

The complaint

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

What happened

Mr M approached Portal in April 2015 to discuss his pension and retirement needs. He says he was told by a friend that he could access his pension, so he wanted to look into this. He says he found out about Portal through an advertisement.

Portal then contacted Mr M's occupational scheme to, I understand, find out what his DB scheme deferred benefits were, the transfer value of them and how much tax-free cash he could release.

On 22 July 2015 Portal wrote to Mr M with some preliminary information about his options. It said that his DB scheme had a value of £30,812 and he could release £7,703 tax free cash from it. The letter also said he could do nothing, transfer and not take any benefits or transfer and take a cash lump sum and an income.

On 30 July 2015 Portal completed a telephone fact-find. This gathered information about Mr M's circumstances and objectives. This showed that he:

- Was aged 55 and single.
- Owned his own property. This was worth approximately £120,000 and it was subject to a mortgage of £35,000.
- Was currently not working and he was in receipt of state benefits only.
- He had cash savings of £2,000 which he was using to cover the shortfall in his income.
- He wanted to use the tax-free cash from his pension to purchase a car, he thought this would help him return to work.

Portal also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'moderately adventurous'.

On 7 August 2015, Portal wrote to Mr M with some information about the proposed transfer. It advised Mr M not to transfer his pension benefits into a personal arrangement. It said that the *'critical yield (the growth rate required to match your guaranteed benefits with this provider) was 11.6% it would be **against our recommendation to do this**. Furthermore, you would be waiving your entitlement to a guaranteed pension of £2,214 per annum which is payable at retirement age 65.*

However, this letter went on to say to *'If you still wish to go-ahead with pension release, we can still help you with this. As this is against our recommendation, we now need you to complete and return the 'insistent client form' confirming you are aware of the benefits you would be giving up.'*

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

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

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

Mr M completed and returned the forms saying he wished to proceed as an insistent client, In the section of the form to explain in his own words why, Mr M wrote *'To purchase a car so as I can return to work'*.

Portal then sent Mr M a suitability report on 27 August 2015. The cover letter said:

'I am pleased to enclose a copy of your suitability report that includes my recommendation. As of today's date, if you follow my recommendation you will:

- *Transfer your pension plan(s) to an (third party provider) income drawdown plan, whereby you will receive your tax-free cash lump sum of circa £7,703.'*

The first section of the full report said that ***'I recommend that you do not transfer your existing pension plan and leave your pension funds where they are. However, you have elected to disregard my recommendation and you are aware that I will now treat you as an insistent client. As an insistent client, you have asked that I make a recommendation on how you may utilise your pension funds.'***

The report then went on to outline the benefits that Mr M was giving up, his current situation and attitude and capacity to take risk, alternative ways to generate cash, the risks of the pension, information about pension schemes. The recommendation section again says that Mr M shouldn't transfer his pension but went on to say that *'As such I have considered a wide range of pension providers and recommend that your existing policy with ... be transferred to an ... (third party SIPP)'*. And then went on to provide information about Mr M's *'New Provider Recommendation'* and the recommended investments within this. Lastly the fees payable were shown.

The conclusion, amongst other things said that: *'Due to this I recommend that you to transfer your current pension arrangements to the ... (third party SIPP) ... whereby you may release up to 25% of your pension funds as a Tax Free Cash Lump Sum of circa £7,703.'*

Mr M completed the application forms – which included a further declaration acknowledging he was proceeding as an insistent client – and the transfer went ahead on the basis of this recommendation.

The transfer value of the DB scheme was around £30,800 and Mr M took tax free

cash of around £7,700. He invested the remainder in a range of funds. I understand Mr M has now withdrawn all of the funds.

Mr M complained in 2021 to Portal about the suitability of the transfer advice because:

- There was a conflict of interest as the transfers needed to complete before Portal would be paid for the advice.
- The advice focussed on releasing tax-free cash and didn't consider Mr M's needs properly. The focus was on releasing this tax-free cash before any advice was given which influenced his decision. He wasn't asked about his future income or retirement needs in any detail.
- It didn't provide sufficiently clear and understandable advice about Mr M's options, much of it was generic and it didn't provide clear warnings about making the transfer. The advice didn't properly consider his alternatives to purchase a car or how to use any insurance payment from his old car which was written off.
- The transfer wasn't suitable. Mr M was reliant on the money from the DB scheme for his retirement and other options weren't explored.
- He wasn't an insistent client, and it wasn't reasonable for Portal to treat him as one. It shouldn't have facilitated the transfer of the DB scheme. Treating him as an insistent client was 'back covering'.

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

- There wasn't a conflict of interest and Portal was acting within the regulations of the time. There wasn't specific insistent client rules or regulations.
- The advice was suitable for Mr M and it didn't concentrate on the tax-free cash available. That said it did meet his aim of helping him to purchase a car.
- But Mr M didn't want to use his savings to purchase a car and there was no mention of insurance money, or any other means, of him being able to do this. So, it was reasonable that he transferred his DB scheme.
- It was reasonable to treat Mr M as an insistent client. He confirmed at the time of sale that he wanted to proceed on this basis.
- Alternatives, such as debt management and other means to fund a car purchase were discussed.
- The funds he invested in were reasonable and met his attitude to risk.
- The documentation was clear and fully informed Mr M about the transfer

Mr M referred his complaint to our service. An investigator upheld the complaint and recommended Portal pay compensation. He said that it was established that the transfer wasn't suitable for Mr M. And he didn't think that Mr M was an insistent client. So, Portal shouldn't have advised Mr M to transfer the value of the scheme.

Portal disagreed, saying that:

- The insistent client process was robust and met the regulators requirements.
- A full analysis of his circumstances was provided, and Mr M agreed to proceed with the transfer on this basis.
- The information clearly showed the transfer wasn't in his best interests and outlined the benefits he would be missing out on.
- Alternatives were fully discussed with Mr M at the time.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

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

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

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 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 M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were Conduct of Business Sourcebook ('COBS') 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 M had to have understood the consequences of going against the recommendation.

The letter Portal sent to Mr M on 22 July 2015 was headed '*Reviewing your pension – here are your options...*'. It went on to confirm the transfer value of his DB scheme. It also said that a call would have to now take place to understand Mr M's circumstances and that options would be discussed.

Portal had only gathered some information about Mr M's DB scheme at this point. But it was already strongly emphasising that the transfer would be the right course of action. It said that personal pensions could:

'... provide great tax incentives (which you would be taking advantage of with pension release) and if the right investments are chosen they can still perform very well for you...

... If you decide to release some tax free cash from your pension then one of the things we would do is set up your pension so that you don't have to purchase an annuity when you decide to retire. This gives you much more flexibility in your choices at the time ...'

I think the contents of this letter suggests the approach already being skewed to a particular outcome. I don't think this was in line with the requirement to start by assuming the transfer was unsuitable.

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

Portal then completed a factfinding call. But the emphasis of the information recorded in the fact find was, in my view, the release of tax-free cash above all else. This was the first question under '*Client Requirements*' section. There is very little by way of questions about Mr M's income needs in retirement. Indeed, the only mention of this seems to be one question saying '*What annual income will you require when you retire?*' which wasn't answered.

The primary purpose of a pension is to provide benefits in retirement. So, the lack of any real consideration of Mr M's retirement needs makes it difficult to say that enough essential information was obtained to make a suitable recommendation. And the repeated emphasis within some of the questions around the need for tax-free cash could very well have led Mr M into thinking that this what Portal thought was best.

The bigger issue in my view though is the correspondence that then followed this. The next correspondence Portal sent Mr M was a letter on 27 August 2015 and the enclosed suitability report. This went on to say that, as I've outlined above, if Mr M followed Portal's advice he would transfer his pension and receive his tax free lump sum of circa £7,703. So, this is the cover letter that enclosed Portal full advice and it was summary of Portal's advice and personal recommendation to Mr M.

And in my view, should've made it clear that it had understood enough about Mr M's circumstances for Portal to believe its advice was suitable and provided comparisons, or detailed information, in order for Mr M to make an informed opinion. But there was no further reason given in the letter itself for this recommendation or why Portal had reached this conclusion.

This letter enclosed the suitability report. Again, as I've outlined above this did, in direct contradiction to the cover letter, say that Mr M shouldn't transfer his pension. But the only additional explanation of the recommendation was by saying '*A Critical Yield of 11.6% applies to this plan. That means any new plan would have to grow by 11.6% each and every year to achieve the same guaranteed benefits as your existing pension plan.*' Suggesting this was the reason for the recommendation made. But there was no further explanation or reasoning about this. I don't think it's reasonable to assume that Mr M would have understood this.

I think Portal was correct that the required critical yield was unlikely to be achievable. And it's worth mentioning here that the critical yield showing on Portal's transfer analysis (TVAS), where a full match of Mr M's scheme benefits is taken is 11.6%, or 9.6% if tax-free cash is

taken, both at age 65. And this meant that a transfer was not financially viable. But this isn't the only thing I'd have expected Portal to have taken into account before making a personal recommendation. The critical yield is important, and a strong indicator of whether retirement benefits are likely to be better or not by transferring. But this isn't the only consideration for whether advice is suitable.

There can be reasons that it is in a consumer's best interests to make a transfer, even if the retirement benefits will be lower. And I'd have expected to see some consideration of these as Portal was making a personal recommendation to Mr M and for these considerations to be explained to Mr M so that he could make an informed decision.

Portal's recommendation letter does talk about the reason for the transfer, this was a car purchase. But I think it's fair to say that this letter contained only a very cursory reference to this. I think it's likely that Mr M saying he wanted to do this was accepted as reasonable without much investigation. And Portal accepted that his short-term need for this was a good enough reason to materially lower his retirement income without much analysis of it.

There was also no detailed assessment provided about what alternative ways of raising the required money had been considered, or why these had been discounted. There was a section entitled alternative ways to generate cash, but this was very brief and seemingly generic. I'm not persuaded Mr M's other options to meet this need were fully considered.

There also doesn't seem to have been any consideration to Mr M taking benefits under his existing scheme at that time. As I've said, I acknowledge a TVAS was carried out. But none of the information I've seen indicates this was shared with Mr M. Neither of the letters sent in August 2015 make any reference to the information within the TVAS, beyond the critical yield, or to it being included for review. And I haven't seen any other evidence that it was shared. So, I can't reasonably say that Mr M had the opportunity to review this document.

In any event though, Portal didn't look at the potential for immediate retirement. Mr M was 55. And in the 'scheme information' section of the TVAS report, it was noted that 55 was the earliest retirement age allowed by the scheme. So, it appears he was eligible to take benefits under the DB scheme at that point. But that doesn't appear to have been talked about at any stage of the advice process. Indeed, the TVAS report looked at what Mr M would be able to take at age 57, as well as the assumed scheme retirement age of 65. But I've seen no reason for this or why instead it didn't cover what could be taken at age 55.

The TVAS report indicated that at age 57 Mr M would've been able to take tax-free cash of £8,556 under the DB scheme and then receive a guaranteed escalating income of £1,375 per year. If he'd taken benefits at age 55, these figures would likely have been lower. But I think it is reasonable to assume that the tax-free cash would've been enough to provide the amount Mr M wanted, or very near it. And he'd have then received a guaranteed escalating income. But again, I've seen no evidence that this option was considered or discussed with Mr M. And I'll reiterate I'm not persuaded that there was a real pressing need for the tax-free cash.

The suitability letter does not compare the pension that Mr M was giving up. The options did mention that the projected benefits Mr M could potentially take by staying in his existing scheme until age 65 were a pension of £2,214 per year and tax-free cash of £9,818. But there was no comparison within the recommendation between this and what Mr M may potentially receive by transferring (aside from immediate tax-free cash).

Without any of this information, or indeed any substantive reasoning being provided in writing for why Portal didn't recommend Mr M transfer, I don't see that Mr M could reasonably have understood why this was apparently Portal's advice. So, I don't think Portal

provided full and clear advice to Mr M. And as a result, I don't think he was in a position to make an informed decision – about the transfer or about being an insistent client. And so, I don't think the advice given by Portal, was suitable.

Insistent Client

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

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

I do acknowledge that the forms Portal provided included a section for Mr M to complete in his own words to explain why he wanted to transfer. And I can see he did this, saying he understood the effects of doing so. But given the lack of any reasoning with the recommendation made and there being no evidence of any other comparison being provided to this, I don't think Mr M was in an informed position or could in fact fully understand the apparent risks. So, I think this statement holds less weight and I think was likely only made because Mr M believed he could access some additional funds.

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

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

There were some brief mentions of Mr M's circumstances but these weren't very detailed and really rest on his want to buy a car. I appreciate that Mr M may have been in a difficult situation, he of course may not have been, it's hard to conclude this with any certainty given the brief information about his circumstances. And this may have seemed like a reasonable way to solve this. But there is very little commentary on why Mr M couldn't take on any form of borrowing, when he would return to work and how much a car would cost. There was no examination of his expenditure at all. And the adviser's job here is to provide detailed advice about his circumstances. I don't think this happened here.

As I've outlined above a part of the report contained additional detail in respect of alternative funding options. It said using a loan, re-mortgage, disposable income or assets had been discounted as not financially viable. But I don't think this demonstrates a genuine consideration of these options in any depth.

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

The focus of the suitability report was also largely on the new provider that Portal was now recommending as well as the portfolio mix it was suggesting and why it was doing so. And the covering letter that accompanied the report clearly said that Portal was recommending that Mr M transfer his pension.

This, I think, supports what Mr M has said – that his understanding was Portal was in fact recommending the transfer. At the very least it significantly muddled the waters. Which I think on balance likely led Mr M to believe that Portal felt the transfer was appropriate. And made it next to impossible for him to make an informed decision.

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

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

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

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

Would Mr M have acted differently?

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

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

And, in my view, this meant Mr M wasn't able to make an informed decision. If he had been provided with more appropriate information and reasoning, so that he fully understood the

risks and long-term implications involved in transferring his DB scheme and investing as he did, and hadn't been directed towards the 'insistent client' route, I think he would have acted differently and retained his deferred benefits. As a result, I think Mr M's complaint should be upheld.

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

Summary

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

Putting things right

Portal should pay Mr M £300 for the distress caused by the unsuitable advice.

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 M 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 M.

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for Portal's unsuitable advice. I consider Mr M 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.

For clarity, Mr M 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 M's acceptance of the decision.

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

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

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 M 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 M 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 M 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 M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M 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 M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 21 December 2022.

Andy Burlinson
Ombudsman