

The complaint

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

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

What happened

Mr B says that he was introduced to Portal's services by his then defined benefits (DB) OPS provider in 2014. He was interested in releasing a Tax-Free Cash (TFC) lump sum from his pension. He didn't meet with an adviser face-to-face and all contact took place over the telephone or via email.

Portal issued a suitability report dated 2 April 2014, it recorded Mr B's objectives as wanting to release TFC from his OPS, investing the residual funds because he didn't require an income at that time.

Mr B had deferred benefits from an OPS he was a member of with a former employer. He'd accrued around 10 years of service between 1988 and 1998. His benefits had a transfer value of around £127,000.

Portal's recommendations were recorded in the following terms (bolding is my emphasis):

"Having considered all of the information available to us including the charging structures of the transfers, available underlying fund choice, your personal circumstances and other factors, I have come to the following conclusions:

My recommendation is that:

- *You transfer your [OPS] to an Income Drawdown Plan with the Novia Personal Pension.*
- *You switch your [OPS] to the Novia Personal Pension."*

"The reason I have recommended a pension transfer is due to the possibility that the benefits available at retirement with your recommended new pension will exceed the benefits that would have been available through your existing provider."

"By following this recommendation, you will:

- *Meet your stated Income Drawdown objectives*
- *Be able to take up to 25% of your Allied Domecq policies as a Tax Free Cash Lump Sum to meet your needs, you have selected to take £31,833.*
- *Meet your stated Pension Switch objectives"*

"...With this plan you do have the choice as to which funds your money is invested in and I have made recommendations for these as well."

Mr B accepted Portal's recommendations. On 26 June 2014 his OPS funds were transferred to his new Novia SIPP. He took TFC of around £31,800. Portal charged 5% of the fund value, or £6,360, for its initial advice. After these deductions there was around £89,200 to invest.

Portal assessed Mr B as having a moderately adventurous attitude to risk. It recommended he invest around 60% of his residual pension pot in a series of mini-bonds.

MRL approached this Service in April 2021. It raised several concerns about what had happened to Mr B in 2014. 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 had sent Mr B its final response to his complaint on 17 November 2020. It argued he'd brought his complaint too late and so this Service couldn't consider it. An Investigator set out why we could look at the case, but Portal disagreed. So, the matter was passed to an Ombudsman for review. She concluded that we could look at Mr B'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 case, they must still consider jurisdiction. Having done so I agree with the findings and conclusions set out by the Ombudsman in her letter of 8 June 2022. There's little point in me rehearsing those arguments again. Portal's main argument hinged on an annual review letter it said Mr B was sent. I think the following extract from the ombudsman's decision neatly summarises the position:

"Portafina says Mr B ought to have been aware he had cause for complaint from an annual review letter he was sent in August 2016. But I don't agree."

"The overview says the value of his SIPP had increased by 3.19%. I can see the pack that accompanied the letter, which it says looks in greater detail at how the pension is performing, says that despite the impact of Brexit there's a positive outlook over the long term. And while it does say the performance of structured element of Mr B's investments – those he's now complaining were unsuitable – raises some concerns, it also goes on to say it isn't unduly worried, that it's happy with the growth and confident this will grow by the targeted amount by the end of the specified investment period."

"So I don't think there's anything in the letter to suggest there were any concerns relating to Mr B's SIPP that might have alerted him to a problem. I think Mr B would have felt reassured by the information in it, rather than concerned. So I don't think he ought reasonably to have become aware he had cause for complaint from it."

"I can see Mr B's SIPP summary and valuations from August 2017 and June 2018 show it increased in overall value. I've taken into account that the October 2019 valuation reflects a drop in overall value of just over 4% though, seemingly due to an 85% drop in the value of one of the investments that he's said was unsuitable for him. But, even if this ought reasonably to have given him cause for concern, this was within three years of when he complained to Portal and referred his complaint to our service. And I haven't seen anything to persuade me that Mr B ought reasonably to have become aware he had cause for complaint before then."

This Service can consider Mr B's case.

An Investigator went on to consider the merits of Mr B's case and issued her view on 16 September 2022. She upheld it because she found Portal's advice had been unsuitable. Portal failed to respond to the Investigator's view and so his complaint was passed to me to review afresh. I issued my provisional decision last month. Neither party provided new

evidence or arguments and so I see no reason to depart from my initial findings and conclusions.

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 B's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr B's case?

The first thing I've considered is the extensive regulation around transactions like those performed by Portal for Mr B. 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 B's complaint.

At the time of the advice Portal gave Mr B, 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 B to be able to make an informed decision.

- Give Mr B 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 B 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 B 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 (unregulated collective investment scheme).

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 B that are important to my consideration, these include the Pension Options Personal Financial Questionnaire (fact-find), the risk attitude questionnaire, the pension transfer analysis report and the suitability report.

At the time of Portal's advice Mr B was 56 years old and his intention was said to have been to retire when he reached 66. His employment situation is somewhat confused, the fact-find suggests he was out of work, but also notes he'd been with his current employer for three months. Mr B has told this Service he was in employment as an HGV driver earning around £30,000 a year.

Mr B lived in rented accommodation. The information Portal gathered about his household incomings and outgoings was scant, although the indication is these were in balance. He was said to have had £2,000 of savings, and was eating into these. He had a car loan, with a balance of £8,000 and credit card debt of around £10,000.

Portal hasn't set out its position on the merits of Mr B'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 B a letter on 21 March 2014 about being 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 B'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 B's own words.

I've reviewed Portal's approach to how it conducted business with Mr B as an insistent client. For example, Portal has provided the letter it sent Mr B, 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 [X] which has a transfer value of £127,332, from which you could release a total amount of £31,833 as a tax free lump sum. However, as the critical yield (growth rate required to match your guaranteed benefits with this provider) is 13.5% it would be against our recommendation to do this. Furthermore, you will be waiving your entitlement to a guaranteed pension of £6,508 per annum with a pension commencement cash lump sum of £43,385 which is payable at retirement age 65."

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

"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."

"I enclose a form with the various options available to you. Please can you complete and return both forms to us in the pre-paid envelope as soon as possible. Once we have this, I 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 B being treated as an insistent client. The second option was to remain with his OPS, which it recommended. Portal also provided Mr B with an insistent client template letter to complete and return if he took the first option.

Mr B completed the forms provided by Portal to say he wanted to transfer his pension. Portal then wrote to him and provided a suitability report around 2 April 2014.

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 B 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 B the suitability report after he'd decided that 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 B 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 B, 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, Mr B says he doesn't remember signing an insistent client form – and Portal hasn't supplied such. He also says he doesn't know what an insistent client is. I've concerns about his 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 B 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.

Portal's position is further weakened when reviewing the suitability report it prepared for Mr B. This seems to be at odds with the letter it sent him in March 2014. I say this because the report recommends the transfer of Mr B's OPS funds. And, it also says a reason for doing so was the possibility the new arrangements it was recommending would lead to his benefits exceeding those under his former scheme. Such a claim flies in the face of evidence such as the pension transfer analysis which indicated his new investments would need to achieve annual growth in excess of 13% to do this – a highly unlikely outcome.

Portal's March 2014 letter recommending Mr B didn't proceed with the transfer of his OPS pension benefits – albeit offering him the insistent client route – can't be reconciled with its suitability report of 2 April 2014, which faces in the opposite direction in several key areas. This is another significant failing. It didn't provide Mr B with clear and consistent advice.

Mr B was a deferred member of an OPS. This had a transfer value of around £127,000. This was his only pension provision, aside from any state pension entitlement. When asking the question about funding his retirement, the answer recorded is state pension, personal pension (presumably the plan Portal went on to recommend) and inheritance.

While, in March 2014, Portal acknowledged the transfer of Mr B'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.

Mr B's requirements were recorded by Portal as: 'building up savings; new car; clear some bill/debts.' But Portal failed to conduct a detailed income and expenditure analysis. There's no substantive input about options for the creation of an emergency fund and how large this should be (it's often suggested 3-6 months of household expenditure is a good guide). There's no information about how much he wanted to spend on a car. Nor what debts he was looking to clear.

Portal hasn't provided a record of any discussion of why accessing his valuable OPS benefits was a better option than, say using his £2000 savings. Or considering the rescheduling of his debts – although I note Mr B has told us he didn't have any problems at the time in servicing his credit and loan.

Portal's position is weak. Even if it had been in Mr B's mind to access his TFC to build up savings, buy a car and pay down debt, it would've been obvious this was a questionable strategy. There's no record it gave Mr B such advice.

Portal hasn't provided a record of what Mr B'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 B'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 B 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 B'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 B didn't transfer his benefits, I don't think it's demonstrably met these obligations.

Turning to the need for Mr B's Novia 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 B 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 B. The suitability report set out the position arrived at. It said:

“Based on the answers you provided in your risk profile we believe you have moderately adventurous attitude to risk. This broadly means:

- Moderately Adventurous investors typically have moderate to high levels of financial knowledge and will usually keep up to date on financial issues. They will usually be fairly experienced investors, who have used a range of investment products in the past.*
- In general, Moderately Adventurous investors are willing to take on investment risk and understand that this is crucial in terms of generating long-term return. They are willing to take risk with a substantial proportion of their available assets.*
- Moderately Adventurous investors will usually take gambles where they see the potential rewards as being attractive. They will usually be able to make up their minds on financial matters quite quickly. While they can suffer from regret when their decisions turn out badly, they are usually able to accept that occasional poor outcomes are a necessary part of long-term investment.”*

I've several concerns about the risk assessment process Portal conducted. Bearing in mind what we are told about the traits of a moderately adventurous investor in the definition

provided. As the Investigator noted, Mr B's responses captured on the Pension Options Personal Financial Questionnaire are dissonant with this. For example:

- His friends and family would describe him as a cautious person
- He didn't understand investment matters at all
- He was not comfortable investing in the stock market or property
- He preferred safer investments even if it meant lower returns

There's no evidence that Portal discussed the contradictions and tensions in its assessment of Mr B's risk outlook. It didn't do enough to demonstrate its assessed attitude to risk was correct. It's clearly too high. However, Portal pressed on, it recommended 60% of his residual funds were invested in a series of mini-bonds, it described as follows:

Lakeview UK Investments PLC

Secured on a successfully trading UK Holiday village in Cornwall, England. The proceeds of this bond are being used by the developer to build new holiday villas and an apart hotel to satisfy the increasing tourist demand. The Bond term is five years with 11% interest paid annually in arrears and then every 3 months from year 2. 70% of all sales will be held in escrow to pay back the loan interest and the loan.

Real Estate Investments USA PLC

Secured on US residential property (mainly in Florida, Chicago and Detroit) which is being bought back from banks, refurbished and sold to onward pre-determined investors. The Bond pays 15% per annum, paid annually in arrears and has a term of 5 years. All interest and capital is lent denominated in sterling so there is no direct currency risk.

Strategic Residential Developments PLC

The Bond term is for 5 years, with 11% paid annually in arrears. Loaned monies are used to source and purchase existing houses in the South of England with potential development plots within their grounds, using a sophisticated software programme, plots which will then be sold separately and developed. Security will be taken over these houses once purchased and released when sold.

Tambaba Developments PLC

The Bond term is 7 years with 11% interest paid annually deferred initially until year 2. Loaned monies will be used to develop the site completing infrastructure works and building villas and bungalows for mostly local purchasers at the Tambaba Country Club Resort in the state of Paraiba, North East Brazil. Security is taken over the Tambaba development site (minimum value of 150% of any loan) with all capital lent and paid back into sterling.

As well as creating a lack of diversification in how Mr B'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 B'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 high-risk portfolio. He had no other assets or savings to fall back on.

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

Portal was being paid a lot of money to provide best advice to Mr B. 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 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. While it did note the new arrangement would be more expensive, I don't think that was sufficiently transparent.

Portal should've provided Mr B with fully formed and unequivocal advice not to proceed with the transfer of his OPS benefits into a Novia SIPP, the purpose of which was to access his TFC and invest in a 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 B. 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 B 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 B. 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 B appropriate advice, he wouldn't have gone ahead with the transfer of his OPS benefits to the Novia 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 B's OPS into the Novia SIPP and the investment in the high-risk portfolio of 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 B'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.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Portal Financial Services LLP should pay Mr B the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Portal Financial Services LLP pays Mr B the balance.

This recommendation is not part of my determination or award. Portal doesn't have to do what I recommend. It's unlikely that Mr B can accept my decision and go to court to ask for the balance. He may want to get independent legal advice before deciding whether to accept this decision.

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 B whether he preferred any redress to be calculated now in line with current guidance or wait for the 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 B.

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 B's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mr B'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 B 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 B 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 B 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 B to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

The compensation amount must where possible be paid to Mr B 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 B.

Income tax may be payable on any interest paid. If Portal Financial Services LLP deducts income tax from the interest, it should tell Mr B how much has been taken off. It should give Mr B 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 set out, I'm upholding Mr B's complaint. I require Portal Financial Services LLP to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 January 2023.

Kevin Williamson
Ombudsman