’t recommended, went on to recommend a transfer to the SIPP.

Further, I don’t think any of Mr R’s objectives were worth giving up the valuable benefits of his DB scheme for. While Mr R was paying off a loan and a credit card bill, this was

managed and there's no evidence he was struggling with his repayments. And the benefits of not having to repay debts in the short-term had to be offset against potentially being worse off in retirement, at a time when he would no longer be working and he would need to rely on his pension. So, had Portal tested this objective further, Mr R might have seen the option of clearing his debts, as something that might benefit him in the short-term but that certainly wasn't worth giving up a guaranteed pension for.

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

I also don't think Portal fully explored what Mr R's wants and needs were. And I don't think it met its obligations to challenge Mr R's objectives in light of what he would be giving up. Indeed Mr R had a disposable income of around £400 each month. So he had no urgent need to repay his debts. Similarly, while I can understand that the prospect of going on holiday might be attractive, this clearly wasn't something that was essential for Mr R. Likewise, while I can see the benefits of an emergency fund, Portal didn't establish why this was so important to Mr R that it was worth giving up guaranteed pension income for. In fact, as far as I can see, Portal didn't attempt to find out just how much Mr R thought he would need. And without that information Portal wasn't in a position to give him suitable advice.

Also, I don't think Portal gave Mr R all the information he needed in order to make an informed choice. For example, the DB scheme would have allowed Mr R to access benefits from it at age 55. And while it's likely that the level of TFC and his annual pension would have been greatly reduced by taking his DB funds early, there's no evidence Portal considered this at all. This could have provided Mr R with a modest amount of TFC while also providing an ongoing, index linked and guaranteed income for the rest of his life. It might well have been the case that the sums on offer to Mr R from his DB scheme at age 55 wouldn't have been suitable for him. But it's something that Portal should have put to him before deciding he was an insistent client.

Furthermore, when the DB scheme administrators provided information about the likely benefits available from the scheme, it said that the CETV was only guaranteed until July 2017. But, by the time that Portal sent its first suitability report that date had already passed and so the CETV wasn't guaranteed. That means the figures that Portal referred to in both of its suitability reports were already out of date. In November 2017 the DB scheme administrators provided a revised CETV. That said that the full CETV was £23,800 but because the fund was in deficit the trustees were offering a reduced CETV of £19,819.

Portal then acquired a second transfer value analysis. But this was completed on the full value of £23,800, rather than the lower amount of £19,819. So the figures in it aren't at all accurate. It's notable that Portal also asked Mr R to sign a declaration to say that he was happy to proceed by transferring £23,800 from his DB scheme to his SIPP. The declaration added that the critical yield for this sum was 10.2%. But the DB scheme administrators weren't offering Mr R a CETV of £23,800, they were only offering £19,819, which meant that Mr R would receive £3,981 less than Portal had told him to expect. And the critical yield also wasn't accurate because it was based on the wrong figure. I believe these are issues that, in order for Portal to give Mr R information that was clear, fair and not misleading, needed to be brought to his attention. But I haven't seen evidence that Portal made the change in figures clear to Mr R..

I also think Portal should have done more to bring the reduced level of Mr R's CETV to his attention. Portal did say in its suitability report that the CETV had been reduced from

£24,202 to £20,047 because the scheme fund was in deficit. The report also said that the DB scheme was covered by the pension protection fund ('PPF'), which could ensure that Mr R received at least 90% of his entitlement under the DB scheme. But what Portal didn't make clear was that the CETV which the DB scheme administrators were offering initially was only around 83% of its full value. Also the DB scheme administrators told Mr R that its trustees had put in place arrangements to reduce the scheme's shortfall, although they couldn't say when that would be achieved by and if they managed that it would have increased his fund value by around 17%. So I would have expected to see clear evidence that Portal raised this with Mr R to ensure he understood that, if he remained in the scheme, he was likely to receive higher benefits from it in the future than by transferring out when he did. But I've seen no evidence that Portal clearly brought this to Mr R's attention.

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

I've noted that Mr R told Portal that he wanted to go against its advice and for it to treat him as an insistent client. But it had previously told him that he should transfer out of the DB scheme. And it's later advice that he shouldn't do so – if that's what it was trying to say – was anything but clear.

On balance, given the failings set out above, I don't think it would be reasonable for me to conclude the process Portal followed meant that it was fair to truly regard Mr R as an insistent client. So I don't think it acted in his best interests.

Portal was in a good position to have analysed, tested, challenged and advised Mr R about what was in his best interests for retirement planning. It knows pension pots like Mr R's DB scheme were paid into with the intention of providing for retirement. But Mr R's chosen path was to give up that income in retirement for a shorter-term solution, rather than long-term planning. But I've seen no evidence that Portal challenged Mr R's reasons for doing that. Indeed initially, in its first suitability report, Portal clearly recommended that Mr R should transfer out of his DB scheme, even though Portal later said that an alternative pension was unlikely to grow at the required rate. And I don't think that applying an insistent client label to someone when they express that their preference is not to follow advice, is the same as applying the rigorous process of arriving at a fair determination of who an insistent client really is. And I don't think the process Portal followed was consistent with the regulator's expectation.

It follows that I don't think Portal treated Mr R fairly. I've also considered what's likely to have happened if Portal's advice not to transfer had been more robust and had followed a more effective process. And, had that been the case, I don't think Mr R would have insisted on transferring out of the DB scheme. I say this because Mr R had no investment experience and no urgent need for the funds.

So if Portal had clearly and consistently presented that it wasn't in Mr R's best interest to transfer out of his DB scheme and contrasted the short-term benefits of doing so against the loss of guaranteed income and benefits in retirement, I think he'd have heeded Portal's advice not to transfer the funds from his DB scheme. It follows that, if Portal had provided him with clearer advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

Portal's recommendation for Mr R to transfer his personal pension to a SIPP

It's worth pointing out that from the outset Portal's advice was that Mr R should transfer both his DB scheme funds and his personal pension funds into the named SIPP. Neither of Portal's suitability reports go into any real detail about what benefits there were to Mr R to transfer his personal pension to a SIPP. Although the first suitability report does say that Portal believed the SIPP would deliver greater ongoing benefits than his current provider. But the report doesn't provide any analysis or figures to support that statement, so, I don't know how Portal arrived at it. And I don't think it set out why this was in Mr R's best interests in its communications with him.

But, what I can say for certain, is that Portal gave Mr R the clear impression that by transferring his funds, from both pension pots, he could access TFC of £12,594. I've already said that I don't think Portal should have recommended – at any point – that Mr R should have transferred his funds from his DB scheme. But Portal clearly made that recommendation initially and dangled the possibility of TFC in front of Mr R even though transferring from his DB scheme wasn't in his best interests. But what probably sweetened the deal in Mr R's mind was the increased sums available because of the cash he could take from his personal pension. But, if Mr R wanted to access those funds at that time he had no need to involve Portal at all.

In fact Mr R contacted Portal in June 2017, before it had made any recommendation, to say that his personal pension provider had told him that, if he wanted, he could access his benefits directly from it. I've only seen a very brief note of that call, but Mr R apparently told Portal he was happy to stay with it.

I haven't been party to what Portal actually discussed with Mr R at the time to say what the benefits or disadvantages of staying with Portal were. But what is clear is that Portal changed its advice, and wrote its second suitability report, after Mr R told it he wanted to take taxable funds of £28,650 from his pension funds as well as his TFC. And while I think Portal did the right thing in telling Mr R that this was against its recommendation, because Mr R would essentially be significantly depleting his retirement funds, I don't think its advice went far enough.

Mr R apparently told Portal he wanted the additional funds so he could put a deposit down on a home. And he chose that sum in order to "stay away" from the 40% tax bracket. So the additional £28,650 wasn't the sum he needed in order to put down a deposit for an imminent home purchase, it was just the highest amount he could take without having to pay higher rate tax. But I've seen no evidence that Portal asked Mr R how much the property he was intending to buy was or what deposit he actually required. And, in order to take the taxable sum as well as TFC Mr R would have to entirely clean out the funds from his personal pension and also take a significant chunk from his DB scheme funds. But there's little evidence that Mr R needed the full sum of (£12,594 + £28,650) £41,244 for an actual deposit, as it doesn't appear that he was actively seeking a property at that time. So Portal should have ran through Mr R's other options with him. One of those options should have been to leave his funds where they were until such time as Mr R actually needed the money.

Another option would have been for Mr R to leave his DB funds untouched and to take the funds from his personal pension. Mr R was in a position to take cash directly from his personal pension himself. He didn't need Portal's involvement in order to do that and this was something Portal was aware of. So, if he'd insisted on accessing funds he could have taken all the money from his personal pension, which at that time was £30,332. That would have been made up of £7,583, which would have been payable as TFC and the remaining £22,749 would have been taxable. Those sums would certainly have allowed Mr R to achieve his objectives with money left over to put towards a deposit for a home, if that was what he wanted. And what Portal should have made clear to Mr R is that by taking that

action he would not need to pay Portal its 7% fee for arranging the transfer from his personal pension. And in so doing he would be £2,123 better off.

Mr R wanted access to a sum at least equivalent to his entire personal pension plan fund. So, there was no reason for him to transfer his personal pension to a SIPP only to almost instantly deduct a sum that was more than the entire fund shortly after. That meant that the fund had no real prospect of any growth in such a short space of time, which could have been Portal's only justification for arranging the transfer. But because Portal arranged the transfer that meant Mr R would have to pay Portal its 7% fee. There was simply no need for him to incur those charges. This is something that Portal should have been aware of and so should have brought to his attention. So even if Mr R insisted on taking TFC and taxable cash from his personal pension, he had no reason to transfer the funds into a SIPP first.

Instead, at the very least, I think Portal should have made it clear to Mr R that he had nothing to gain by transferring his personal pension to a SIPP and then deducting the sums he was looking to take. It should have advised Mr R that if he was insistent on taking a higher sum then he should have taken it directly from his personal pension without paying a fee to Portal. It should also have advised him to leave his DB scheme in place, so he didn't lose its guaranteed benefits and which were likely to increase over time as the scheme trustees addressed the funding shortfall. But it didn't do that. And, if Portal had been clear with him that this was an option then he could have simply taken the funds from his personal pension. But he didn't do that because Portal didn't make it clear to him that this was better for him than transferring to a SIPP, paying fees to Portal for doing so and then taking the funds out of the SIPP.

It follows that I think that, given appropriate advice, Mr R wouldn't have transferred his personal pension funds to the SIPP. So I think Portal needs to, as far as possible, return Mr R to the position he would have been in but for its unsuitable advice.

Our investigator recommended that Portal should address any losses Mr R suffered because of the transfer from his personal pension to the SIPP by calculating a notional value of what his personal pension would be worth now if he'd left it untouched and comparing that against what the equivalent fund is worth now. She said that calculation should make adjustments for any sums Mr R had taken out of his fund. She also said Portal should compensate Mr R for any fees he wouldn't otherwise have had to pay. However, given that Mr R deducted a sum from his SIPP that was more than the entire value of his personal pension then I don't think there is any merit in Portal making the notional value calculation our investigator recommended. That's because, after making the amendment for the amounts Mr R had taken from his funds, the notional value will undoubtedly be zero, which means that no compensation would be payable.

But, as I've said above, if it wasn't for Portal's unsuitable advice, Mr R could have accessed his personal pension funds directly from his personal pension provider. And in those circumstances he wouldn't have had to pay Portal's fee, which I understand was based on 7% of the quoted transfer value. So, I think it would be fair for Portal to compensate Mr R for the fees he paid to it for arranging the transfer of his personal pension. And, as he's had a loss of use of that money, it should add simple interest to it at a rate of 8% a year.

Further as I think that, if Portal had given Mr R appropriate and clear advice about leaving his DB funds untouched he would have left those funds were they were, I think Portal should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Of course, I have to consider whether Mr R would've gone ahead anyway, against Portal's advice. Portal argues that this is the case, although it hasn't clearly explained why it believes

that would be so. But, as I've said above I think if Portal had given clear advice that transferring his DB funds to a SIPP wasn't in his best interests he wouldn't have done so, particularly as he could've taken funds from his personal pension if he was determined to take some cash. It follows that I think Portal needs to take appropriate steps, as set out below, to address Mr R's losses.

Putting things right

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

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.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr R whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

For clarity, while Mr R has taken funds from his pension pot, he has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age 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 R's acceptance of the decision.

Portal may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R'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 R as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to 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 R 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% a 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 R.

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

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Portal to carry out a calculation in line with the updated rules and/or guidance in any event.

Also, Mr R shouldn't have had to pay charges to Portal for arranging the transfer of his personal pension fund, as he could have accessed those sums without incurring a fee. So, in order to put him back into the position he otherwise would have been in I think Portal should reimburse Mr R for the proportion of its fee for arranging the transfer from the personal pension to the SIPP. It should add simple interest to that sum at a rate of 8% a year from the date Portal took payment to the date it reimburses him.

My final decision

Determination and money award: I uphold this complaint and require Portal to pay Mr R the compensation amount as set out in the steps above.

Additionally I require Portal to reimburse Mr R for the fees it charged him in relation to the transfer of his personal pension funds into a SIPP. It should add simple interest to that sum as set out above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 November 2022.

Joe Scott
Ombudsman