

The complaint

Mr H complains about the advice given by Portal Financial Services LLP to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). Portal processed the transfer of Mr H's scheme benefits to the SIPP on an 'insistent client' basis. Mr H says Portal badly advised him and has caused him a financial loss.

What happened

In or around late 2014, Mr H had recently turned 55 and was employed earning around £15,000 a year. He wasn't intending to retire for the foreseeable future. Mr H had no savings, assets or investments and lived in rented accommodation. His only retirement provision (other than his state pension) was his employer's DB occupational pension scheme which, in December 2014 was calculated to give him an income of £3,294 per year and a tax-free lump sum of £4,767 at his normal retirement date (NRD) age of 65.

Mr H came into contact with Portal after having seen an advertisement about releasing cash from pensions. Mr H had gambling debts and payday loans totalling £8,000, which he was paying off at £900 a month, and thought that he might be able to access some cash from his pension to clear them.

Portal sent Mr H a TVAS report on 12 January 2015 and wrote to him inviting him to set up a telephone appointment with one of its paraplanners. The letter said that the paraplanner would talk through the options. The report said that the critical yield required for Mr H's SIPP to grow in order to match the benefits he had under his DB scheme was 10.8% if he took a full pension or 9.3% if he took tax-free cash (TFC) and a pension.

On 20 January 2015, Portal took some details from Mr H over the phone and completed a fact-find. It noted that Mr H was in good health, that he didn't want to take an income from his pension at that point, was still working and that his main objective was to take the maximum TFC available in order to clear down debts, free up his income and help his daughter move to America.

Portal noted Mr H's income was £1,200 per month, that it had discussed with Mr H the loss or reduction of his guaranteed DB scheme benefits and that if he took TFC now, then he could not take any TFC at a later date. Portal also carried out an assessment of Mr H's attitude to risk (ATR), which it deemed to be 'moderately cautious'.

On 21 January 2015, Portal sent a letter to Mr H in which it said his DB scheme had a cash equivalent transfer value (CETV) of £50,827 from which he could release a lump sum of £12,706 as TFC. It went on to say that as the critical yield was 10.8%, the transfer was against its recommendation. It further stated that Mr H would be waiving his entitlement to a guaranteed pension of £3,937 and TFC of £5,698 at his NRD of age 65. The letter immediately went on to say that if he did still want to effect the transfer then it could help him do so that but it would need to treat him as an 'insistent client'. The letter included an options form and asked Mr H to tick the box on the form that was right for him.

Mr H signed the form on 24 January 2015. It said at the top that the form was to let Portal know whether Mr H still wanted to go ahead and access his pension fund early even though this would go against its recommendation. Mr H ticked the box that said; *'Option 1: Income Drawdown – After taking the tax-free cash sum of £12,706, the residual amount of £38,121 will be reinvested until you require an income. You will be treated as an insistent client'*. The form also included a second section which included some typed paragraphs where Mr H stated that he understood that his plan was unlikely to achieve the critical yield necessary to match the benefits of his DB scheme, that he was giving up a guaranteed pension and lump sum and what his pension might look like at NRD if he took the TFC he was intending to take. Finally, the form stated that Mr H understood he was transferring his DB pension against Portal's advice.

Portal sent Mr H its suitability report on 29 January 2015 together with a covering letter. The covering letter said it was recommending that Mr H transfer his pension to a SIPP and that in so doing he would receive the TFC previously identified and that he would have access to further advice whenever he decided to take an income from the funds. The letter also asked that if Mr H agreed with its recommendation then he should sign the enclosed forms.

The suitability report said that Portal recommended that Mr H leave his DB scheme where it was but, being treated as an insistent client, he had asked Portal to make a recommendation about how he could utilise his pension funds. Portal said that it was therefore recommending that he transfer it to a SIPP (with 'N'). The report said that the recommendation allowed Mr H to meet his objectives to repay his debts and help his daughter go to America. It went on to say that it was recommending Mr H transfer his DB scheme to a balanced portfolio offered by N that included a mixture of equities, fixed interest securities, secured bonds and cash. Portal said it had based this recommendation on Mr H's ATR, capacity for loss and term to NRD.

Mr H signed the transfer forms on 12 March 2015 and the transfer took place shortly after. Portal's fee for arranging the transfer was 5% of the total transfer value. It also charged 1% of the fund value per year for reviewing Mr H's investment. N charged an initial fee of £180, an annual fee of £75 and an annual management charge of 0.5% of the fund value.

In October 2020 Mr H complained to Portal about the suitability of the transfer advice and the charges he incurred as a result. He said Portal had failed to provide clear and understandable advice about the comparison of pension benefits between the DB scheme and the proposed SIPP. Mr H said the suitability report referred briefly to his stated objective to clear down debts but otherwise provided only generic objectives. He said there wasn't any consideration about whether his only stated objective could have been met without transferring away from the scheme. Mr H said that had he been clearly warned about the specific benefits he was giving up he would've accepted that advice.

Mr H went on to say that he was reliant on the DB scheme as his only pension provision. And he said he was asked to sign an insistent client form facilitating the transfer before any suitability report was produced. Finally, Mr H said he wanted compensation to put him in the position he would have been in had he received suitable advice from Portal.

Portal looked into Mr H's complaint but didn't think it had done anything wrong. It said it had clearly communicated to Mr H that it wasn't in his best interests to proceed with the transaction. And it said it had made him aware of the guaranteed benefits he was giving up. Portal said it had followed the correct regulatory procedures in place at the time and had provided Mr H with all the information he needed to make an informed decision but that he had wished to proceed as an insistent client.

Mr H referred his complaint to our service in June 2021. Our investigator looked into the complaint and recommended it was upheld. He thought that Portal's insistent client process was flawed and hadn't done enough to explain to Mr H why the transfer wasn't in his best interests. He said that given Mr H's ATR and lack of investment experience, Portal should have exercised more caution when it said it could assist Mr H as an insistent client. Our investigator recommended that Portal pay compensation to Mr H.

Portal disagreed with our investigator's findings stating that it had acted in Mr H's best interests and made sure he understood about investment growth. It said it had advised against the transfer, had explained about, and compared, the benefits he would be relinquishing but Mr H decided to proceed with the transfer anyway. Portal said it had complied with all the regulator's requirements at the time of the advice and that it was satisfied that Mr H understood the risk he was taking by proceeding. It said the suitability report it sent Mr H made it clear that the transfer was against its advice and explained why the transaction wouldn't be in line with its recommendation. Portal also said its insistent client process and documents demonstrated best practice for insistent client transactions. It said that Mr H would have transferred his DB scheme without its involvement given the situation he was in.

Our investigator looked at the complaint again but wasn't persuaded to change his mind. He said whilst the regulator hadn't introduced guidance about insistent clients until 2018, advisers before that date were still required to conduct business with due skill, care and diligence. Our investigator said, with this in mind, he remained of the view that Portal's process for insistent clients was flawed. He said Portal had enabled Mr H to access his TFC without fully understanding if it was in his best interests to do so.

The complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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'). And 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

What follows 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 Portal'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 largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 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 H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

A key aspect in this case is Portal's categorisation of Mr H as an insistent client. An insistent client is one that wishes to take a different course of action from that being recommended and wants the business to facilitate the transaction against its advice.

At the time of the advice there were no regulatory rules in place in respect of insistent clients. But there were rules in the regulator's Handbook, which required Portal to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, COBS required Portal to provide information that was clear, fair and not misleading. So, Portal's recommendation had to be clear and Mr H had to have understood the consequences of going against the recommendation.

Portal says that it provided suitable advice and acted in Mr H's best interests. It says that it followed the correct regulatory requirements in place at the time. Mr H says Portal's advice was negligent and he's suffered a loss as a result.

Having considered all of the evidence presented, while Portal's suitability report did set out that its recommendation for Mr H was *not* to proceed with the transfer, I think there were weaknesses and failings in the advice process, which meant Portal didn't act in Mr H's best interests. And I think it's likely that Mr H understood or believed overall that Portal was recommending he should go ahead with the transfer.

I say this because even before the fact-find telephone advice call Portal had with Mr H on 20 January 2015 it sent him a brief letter on 12 January 2015. That letter invited Mr H to set up a telephone appointment to talk through the options. The letter then went on to set out the CETV of the DB scheme and the also that the critical yield was 10.8%. And there was then a section that said, '*What are your options right now?*' after which three options were listed – to do nothing, to do a pension release to transfer benefits and release a tax-free sum of £12,706 or thirdly, to take full benefits and retire with an income.

This letter didn't set out any of the risks associated with making the transfer rather it went on to set out the advantages. Given the situation Mr H was in at the time, I think it was imperative, if it was to act in Mr H's best interests, that Portal set out the disadvantages alongside the advantages. But that isn't what happened. And the letter was sent before any fact-find was completed or any advice given.

Then, on 21 January 2015, following the telephone discussion about his pension options Portal had with Mr H the previous day, Portal sent him what I think can only be described as another brief letter with the outcome of its advice. The letter said that because of the growth rate required to match Mr H's guaranteed benefits from his DB scheme, and because he'd be giving up those guaranteed benefits, it recommended he should not transfer away from

his DB scheme to access a tax-free cash lump sum. But I don't think either that this letter clearly set out the risks associated with the transfer.

In this situation I'd expect the emphasis of the documentation to be the reasons why the transfer was not in Mr H's best interests. But the information on this form was limited to the loss of guarantees and the growth required to match his existing benefits. While Portal later sent a more detailed suitability report, which I will refer to later on, at this stage Mr H had little information to go off to decide if being an insistent client was truly in his best interests.

Yet immediately underneath the brief summary of why Portal recommended Mr H should not transfer away from his DB scheme, it said that he could go about doing it regardless, by effecting his right to transfer on an insistent client basis. And while it said this would be against Portal's recommendation, it enclosed the necessary forms Mr H needed to complete and return to pursue this option. And 'option 1' he was presented with was to go against Portal's advice – the second option was to do nothing as per its recommendation. It strikes me that Portal's process here was geared towards facilitating the transfer and that from the start of the relationship, Mr H was being led towards a transfer to secure his TFC regardless of whether it was in his best interests to do so.

I think if Portal firmly believed in its advice and recommendation and it was acting in Mr H's best interests, not only would it have given more detail upfront and placed greater emphasis on the reasons why the transfer wasn't in Mr H's best interests, it also wouldn't have told him at the same time as delivering its recommendation - albeit briefly - how he could put it aside and bypass it. I think the wording and the emphasis placed on how Mr H could ignore Portal's recommendation was unfair to him and wasn't in his best interests.

I don't think it was in Mr H's best interests to go against Portal's recommendation – yet Portal made it very easy for him to do so. I also think, given the context and the emphasis placed on this, that Mr H could reasonably have interpreted that overall Portal was recommending he go ahead and transfer.

I think also that it ought to have been clear to Portal that Mr H had little knowledge or experience of financial matters based on the information available at the time of the advice. For example there's nothing recorded on the assets section of the fact-find to suggest Mr H was an experienced investor – in fact it appears he was completely inexperienced. It is documented that Mr H even have a mortgage or any savings. I'm mindful too that Portal assessed Mr H's ATR as being 'moderately cautious'. This process involved Mr H giving answers to a series of questions – one of which was about his understanding of investments for which he ticked the box to say he strongly disagreed that he found investment matters easy to understand. Indeed the answers to the ATR questions Mr H gave indicated that he had a very low attitude to risk.

I think this should've put Portal on notice that it had to be very careful if it was to take Mr H through the insistent client route.

I can see that Mr H's insistent client forms included a declaration section where Mr H was required to sign that he understood what the critical yield was, that it was unlikely he'd be able to match the benefits held with his existing scheme, that he would be giving up guaranteed benefits which Portal didn't recommend he proceed with but if he still wanted to then he would be treated as an insistent client. It went on to say that Mr H wanted to proceed as his priority was to repay debt and help his daughter go to America (ahead of retirement planning) and also that he was fully aware of the charges associated with the transfer.

I don't think that in signing this declaration that it adequately demonstrates that Mr H knew and understood the risks involved and the recommendation he was agreeing to. I say this because the form was pre-completed and all Mr H had to do was simply tick a box and sign the declaration to say that he understood what he was giving up by transferring.

And crucially, as I indicated earlier on, Mr H, at this point, had yet to receive Portal's full suitability report. So he had had no time to read and digest it before having to decide if he wanted to go ahead anyway. So I'm not persuaded that at the time Mr H completed the forms on 24 January 2015 that he was in a position to make an informed choice here. And I don't think this document alone sufficiently demonstrates that Mr H was truly an insistent client.

It was only after receiving Mr H's confirmation that he wanted to proceed with the transfer that Portal sent him its full suitability report. And while this repeated the recommendation not to transfer out of the DB scheme, it was followed by a positive recommendation, advising Mr H to transfer his benefits to facilitate access to his tax-free cash. And this was all set out under a heading titled '*Our recommendations*'.

In order to fulfil the regulator's requirements under COBS 9.2, Portal needed to give Mr H advice on the overall suitability of the transaction envisaged, that is the transfer and the choice of pension and investment. Instead, it first gave Mr H advice on the advice to transfer, and only considered the suitability of the proposed alternative in the full suitability report *after* securing his confirmation to proceed on an insistent client basis.

So, by recommending that Mr H transfer his benefits to a particular scheme, not only did this undermine the recommendation not to transfer, I think Portal has effectively given him a recommendation to transfer out of his DB scheme. If Portal didn't think that transferring out of the DB scheme to a personal pension arrangement was in Mr H's best interests, it needed to ensure that it gave clear advice that the *whole* of the transaction was unsuitable for him. In my view it shouldn't have separated out the elements. For this reason, I think on receipt of the full suitability report Mr H likely believed Portal was recommending he transfer out of the DB scheme, and that it was reasonable for him to do so.

Mr H's main objective for accessing his pension early was to enable him to generate a lump sum which he could use to clear his debts. There's no record of what Mr H's £8,000 debt was comprised of, other than a general reference to payday loans and gambling debts, what the repayments term(s) were or the interest rates. All I can see from the fact find was that Mr H was paying £900 a month towards the debt. What I can't tell is how long exactly it would have taken him to completely clear the debt he owed. Based on the repayments and the total sum owed, it is possible that he could have been debt free within about a year. But if Portal was truly acting in Mr H's best interests, it would have obtained this information from him. That way it could advise him fully on his options. But it didn't. It only noted the amount of debt and that after outgoings each month of £300 and repayments of £900 Mr H had nothing left over from his monthly take home pay of £1,200.

There was no exploration of the term of the debt outstanding. And, if it was very short term, then I think Portal ought to have first considered whether Mr H could or should just continue with paying until his debt was cleared rather than relinquish his DB pension scheme. Nor was there any exploration of whether (as an alternative to transferring his pension and accessing his TFC) it was possible for Mr H to restructure the loan(s) to reduce the monthly repayments to a more affordable amount.

So, whilst Portal claims to have considered alternative ways for Mr H to meet his main objective of clearing his debt, having reviewed the evidence, I'm unable to agree. What options (if any) were discussed aren't documented. So whilst I can understand why Mr H might have said to Portal that he didn't want to take on any more debt or pay interest, given 75% of his take home pay was being spent servicing debt, I don't think accepting his statement without challenge can be said to mean Portal was acting in Mr H's best interests. I think it should have explored the debt situation thoroughly and given Mr H some options he was able to consider. Unfortunately, Portal's advice was presented to Mr H in such a way that he was likely left with the impression that the *only* way he could clear his debts and reduce his monthly outgoings was by transferring his pension and accessing the TFC. But as Portal didn't explore any possible options with him I can't know if this was actually the case or not.

I also can't see that Portal assessed what income Mr H would need in retirement or how he'd fund it if he transferred out.

Nor can I agree that advising Mr H to transfer his guaranteed pension benefits in order to access TFC so he could help his daughter take a holiday was in his best interests – particularly when, aside from his state pension, his DB scheme was his only retirement provision. I'm sure that being able to help his daughter go to America would have seemed attractive to Mr H but I cannot agree that it was suitable to advise him to transfer his DB scheme in order to access what would have been a relatively small proportion of the TFC, and for which there may have existed other means, unexplored by Portal, to raise it. I know that Portal stated in the suitability report that Mr H didn't want to take on any more lending but it doesn't seem to me that it explored the possibility of restructuring his loans, perhaps to take their repayment term out a bit, so he would have more disposable income available every month which he could have used to assist his daughter. I note too that no time frame was placed on his daughter's need for the money so it seems to me that Portal can't be said to have acted in Mr H's best interests if it didn't have a full understand of why, and when, he needed the money. I've seen no evidence that Portal explored any alternatives with Mr H.

I acknowledge there were no specific insistent client rules at the time. But I consider the regulatory rules and guidance that were in place at the time were clear that Portal had to act with due care and skill and in Mr H's best interests. By not seeking to properly understand Mr H's objectives and what he was really trying to achieve, and not fully exploring the alternatives before carrying things out, I'm not persuaded it can be said to have been acting in Mr H's best interests.

Ultimately I don't think Mr H was able to make an informed choice here – it seems to me that he most likely went ahead with the transfer as he believed it seemed like a good idea and it was the only way to meet his objectives. Portal failed to properly understand Mr H's overall position and overlooked or ignored any possible alternatives. Furthermore, I think the way Portal presented its recommendation to Mr H would've led him to believe it was giving him a positive recommendation to transfer out of the scheme. And I think this would've given Mr H the impression that Portal agreed with his approach.

Portal recommended that Mr H invest in four funds (5% in cash, 60% in equity, 10% in property and 25% in a global short dated bond). As I'm upholding the complaint on the grounds that Mr H cannot be truly regarded as an insistent client therefore making the transfer out of his DB scheme unsuitable, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr H should have been advised to remain in the DB scheme and so the investments in the SIPP wouldn't have arisen if suitable advice had been given.

Overall, and on balance, given these failings, I don't think it would be reasonable for me to conclude the process Portal followed meant that Mr H can truly be regarded as an insistent client - I think Portal made it altogether too easy for Mr H to agree that he was an insistent client. Portal's overall communication with Mr H wasn't clear or fair, it didn't act in his best interests and it failed to act with due care and skill.

I now need to consider if Portal had followed the insistent client process correctly, whether Mr H would've still gone ahead. Portal says that because of the situation Mr H was in he would've accessed his DB pension benefits early regardless of Portal's involvement.

But I disagree. If Portal had acted in Mr H's best interests, providing a recommendation on the suitability of the whole of the transaction envisaged at the outset, and addressing Mr H's true objectives at the time, I don't think he would've insisted on going ahead with the transfer. As I've outlined above, I don't consider Mr H to be an experienced investor who possessed the requisite knowledge, skill or had the confidence to go against the advice and recommendation he was given. I think he relied solely on the advice and process Portal employed.

So if things had happened as they should have, taking everything into account, I don't think it likely Mr H would have insisted on going ahead with the transfer.

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

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr H. So I've also thought about whether it's fair to award compensation for distress and inconvenience. Such awards aren't intended to fine or punish Portal but rather to recognise the emotional and practical impact its actions have had on Mr H. And taking everything into account, including that I consider Mr H is now at the age when his retirement provision is of greater importance to him, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

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 H 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 didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr H.

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

Portal must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

My understanding is that Mr H could have taken his pension benefits without reduction at age 65 and he has told our investigator that that is the age at which he intends to retire. So I think, had Mr H remained in his DB scheme, then he would have most likely accessed it at this point. Consequently Portal should base the compensation payment on Mr H's scheme's normal retirement age of 65.

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 H's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr H'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 H 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/her/their 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 H 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 H.

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.

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 uphold this complaint and require Portal Financial Services LLP to pay Mr H 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 H 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 H any interest as set out above on the sum of £160,000.

Portal Financial Services LLP should also pay Mr H compensation of £300 for the distress and inconvenience its unsuitable advice caused him.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Portal Financial Services LLP pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H 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 H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 November 2022.

Claire Woollerson

Ombudsman