

The complaint

Mr M complains about the suitability of the advice he received from Portal Financial Services LLP (Portal) to transfer two of his existing pension plans to a new flexi access drawdown pension.

What happened

Mr M was a member of two defined benefit (DB) occupational pension schemes (OPS), one as a deferred member and one as a current member of the Civil Service Pension Scheme. He also held benefits in a personal pension and deferred benefits in a money purchase OPS.

In 2017 he spoke to Portal about drawing tax free cash (TFC) from some of the plans in order to pay off some debt and maintain some savings in his account to help with other potential future expenses - such as his daughter's wedding. He planned to retire in about four years' time when he could draw the benefits from his DB OPS'. Portal's recommendation was to transfer the two money purchase pension plans, valued at around £81,764, into a flexi access drawdown plan with the same provider that managed on of the plans – and to invest the residual amount into two new funds after the TFC had been withdrawn.

In October 2021 Mr M complained, using a professional representative, that the advice he'd been given in 2017 was unsuitable and that he wanted to be put back into the position he'd now be in without Portal's recommendation.

Portal didn't uphold the complaint. It said that it thought its information gathering exercise had been conducted as required and that Mr M had been pleased with the depth of its recommendations. And it thought its recommendation was suitable and the underlying investments were in line with Mr M's attitude to risk (ATR).

Mr M wasn't happy with that response, so he brought his complaint to us where one of our investigators looked into the matter. He thought the complaint should be upheld making the following points in support of his assessment:

- He thought it was reasonable that, given his circumstances at the time, Mr M needed to access his pension benefits to obtain the TFC lump sum he required to repay some debts.
- Evidence would suggest that Mr M couldn't have simply drawn cash from his existing plans without taking an income as well – which he didn't require at that time.
- He didn't think the charges that applied to the new plan would have made the recommendation to transfer unsuitable and he thought Portal was entitled to retain the fees it had agreed with Mr M and received for its advice.
- But, as he considered Mr M to have a low ATR, he didn't think that the underlying investments that were recommended were suitable for his situation at the time – particularly as Mr M only had around four years to his intended retirement age.

- He said Portal should compare the value of Mr M's pension with what it would be now had it been invested in line with his ATR. He also said Portal should pay Mr M £300 for the distress and inconvenience caused.

Mr M accepted the investigator's view but Portal didn't respond, so the complaint was referred to an ombudsman and it's been passed to me to review.

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.

And having done so I agree with outcome reached by the investigator. I think Portal's recommended investment strategy was too high a risk for Mr M's circumstances at the time – so I'll explain my reasoning.

The recommendation to transfer

Portal's suitability report set out the reasons for recommending the transfer of Mr M's pensions. It said that *"because of this we recommend transferring your pension, so you can access tax-free cash to help you achieve your objectives."* The reason Mr M had given was to *"repay debt, go on holiday, help with his daughter's wedding and create an emergency fund"*.

So I've looked at Mr M's situation at the time and compared it to other factors that needed to be considered to decide if I think the advice to transfer was suitable. I've looked at the suitability report and fact find that Portal completed and listened to the information gathering that was conducted over the telephone.

There was no suggestion that Mr M was unhappy with the performance of his existing plans or that he regarded the funds as being inappropriate for his needs. And looking at charges involved, Portal charged Mr M 5.47% of his fund initially with a total ongoing yearly cost of around 1.83% of the fund. Portal itself accepted that these fees were higher than the existing charges Mr M paid and, with only four years until his suggested retirement date, I think it's unlikely that such an investment horizon would have allowed those higher fees to be recouped to the extent that the new plan would have provided significantly greater returns at retirement.

I haven't been provided with an illustration that compared the fund values at age 60 of both the existing and new plans, so I'm unable to confirm exactly what the effect of those higher charges would have been at retirement, but I think Mr M should have been provided with such an illustration so that he could have been in a more informed position regarding the likely returns he would receive.

So, it would seem there was very little justification to recommend a transfer based on the main principal of whether it would have been likely to have provided Mr M with greater returns or lower costs. I note that the regulators thematic review of 2008 said that advice was deemed as being unsuitable when the outcome of a transfer was *"a pension incurring extra product costs without good reason..."*

But I have taken into account that, while Portal did set out the historical investment returns its recommended funds had provided, it didn't promote a potentially greater return as a reason for transferring. As I've said above it set out the reason as being that Mr M wanted to access his TFC at that point to pay off some outstanding debts, fund some potential expenditure, and provide some "money in the bank." So I've looked at whether this was a justifiable reason.

At the time of the advice Mr M had maximised his overdraft and wasn't in a financial position to reduce it. Portal's fact find noted that, within the income and expenditure figures it detailed, it appeared that Mr M had no disposable income each month after his miscellaneous expenses were taken into account. He confirmed this during the fact finding telephone call when he said that each month he "*managed to break even at best*". It was also confirmed that Mr M made a monthly repayment towards his outstanding credit card balance. Additionally, Mr M said he wanted to take his wife – who was in poor health, on a holiday and thought he might need to help to finance his daughter's wedding at some point. Mr M also stated that he didn't want to incur any new borrowing or outgoings in order to meet these expenses and debts.

And, while Mr M's representative has said that Mr M didn't specify that he wanted to take his TFC to deal with these issues and that he simply gave Portal a list of things he would do with the money if it were available to him, having listened to the telephone conversation I think Mr M was keen to deal with some of those monetary needs as soon as possible. When the adviser first talked about the reason for the call she asked if it was about the "*tax free cash lump sum*" to which Mr M said, "*yes that right*", the adviser then said, "*what is it you're looking to access the tax free cash lump for at this time?*"

Mr M then set out his reasons – particularly that it would "*help out immensely if I could just clear that (overdraft) off...*" He later confirmed that he could "*absolutely not*" use an alternative option to raise the TFC funds and that it was "*very important*" to him to access the funds now and that it was "*welcome opportunity*".

So from the evidence that I've heard, I think Mr M – having already received Portal's "pack" of options that were available to him, was aware of the option to transfer his pensions to a drawdown plan and enable him to draw TFC. I think he also saw Portal's recommendation as meeting his objectives at that time. In the call Mr M went on to outline his plans for retirement explaining that he wanted to retire at 60 and had the other OPS' – which he thought would provide an income which would satisfy his needs. He said the pensions that Portal wanted to transfer didn't form part of that plan and could therefore be used for other – more immediate needs.

So I think the question to consider here is whether Mr M was comfortable with Portal's recommendation and that, even if it might not have been in his best interests from a purely financial point of view, it met his objective at the time which was to repay some outstanding debt he was struggling to maintain and to provide a cushion of savings for some likely expenses he might incur prior to his retirement. I know Mr M's representative has said that the potential expenses didn't materialise and that the money was ultimately spent on home improvements which wouldn't have been a sufficient objective to justify the transfer in the first place.

But I have to consider the information which was obtained and noted at the time, and I'm satisfied that Mr M himself did give the reasons I set out earlier as things he wanted to achieve at that time with the TFC. The fact that they didn't happen is now a matter of hindsight and wouldn't have been known at the time.

So, and I think it's a finely balanced assessment to make, I think Mr M was likely to have gone ahead with the advice to transfer his pensions and withdraw the available TFC regardless of the other factors involved in determining whether the transfer was in his best interest. And I think the advice wasn't unsuitable in the specific circumstances I've outlined here. But even if I determine that the transfer itself was suitable, I still need to consider the suitability of the underlying investments that Portal recommended.

The suitability of the underlying investments

When Portal set out its recommendation to transfer, it completed an ATR questionnaire with Mr M. The outcome of the questions led to the definition of Mr M as being “cautious” which the fact find document that was completed noted he agreed with. In particular Mr M confirmed he had no previous experience of investments – except for his pensions.

Portal said in its suitability report that it recommended a portfolio that “*includes a mix of equities and fixed interest securities*” in line with Mr M’s ATR. This led to a recommended investment strategy of 53.44% of the transferred money being put into a “*global bond fund*” and 41.56% into a “*world equity fund*.” The remaining 5% remained in cash. So I’ve looked at how that split compared with Mr M’s cautious ATR.

The bond fund – which accounted for over half of the overall portfolio, was noted to have a “Morningstar” risk rating of two where the highest level was seven. And I note it was a bond fund, which had an objective of providing income while preserving the original capital. So I think it was broadly in line with Mr M’s cautious ATR. But the other fund was primarily invested in “*shares of companies traded in developed and/or emerging markets*.” And “*may invest up to 20% of its net assets in emerging markets countries*.” It also might use “*futures and foreign currency contracts for efficient portfolio management purposes*.” The Morningstar risk rating for that fund was six out of seven.

So I don’t think the equity fund, which accounted for over 40% of the portfolio, could be seen as anything other than a high risk fund. And when taken as part of the overall portfolio I don’t think it complemented the bond fund to provide an overall cautious rated portfolio – which was required in order to be in line with Mr M’s ATR. In my view the two funds together provided a balanced or medium risk type portfolio, which was a higher risk than Mr M had an appetite for. It should be remembered that Mr M was repaying debt with his TFC and hoping to retire in four years’ time when he would require all the income that was available to him. In those circumstances I don’t think he had the capacity for any investment loss – and with such a short investment horizon I think he would have primarily favoured lower returns against risk to his capital.

I think the definition of a “cautious” ATR – which was accepted by both Mr M and Portal, was an accurate description of his risk profile at that time for the residual funds that remained after the transfer – and with retirement less than five years away. In my view the recommended underlying investments didn’t match Mr M’s ATR and the portfolio was too high a risk for his circumstances. So I think Portal needs to compensate Mr M for the unsuitable underlying investment strategy and I’ve set out what it needs to do below.

Putting things right

Fair compensation

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if he had been given suitable investment advice.

I take the view that Mr M would have invested differently. It’s not possible to say *precisely* what he would have done differently. But I’m satisfied that what I’ve set out below is fair and reasonable given Mr M’s circumstances and objectives when he invested.

What must Portal Financial Services LLP do?

To compensate Mr M fairly, Portal Financial Services LLP must:

- Compare the performance of Mr M's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.
- If the fair value is greater than the actual value there is a loss and compensation is payable.
- Portal Financial Services LLP should also add any interest set out below to the compensation payable.
- Portal Financial Services LLP should pay into Mr M's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Portal Financial Services LLP is unable to pay the total amount into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mr M £300 for the disruption caused to his retirement planning.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Drawdown plan	Still exists and liquid	For half the investment: FTSE UK Private	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if

		Investors Income Total Return Index; for the other half: average rate from fixed rate bonds			not settled within 28 days of the business receiving the complainant's acceptance)
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Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Portal Financial Services LLP should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Drawdown plan should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Portal Financial Services LLP totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr M wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income *Total Return* index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr M's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr M into that position. It does not mean that Mr M would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr M could have obtained from investments suited to his objective and risk attitude.

My final decision

For the reasons that I've given I uphold Mr M's complaint. My decision is that Portal Financial Services LLP should pay the amount calculated as set out above.

Portal Financial Services LLP should provide details of its calculation to Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 February 2023.

Keith Lawrence
Ombudsman