

The complaint

Mr K says the advice given and the arrangements made by Portal Financial Services LLP (Portal), to transfer his Occupational Pension Scheme (OPS) benefits into a Transact Self-invested Personal Pension (SIPP) and recommend investments in specialist holdings was unsuitable.

Mr K is represented by Money Redress Limited (MRL).

What happened

Mr K says he was approached by Portal in 2012 to discuss his pension arrangements. He says he never met the adviser and that all contact took place over the phone. He says Portal told him that given his age, there was potential for him to take a tax-free cash (TFC) lump sum from his pension. He was thinking about paying off some debt at the time, so he says the proposal seemed timely, but wasn't essential.

Portal issued a suitability report dated 23 October 2012, it recorded Mr K's objectives in the following terms:

- Use your existing pension plans to provide an income at a later date and to take your [TFC] entitlement immediately.
- Retain a residual fund that remains invested until such a time that you require an income in your retirement.
- Ensure that you have a good awareness of investment opportunities available to you.
- Ensure your portfolio reflects your current Risk and Reward profile.
- Have access to a system which will monitor the performance of your investments.
- Be kept informed of the performance of your portfolio.

Mr K had deferred benefits from an OPS he was a member of with a former employer. He'd accrued around 12 years of service between 1978 and 1990. His benefits had a transfer value of around £59,700.

Portal's recommendations were recorded in the following terms:

"I would normally recommend that you leave your pension benefits where they are as this will be most beneficial to you in retirement. However, during our telephone conversation you advised me that you are aware of the downfalls in taking your benefits now but due to your current circumstances you would like to take your benefits immediately; in accordance to your wishes, I recommend:

- *That you transfer your existing pension fund to a Transact Self Invested Personal Pension.*
- *That you take your full 25% [TFC] entitlement from your arrangement.*
- *You leave the residual fund invested until such a time when you require an income."*

“The reason I have recommended a pension switch to the selected provider is because the potential benefits available at retirement with them look likely to exceed the benefits available with other possible providers once you have taken your [TFC] lump sum from your pension. By following this recommendation, you will:

- Receive your [TFC] lump sum of circa £14,920.*
- Repay your personal debts and purchase a newer car.*
- Structure your portfolio to match your current Risk and Reward profile.*
- Have greater long-term flexibility to maintain your pension in line with your risk/reward profile.*

Portal assessed Mr K as having a balanced attitude to risk. It recommended he invest 87.5% of his residual pension pot in a series of unregulated collective investment schemes (UCIS).

Mr K accepted Portal's recommendations. On 6 December 2012 his OPS funds of £59,680 were transferred into his new Transact SIPP. Portal charged him 5% (£2,984) of the fund value for its initial advice. And most of the residual pot was invested in accordance with its recommendations between 19 and 31 December 2012.

MRL approached Portal in April 2021. It raised a number of concerns about what had happened to Mr K in 2012. For example, it said Portal had failed to meet its regulatory obligations when advising on the transfer of OPS benefits. The rationale for the transfer had been weak. And the investments made had been inappropriate. Essentially the transaction had been unsuitable.

Portal sent Mr K its final response to his complaint on 21 June 2021. It argued he'd brought his complaint too late and so it wouldn't look into the specifics of his case.

An Investigator considered Mr K's complaint and set out why we could look into it, but Portal disagreed. So, the matter was passed to an Ombudsman for review. She also concluded that we could look at Mr K's complaint.

Portal didn't respond to the Ombudsman's decision. But to be clear, whenever a case comes to an Ombudsman for a decision on the merits of a complaint, they must still consider jurisdiction. Having done so I agree with the findings and conclusions set out by the Ombudsman in her letter of 4 October 2022. There's little point in me rehearsing those arguments in full again.

Portal's main argument hinged on a series of documents it said Mr K was sent and should've put him on notice of problems with his investments and therefore gave him cause to complain much earlier than he did. I think the following extract from the ombudsman's decision neatly summarises the position:

“I've looked at the letters Portal sent Mr K and, overall, I don't think he ought to have felt overly concerned by these. I'll explain why.”

“...While Portal's letter dated 22 February 2017 said that the performance of Mr K's investment funds raised some issues and that due to the illiquid nature of these it was waiving its advice fee, it also said that since 2016 there had been a 4.14% growth in fund value after charges. It went on to say it was happy with this growth, it was hopeful Mr K's pension would grow by the targeted amount and that it wasn't recommending any changes to his funds. So, again, I don't think this letter ought to have given Mr K cause for concern about the advice, as it was positive overall.”

“On 23 October 2017, Mr K was sent a SIPP valuation report showing the value of his pension fund had dropped by approximately a third, to just over £22,000, and that the value of two of his investments within it had reduced substantially to nearly £0. Bearing in mind that Mr K’s said he was a cautious risk investor and the extent of this drop in value, I’ve considered if this report ought reasonably to have alerted him to a problem with Portal’s advice. But I can see that a few weeks later, on 6 November 2017, Portal sent Mr K a letter which explained that while it looks alarming that some of his investments had been valued at £1, nothing material had changed. And that this only meant his SIPP provider didn’t know exactly what his investments were currently worth, rather than because they were worthless.”

“Towards the end of the letter it told Mr K that pensions are complex and not to worry, as nothing material had changed since its last contact with him, which appears to have been its letter dated 22 February 2017 when it said it was happy with the performance of his investments. In which case, Portal didn’t just say that Mr K’s investments were still on track despite the £1 valuation. Instead, I think it went further by giving an explanation for the valuation, reassuring him that his investments weren’t in fact worthless and that there had been no material changes. And considering Mr K’s lack of investment experience and that he trusted Portal’s advice, I think he would have felt reassured by it rather than being alerted to something having gone wrong with the advice.”

“...I don’t think Mr K ought reasonably to have been alerted to a problem with the advice until 5 May 2018 when he received a further SIPP valuation report saying his entire pension fund was valued at £7.47 and that all the investments held within it were also valued at around £0. I think this ought to have given him cause for concern considering his pension fund now had no value. And bearing in mind that I can’t see that he was provided with any further reassurance by Portal following this, I think this ought to have given him cause to complain.”

Since Mr K brought his complaint within 3 years from when he ought reasonably to have been aware of cause for complaint, his case is in time and this Service can consider it.

An Investigator went on to consider the merits of Mr K’s case and issued his view 6 October 2022. He upheld it because he found Portal’s advice had been unsuitable. Portal failed to respond to the Investigator’s view and so his complaint has been passed to me to review afresh and provide a 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.

Where there’s conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what’s most likely to have happened.

I’ve not provided a detailed response to all the points raised in this case. That’s deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I’ve taken into account all submissions, I’ve concentrated my findings on what I think is relevant and at the heart of this complaint.

I’m upholding Mr K’s complaint. I’ll explain why.

how does the regulatory framework inform the consideration of Mr K’s case?

The first thing I’ve considered is the extensive regulation around transactions like those performed by Portal for Mr K. The FCA Handbook contains eleven Principles for businesses,

which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Portal. As such, I need to have regard to them in deciding Mr K's complaint.

At the time of the advice Portal gave Mr K, COBS 19.1.6 made the following specific point about advising on a transfer from OPS schemes (bolding is my emphasis):

*"When advising a retail client who is...a member of a defined benefits occupational pension scheme...whether to transfer...**a firm should start by assuming that a transfer...will not be suitable. A firm should only then consider a transfer...to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer...is in the client's best interests.**"*

Under COBS 19.1.2, Portal was required to:

- Compare the benefits likely to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement.
- Ensure that the comparison included enough information for Mr K to be able to make an informed decision.
- Give Mr K a copy of the comparison, drawing his attention to the factors that do and don't support its personal recommendation, in good time.
- Take reasonable steps to ensure that Mr K understood its comparison and how it contributed towards the personal recommendation.

In simple terms, Portal had to assess the benefits likely to be paid and options available under the OPS and compare this with those available under the new arrangements proposed before it advised Mr K on what to do.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

In July 2010 the FCA issued guidance about unregulated investments in a 'Good and Poor Practice report'. The report contained examples of good practice in relation to unregulated investments, for example where a firm had robust controls in place and limited client exposure to 3% to 5% of their portfolios, where those clients had been assessed as being suitable for unregulated investments. An example of bad practice given by the FCA was where up to 100% of a client's holdings were invested in a single UCIS.

did Portal adhere to the regulatory requirements placed on it?

In short, I don't think Portal met the regulatory requirements placed on it. I'll explain why.

There are a number of documents relating to Portal's transaction with Mr K that are important to my consideration, these include the Pension Options Personal Financial Questionnaire (fact-find), the risk attitude questionnaire and the suitability report.

At the time of Portal's advice Mr K was 55 years old. He was married with four non-dependent children. Mr K was in full time employment, as was his wife. The total net monthly household income was around £2,300.

The information Portal gathered about Mr K's household incomings and outgoings was scant. The adviser simply noted there was a minimal net disposable income at the end of each month. The only expenditure noted was the £400 monthly rent. Mr K was said to have two loans, although no information was gathered about outstanding balances nor the rate of interest being paid. He was also said to have around £2,500 on credit cards. No other assets or liabilities are recorded.

Mr K was a deferred member of an OPS. This had a transfer value of around £59,680. This was his only pension provision, aside from any state pension entitlement. His intention was said to have been to retire when he reached 66.

Portal hasn't set out its position on the merits of Mr K's case. But to be fair, I've considered some arguments it could've made. For example, I note that before Portal issued its suitability report it had sent Mr K a letter dated 8 October 2012. This said it would be against its recommendation for him to transfer his pension. It also provided information about becoming an insistent client.

Where a firm decides to transact with a customer on an insistent client basis, it should communicate with them:

- In terms that are clear, fair and not misleading.
- Having regard for the information needs of the client such that the client is able to understand.
- That it hasn't recommended the transaction and that it will not be in accordance with the personal recommendation.
- The reasons why it isn't in accordance with that personal recommendation.
- The risks of the transaction proposed by the client.
- The reasons why it didn't recommend the transaction.

Portal also needed to obtain Mr K's acknowledgement that the transaction wouldn't be in accordance with the personal recommendation given by it; and the transaction was being carried out at his request. This acknowledgement should've been in Mr K's own words.

I've reviewed Portal's approach to how it conducted business with Mr K as an insistent client. For example, Portal has provided the letter it sent Mr K, presumably shortly after it had first spoken to him and had secured information from his OPS providers about the benefits he'd be giving up if he transferred his pension. It was a short letter in which it recommended he did not proceed. It said:

"You currently have a pension with [OPS provider] which has a Transfer Value of £59,680, from which you could release a total amount of £14,920 as a tax free lump sum. However, as the Critical Yield (growth rate required to match your guaranteed benefits with [your OPS] is 34.96% it would be against our recommendation to do this. Furthermore, you will be waiving your entitlement to a guaranteed pension of £6,275 per annum which is payable at retirement age 60."

In the same short letter to Mr K, Portal immediately went on to say the following:

"If you decide that you still wish to proceed, we can help you release money from your pension, but we would have to treat you as an insistent client, as this would be against our recommendation. We would, therefore, require you to complete the attached insistent client form confirming that you are aware of the benefits you would be relinquishing."

"I enclose a form detailing the various options available to you. Please can you arrange to complete and return the forms to Portal Financial Services. Upon receipt, we will arrange to send out all the relevant application forms and Suitability Report detailing our advice."

Attached to the letter was a form with two options – the first was to take TFC and reinvest the residual funds with Mr K being treated as an insistent client. The second option was to remain with his OPS, which it recommended. Portal also provided Mr K with an insistent client template letter to complete and return if he took the first option.

Mr K completed the forms provided by Portal to say he wanted to transfer his pension. Portal then wrote to him and provided a suitability report dated 23 October 2012.

I've thought carefully about what Portal did. I have several concerns about its insistent client process. And I've concluded it was flawed. I say this because:

- While it's communication with Mr K did set out its recommendation for him not to proceed with the transfer, this was seriously undermined by advice in the same short letter about how he could still go ahead. Portal should've provided a breathing space here.
- I note that it would only send Mr K the suitability report after he'd decided he wanted to transfer his OPS. This undermines the process – how could he have been expected to take a fully informed decision without access to the analysis?
- The insistent client form Mr K signed was a template. It wasn't in his own words. It would've been clear to Portal that he had no knowledge or experience of financial matters. So, it would've been important to ensure he understood what he was getting into, and a good way to have done this would've been to see in his own words that he understood the recommendation being made and why he wanted to proceed.
- There are also various examples from Portal's process of gaps in the information it held, or certainly that it provided Mr K, to enable him to make a fully informed decision. For example, what were the terms of his OPS. Many similar schemes allow early access to benefits, albeit often being actuarially reduced.

Further, I've concerns about Mr K's knowledge and experience of pensions and investments, which again should've put Portal on notice that it wouldn't be fair to treat him as an insistent client.

Given these failings it wouldn't be reasonable for me to conclude that the process Portal followed meant that Mr K can truly be regarded as an insistent client. Its communications weren't clear or fair. It wasn't acting in his best interests. And it failed to act with due care and skill.

While Portal acknowledged the transfer of Mr K's OPS wasn't suitable, there were failings in the advice process which meant he wasn't fully informed about his position and we don't know what effect fuller information and better analysis would've had on his decision making.

Portal recorded Mr K's wants in the following terms:

"You would like to cash in the maximum amount available from your pension as you would like to repay your debts and purchase a newer car."

But Portal failed to conduct a detailed income and expenditure analysis. There are no figures showing how much outstanding debt he had. There's no substantive analysis of alternatives to drawing on his pension funds prior to retirement. There's no indication that Mr K was having trouble servicing the debt. And even if he was, there's no exploration of the options such as debt restructuring or repayment plans. And there's no information about how much he wanted to spend on a newer car, and why that was necessary.

Portal's position is weak. Even if it had been in Mr K's mind to access his TFC to clear debts and buy a car, it would've been obvious this was a questionable strategy. There's no record it gave Mr K such advice.

Portal hasn't provided a record of what Mr K's income requirements were in retirement. I've seen no evidence of an attempt by it to get to the bottom of this fundamental question. It was focussed on Mr K's short-term wants and not his medium and long-term needs. It was dealing with his pension pot, so this wasn't appropriate in his circumstances.

Portal was in a good position to have analysed, tested, challenged and advised Mr K about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for retirement. And certainly, when early access is contemplated there need to be compelling reasons, on balance I don't think that was the case here.

It was Portal's role to discern what Mr K's wants and needs were and why. Its role wasn't simply to facilitate what he wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in his best interests. Even though it initially recommended Mr K didn't transfer his benefits, I don't think it's demonstrably met these obligations.

Turning to the need for Mr K's Transact SIPP to provide an income in retirement. Leaving aside what we know in hindsight about the investment performance of the funds recommended to him by Portal, I have various concerns about its advice here.

I don't believe either party would dispute that Mr K wasn't an investment professional. Nor was he a sophisticated investor. Indeed, from the information gathered by Portal it seems he had little knowledge or experience of investing. This is important context when I consider what happened to him.

Portal conducted a risk questionnaire with Mr K. The suitability report set out the position arrived at. It said:

“We have evaluated the answers you have given regarding your attitude to risk in respect of these funds. The answers you gave indicate that you have a balanced attitude to risk. This broadly means:

Balanced investors typically have moderate levels of knowledge about financial matters and will pay some attention to keeping up to date with financial matters. They may have some experience of investment, including investing in products containing risky assets such as equities and bonds.”

“In general, balanced investors understand that they have to take investment risk in order to be able to meet their long-term goals. They are likely to be willing to take risk with at least part of their available assets.”

“Balanced investors will usually be prepared to give up a certain outcome for a gamble provided that the potential rewards from the gamble are high enough. They will usually be able to make up their minds on financial matters relatively quickly, but do still suffer from some feelings of regret when their decisions turn out badly.”

I've several concerns about the risk assessment process Portal conducted. Bearing in mind what we are told about the traits of a balanced investor in the definition provided. The responses captured for Mr K on the Pension Options Personal Financial Questionnaire are dissonant with this. For example (bolding shows his response to various statements about his risk outlook):

- People would describe him as a cautious person – **strongly agree**
- I feel comfortable investing in the stock market – **disagree**
- I feel comfortable investing in property – **disagree**
- I generally look for safer investments, even if it means lower returns – **agree**
- Usually it takes me a long time to make up my mind on financial matters – **agree**
- I generally prefer bank deposits to riskier investments – **agree**
- I am willing to take substantial financial risk to earn substantial returns – **disagree**
- I've little experience of investing in stock, shares or property – **agree**
- I'd rather take my chances with high risk investments than increase the amount I'm saving – **disagree**

I accept Mr K's responses to a couple of other questions may've indicated a willingness to take risk with his funds and that all information gathered needs to be taken together and reviewed. But I can't find any proper exploration of what underpinned Portal's assessment of his risk appetite. There's no record it discussed any contradictions and tensions in its assessment. From the information available it's puzzling how it ended up ascribing him as in the balanced investor category.

Portal didn't do enough to demonstrate its assessed attitude to risk was correct. I'd argue that based on his responses it was too high. However, Portal pressed on, it recommended 87.5% of his residual funds were invested in a series of UCIS, it described in the following terms:

“The Raithwaites Hypa Fund is a specialist investment in a five star hotel development in Whitby, Yorkshire and is designed to yield 8% per annum. In addition the fund has secured a discount to current market value which means that the investment should be worth 25% more than the amount you invest. Our due diligence research evaluates this as a low to medium risk investment which will run over an approximate 7 year period and should provide an average compound return of 11% once capital growth and income are taken into account.

Interest coverage within the fund is 3:1 in other words the interest charge only represents 1/3rd of the funds income and we believe this keeps the risks well within acceptable bounds. The fund will hold the hotel rooms until the hotel becomes established and then look to sell them on at profit as single units or in bulk."

"The Raithwaites Hypa Fund will provide an income stream in early 2013 which can be re-invested or held as cash within your pension and we will review the most suitable option for you as the income falls due."

*"**The Cool Blue Fractional Plus Fund** invests in "Off-Plan" villas and Hotel Rooms which will be resold at higher prices once building is complete. The developments are all financed by local banks and the fund is designed to run over a three year period and return between 50%-100% capital growth on the original investment. Because of the added currency risks involved this investment is medium to high risk but its inclusion in your portfolio is balanced by the other lower risk investments."*

"The Cool Blue Fractional Plus Fund investments will mature in 3 years and we will be able to re-evaluate this portion of your portfolio at that time. If you decide to withdraw prior to maturity however, you may suffer a 3% facilitation fee plus costs from the sale price of the shares owned in the fund."

*"**Venture Oil International** pre-purchases Oklahoma Sweet crude oil. This is supplied on a monthly basis to the fund over a seven year period and resold on the open market. Currently oil is selling for over \$100 per barrel and the fund expects to return the capital invested plus profit equating to an estimated return of 18% per annum. Portal Financial have conducted due diligence on the oil producers and believe that over the investment period the price of crude oil is likely to increase."*

*"**The EOS solar Energy fund** invests in a solar power development in Cyprus where the fund has contracted to sell electricity at a fixed price over a twenty five year period to the Cypriot government. The initial yield is 8% per annum for three years and 10% per annum thereafter denominated in Euro's."*

As well as creating a lack of diversification in how Mr K's funds were being invested, Portal has failed to show that he would've understood what it was getting him into. It knew he actually had limited knowledge and experience of investment and pension matters. This approach flew in the face of regulatory obligations on Portal that I've already set out at some length.

I'm also concerned that Portal didn't get to grips with Mr K's capacity for loss. Although he had another 10 years or so before his recorded planned retirement date, he was being advised to transfer his only pension provision and to invest in a portfolio that was above his risk tolerance. He had no other assets or savings to fall back on.

It seems Mr K's answers to the risk questionnaire were fed into a system and dealt with in a mechanical manner without further enquiry. But given the basic facts Portal knew about his situation - his lack of experience of pensions and investments, his lack of assets and the fact that the pension it was advising him about was his only retirement provision – it should've known he had a low capacity for loss.

More generally, I'm not satisfied that Mr K was properly informed that by moving away from his DB scheme and using the funds to invest, he was moving from a situation where his former employer was bearing the risks related to the provision of his retirement income to one where he was taking on that risk.

It's arguable Portal seemed more concerned with facilitating its investment recommendations than providing effective advice about what was in Mr K's best interests concerning his valuable pension funds.

Portal was being paid a lot of money to provide best advice to Mr K. Those charges are another area of concern. It's recorded that he was charged 5% of the transfer value for the initial transaction. And there was a 1% ongoing advice fee for Portal. There were also fees for the SIPP provider. And there were management fees associated with each of the funds he was investing in.

Portal failed to provide a clear comparison of the charges he would incur in the new arrangements with his former pension plans. I don't think it was sufficiently transparent in these matters.

Portal should've provided Mr K with fully formed and unequivocal advice not to proceed with the transfer of his OPS benefits into a Transact SIPP, the purpose of which was to access his TFC and invest in a specialist high-risk portfolio. I say this because of the flaws I've found in its advice process; what it knew about his attitude to risk and capacity for loss; and his lack of experience of the sort of investments it was recommending.

Instead, Portal failed to conduct a satisfactory insistent client process with Mr K. And it recommended that his OPS benefits be invested beyond his risk appetite. It knew this and the potential consequences. The funds could be illiquid, meaning Mr K might have difficulty getting access to his pension funds. The investment was specialised, out of the ordinary and reliant on third parties. And it was subject to valuation uncertainty.

I can't see that accessing his TFC was a pressing concern for Mr K. If he really needed to access finance, potentially better alternatives weren't properly explored by Portal. Nor was there a convincing assessment of his retirement income requirements.

I think that if Portal had given Mr K appropriate advice, he wouldn't have gone ahead with the transfer of his OPS benefits to the Transact SIPP and the high-risk investment portfolio it proposed. It's unusual for a lay person to seek professional advice and then go against the recommendations received.

To conclude I don't think the transfer of Mr K's OPS into the Transact SIPP and the investment in the high-risk portfolio of UCIS funds it recommended could sensibly be regarded as fair to him. As such I think Portal failed to meet the regulatory requirements placed on it when providing him with such advice and making the arrangements.

So, taking all the circumstances of the case into account, it's fair and reasonable to uphold this complaint against Portal and for it to put things right.

Putting things right

I'm upholding Mr K's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Portal Financial Services LLP responsible for. I consider Mr K would've remained in his OPS.

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) 17/19 (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 K 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. And I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr K.

Portal Financial Services LLP should therefore undertake a redress calculation in line with the pension review methodology, as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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

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

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mr K'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 K 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 would be tax-free 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.

My aim is to return Mr K to the position he would have been in but for the actions of Portal. This is complicated where an investment is illiquid (meaning it can't be readily sold on the open market), as its value can't be determined. That appears to be the case here.

To calculate the compensation, Portal Financial Services LLP should agree an amount with the SIPP provider as a commercial value, then pay the sum agreed to the SIPP plus any costs and take ownership of the investment. If Portal is unable to buy the investment, it should give it a nil value for the purposes of calculating compensation. The value of the

SIPP used in the calculations should include anything Portal has paid into the SIPP and any outstanding charges yet to be applied to the SIPP should be deducted.

In return for this, Portal Financial Services LLP may ask Mr K to provide an undertaking to account to it for the net amount of any payment he may receive from the investment. That undertaking should allow for the effect of any tax and charges on what he receives. Portal will need to meet any costs in drawing up the undertaking. If Portal asks Mr K to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

I'd add the SIPP only exists because of the illiquid investment. In order for the SIPP to be closed and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. I've set out above how this might be achieved by Portal taking over the investment, or this is something that Mr K can discuss with his SIPP provider directly. But I don't know how long that will take.

Third parties are involved, and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that Portal pay Mr K an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

The compensation amount must where possible be paid to Mr K within 90 days of the date Portal Financial Services LLP 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 K.

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

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

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 Financial Services LLP to carry out a calculation in line with the updated rules and/or guidance in any event.

My final decision

For the reasons I've already set out, I'm upholding Mr K's complaint. I now require Portal Financial Services LLP to pay compensation to him as I've indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 December 2022.

Kevin Williamson

Ombudsman