DRN-3395258

The complaint

Mr E complained about the service provided by Portal Financial Services LLP (Portal). He said they had not done what they ought to have done, he been unsuitably advised and as a consequence suffered a loss.

What happened

In 2013 Mr E received a letter from Portal Financial Services LLP (Portal). This made him aware he may be able to access tax free cash (TFC) from any pension benefits he held. Mr E spoke to Portal on 19 March 2013. A fact-find and an attitude to risk document were completed. This included the following information about Mr E at the time:

- He was 56 years old, married and had two grown up children- one still lived at home.
- He had been unemployed since March 2012 and was seeking work.
- His wife was retired (aged 62).
- They both had high blood pressure and were both receiving pension credits/ state benefits.
- They lived in local authority rented housing and the rent was covered by state benefits.
- Mr E had no other pension plans and was in significant debt.
- It is understood Mr E had no assets or savings; although one document prepared by Portal suggests Mr E had £600 in a savings account, this isn't shown elsewhere.
- Mr E had 15 years' service in an occupational pension scheme (OPS) with his previous employer. This was a Local Government deferred defined benefits plan- it appears he'd left the relevant employment in 2006.
- There is information from the time to suggest retirement benefits would have provided an income of £3,566.19 each year. Spousal benefits were also available.
- The OPS had a transfer value of approximately £66,383 at the time of advice.

A transfer report (TVAS) had been completed. The report showed an investment growth of 11.45% was required in order to replace the benefits Mr E's OPS would give him at retirement. A retirement age of 65 was recorded in the report

There is a letter dated 20 March 2013 from Portal to Mr E. It sets out that if Mr E wishes to proceed with a transfer this will be against their advice and it asks him to complete an attached insistent client form if he wants to go ahead. It tells him know that if he wants to go ahead, he ought to return the form immediately as the guarantee of the transfer value may otherwise expire.

The insistent client form contains a declaration prepared by Portal. It sets out that the reasoning for the choice to proceed is that his "*main priority is to release funds rather than retirement planning*".

No signed copy of Portal's insistent client form was provided to this service.

A report called a "Pension release report" was prepared on 26 March 2013; it was accompanied by a letter from Portal. Portal said their attached report was their suitability report.

Portal's letter contains the following information:

"*I am pleased to enclose a copy of our suitability report that includes my recommendation… If you follow my recommendation you will:*

- *Receive your Tax Free Cash lump sum of circa £16,595.*
- *Have greater long-term flexibility to maintain your pension in line with your risk and reward profile.*
- *Receive further advice when you decide to take an income from these funds.*
- *Please read the enclosed suitability report carefully as it contains much more detailed information than highlighted above. There are several points that are covered in the report that it would be prudent to highlight at this point:*
- *You are aware that by taking benefits now, you are giving up your entitlement to a defined benefit.*
- *You are aware that by taking benefits now you will have a reduced pension fund at retirement and no further entitlement to a tax free lump sum.*
- *Your investments will be reviewed on a yearly basis.*

I believe I have made a recommendation suitable for your situation".

Portal's report included the following:

"You have decided that you still wish to proceed with Pension Release despite us advising you not to. We will assist you with this and have treated you as an 'Insistent Client'.

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 a… 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. I have considered a wide range of pension providers and recommend that your existing policy be transferred to the … Personal Pension".

The report also included the following examples of some of the benefits Portal said the transfer would provide:

- *Meet your stated objectives and repay your debts.*
- *Be able to take up to 25% of your pension as a Tax Free Cash Lump Sum to meet your needs, you have selected to take £16,595.*

Portal concluded Mr E's attitude to risk (ATR) was balanced and he wanted to retire at 60. Portal's recommendation was that after Mr E took the maximum tax-free cash lump sum of £16,595, the residual fund of £49,788 would be reinvested until he required an income.

Several times they used the phrase that Mr E would be treated as an Insistent Client. Within their report Portal set out the following information:

“*A Lifestyle Strategy is designed to gradually reduce the amount of risk you are exposed to as the date from which you intend to commence taking an income becomes closer. This is achieved by progressively reducing the amount you have invested in higher risk sectors, moving into lower risk areas. We will review this on an annual basis*”.

The report also set out there was an initial adviser charge of 6.67% of the plan value (after the tax-free cash had been deducted); and their ongoing fee was 1% per annum to manage his investments. Although different fees were set out elsewhere:

“*The charges and effects of the charges are shown in the key features document and illustration. Our initial charge of 5% of the total transfer value is deducted from the residual fund, so you do not have to find our fee from your Tax Free Cash. There will then be an ongoing charge of 1% per annum to manage your investments*”.

The application to transfer was completed and signed by Mr E on 27 March 2013 and the funds were transferred on 29 May 2013.

In May 2013 Mr E’s cash account within his pension plan (a self-invested pension plan (SIPP) with LV registered a tax-free cash sum of £16,961.54. In June 2013 the sum £3,394.01 was paid to Portal as their adviser service charge. And £47,490.63 was transferred and went on to be invested in the Vanguard Life Strategy 60% Equity.

Following the investment and receipt of the tax-free cash sum, Mr E continued to make regular withdrawals from the plan in the months and years that followed. It doesn’t appear Portal received an ongoing advice fee, despite this apparently being part of the initial advice and arrangement.

By January 2019 Mr E’s cash account had a zero balance and his underlying investment had just under £11,000 remaining.

A complaint was made to Portal on Mr E’s behalf in 2019. It said Mr E had not been properly informed or advised. The complaint suggested Portal had provided incorrect information to Mr E, they had failed to follow the proper procedures and had unfairly and unsuitably influenced Mr E to cause him to transfer his valuable pension benefits out of his OPS. It was said that no alternative options were discussed, and it was disputed that Mr E was ever an insistent client. As a consequence, Mr E, who was vulnerable, had suffered loss.

There are letters provided in response to this complaint on paper headed from a firm called “Portafina LLP” with company information that differs in relation to the FCA number and registered address to that of Portal. However the letters make clear reference to the documents prepared in respect of Mr E by Portal, they quote the contents directly. On behalf of Portal, the complaint was rejected.

Mr E’s complaint was referred to this service. In summary we were told on his behalf that Portal ought not to have facilitated the transfer of his OPS. We were told Mr E had no recollection of receiving any advice in writing and had limited knowledge and understanding around pensions. He had been in financial difficulty at the time and had no other financial options. This included no cash savings or any alternative or additional pension provision. Mr E complained the adviser from Portal failed to explore alternative options to raise capital to meet his debts. Mr E said he hadn’t been made aware he’d be better of leaving his pension benefits where they were. Mr E said he’d been intending to retire at 60. This had been close to the age he was seen by Portal. As a consequence of their failures and Mr E’s loss, it’s said Mr E had to amend his plans and now will retire at a later age.

Mr E said he'd been made aware there had been cases where Portal had been criticised in their approach to categorising clients as being "*insistent*". He said there were a number of decisions made by ombudsmen at this service on similar facts to his situation against the same firm. It was said Portal ought to have identified his lack of knowledge and ought to have refused to facilitate the transfer despite his agreement.

Investigator's view

An investigator at this service considered Mr E's complaint. She rejected the complaint. Her view suggests she accepted Portal had advised Mr E, albeit she acknowledged Portal mentioned multiple times that the transfer was potentially unsuitable for him in documents provided. The investigator accepted that on the face of the information the transfer had been unsuitable in respect of achieving the same or better benefits at retirement as Mr E's OPS.

However overall, she concluded there had been external factors that meant Mr E had needed to complete the transfer. He'd been in desperate need of money due to serious financial problems and no other reasonable options. She also concluded the investment had met Mr E's attitude to risk and as such was not unsuitable.

Portal accepted the investigator's view. Mr E's representatives did not. Mr E's representatives told us that because Mr E was particularly vulnerable at the time, Portal ought not to have facilitated Mr E's transfer. It was suggested the investigator wrongly concluded the pressure being applied by "*loan sharks and nasty people*" to Mr E meant the failures of Portal were being overlooked.

Provisional decision

On 24 February 2022 I issued a provisional decision. Although I was sympathetic to Mr E's position and I didn't think Portal's service had been at all satisfactory, I didn't think it was necessarily wrong in these very particular circumstances for Mr E to have accessed funds from his preserved OPS benefits.

I thought Portal's approach had been pre-determined and flawed from the start. But Mr E had been in very serious circumstances on his own evidence, and I couldn't conclude that if he had been differently advised and assisted by Portal he would not have done the same thing; or that it could be said that it was unsuitable in the very personal circumstances of this case.

I indicated I intended to uphold part of Mr E's complaint in respect of the service provided, and to conclude Portal must repay a portion of fees paid to them by Mr E, with interest and an award for his distress and inconvenience. I also set out what I intended to say Portal must do.

Responses to provisional decision

Portal did not respond.

Mr E's representatives didn't agree with my provisional decision. They accepted my findings about the flaws in Portal's processes and advice, and Portal's flawed treatment of Mr E as an Insistent Client. However, Mr E's representatives continue to stress their view that had Portal carried out their advice differently, Mr E was very unlikely to have gone ahead with the transfer. In particular it's said Portal ought to have specifically recommended to Mr E that he seek debt management / insolvency advice and they ought to have informed him this could offer an alternative means of dealing with his current position, without jeopardising his future retirement provision.

In summary I was asked to consider there were a wide variety of other options open to Mr E to meet his financial needs and circumstances. Mr E's representatives didn't intend to rehearse these; albeit they referred to bankruptcy and debt management and drew my attention to part of the Insolvency rules and protections afforded to defined benefit pension schemes.

I went on to provide parties an opportunity to respond to my thinking that interest ought to be paid until date of settlement.

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.

Having done so I haven't been persuaded to depart from the thinking set out in my provisional decision. I am upholding part of Mr E's complaint and Portal must repay a portion of fees paid to them by Mr E, with interest and an award for distress and inconvenience.

The manner in which Portal dealt with Mr E, and the processes adopted were flawed, inconsistent and unsatisfactory. I consider the service provided by Portal can be characterised as pre-determined, advisory and directory. I don't think Portal and their relationship with Mr E met what's expected when categorising someone as a true insistent client.

Mr E was actively led through the process to enable benefits from his OPS to be transferred and accessed. I don't consider Mr E here, chose a different approach to that recommended by Portal. I don't accept Portal facilitated Mr E's wishes, against their own genuine recommendation. Mr E wasn't provided with sufficient understanding or accurate information; nor did Portal meet the standards or requirements around their work and service. There are significant inconsistencies within Portal's paperwork and that created in respect of Mr E and his transfer.

The transfer from the OPS was not going to put Mr E in a better position in respect of his pension arrangements. There was never any reasonable likelihood the critical yield required to match or exceed the OPS benefits would be met. Portal's documents on this were inconsistent. It's also clear Mr E had no other available assets, further pension arrangements or any capacity for loss.

But in the circumstances of this case I have needed to consider whether what was done for Mr E was unsuitable, and if Portal had what they ought to have done here, what I think on balance was likely to have happened. I think Mr E wanted and needed urgent access to money; and facilitating this transfer enabled this. Mr E's circumstances and needs in 2013 are at the centre of this complaint.

Mr E disclosed enough to Portal to have made them aware he was particularly vulnerable and desperate to access any finance he could. I accept the suggestion, this ought to have made Portal take into account his particular financial vulnerability and take additional care when advising and working with Mr E. I am not persuaded Portal did this; albeit there isn't enough for me to conclude Portal knew the extent and nature of Mr E's pressing financial commitments.

Given the very particular circumstances of this case I don't conclude what happened was unsuitable for Mr E, such as Portal ought to be required to bear the responsibility of loss in retirement benefits from the transfer. I am not persuaded that even if Portal had done what they ought to have done, that Mr E would not have gone on to insist, in a way that met the requirements, that he did want to transfer his OPS benefits and in particular access the tax-free cash.

Mr E didn't have any reasonable alternative options when it came to finding alternative sources of money. Mr E was in a real need, and from what he has told us, it might be considered an urgent and desperate need. He told us that not only did he have regulated debts (credit cards for example) to manage, he also had bailiffs and "*loan sharks*" attending his home. He said payments had been missed which led to the interest doubling, and he had "*nasty people"* knocking at his door. Mr E also told us he'd contacted his OPS himself to see if he could access any funds. He had been unemployed for around a year, his wife was retired and there was no indication his position or needs were likely to change, save for becoming more desperate.

I've also considered, as has been suggested by Mr E's representatives, whether if Portal had explored other options for releasing or obtaining money at the time, something different would have happened. I don't think there were any alternative reasonable options available to Mr E to access funds.

It was suggested Mr E could have approached family for a loan. I don't consider this to have been something Portal ought reasonably to have explored. Here Mr E was experiencing constant worry around his debts and people contacting him around repayments; this had already led him to contact his OPS directly, so I tend to conclude this would have been an avenue he was likely to have explored himself if it were an option.

I've seen what's said on Mr E's behalf in respect of debt support agencies and other options. I continue to have real sympathy with Mr E's position, but I don't think a number of the options proposed might not have either been considered by Mr E, (given he had been looking for a solution) or brought to his attention by some of his more regulated debts (credit cards).

In any event, the options proposed, or any others that might have reasonably been considered, would not have addressed all of Mr E's needs; and not the most pressing and urgent. Here Mr E referred to having nasty people attending his home in relation to debts, this makes his needs at the time particularly desperate. I accept this made him vulnerable to the flawed advice approach adopted by Portal, but that doesn't mean I can conclude on balance, this made it unsuitable for Mr E to access his funds to address his pressing problems. It does mean I think Mr E was likely on balance, to have pursued access to these funds, even if Portal had now failed in the ways I have identified. I've seen Mr E continued to draw on his funds in the time that followed, but there's no suggestion he received ongoing advice.

On balance I think it is reasonable, if more unusual, to conclude Mr E had good reason to give up future benefits, for an immediate relief from very desperate, and no doubt worrying and frightening circumstances. He didn't have capacity to lose his only future pension provision, but he had good reason to give it up here.

So the transfer, although on the face of it flawed and unsuitable, was in these very particular circumstances, not unsuitable; I tend to think on balance that if Portal had done what they ought to have done, then in any event, Mr E was more likely than not, to have gone on to insist, in a way that would have met the requirements, that he wished to proceed.

I've seen what's said about other decisions made by this service upholding complaints made against this firm in similar circumstances. However, each case turns on its own facts. Despite my sympathy for Mr E's situation, I have carefully balanced the facts here. I accept

Mr E was vulnerable, he had no capacity for loss, and he would clearly lose future benefits for retirement here.

Mr E's representatives suggest Portal, in the circumstances, ought to have refused to facilitate the transfer. I don't accept this was something they were required to do. I accept and agree Portal ought to have done better when it came to meaningfully communicating to Mr E that leaving his benefits in his OPS would enable him to have more valuable benefits in the future and that a transfer (particularly given his age) would not, (putting aside his desperate financial need), be in his longer term or retirement interests. This doesn't mean I think Mr E would have chosen to do something else.

Investment

For completeness Portal advised on the investment; there is no basis on which to suggest Mr E made or was in any position to make his own investment choice with the residue of his fund once the tax-free cash had been accessed. I don't accept, based on what I've seen the investment as set up, was suitable for Mr E. This is simply in respect of one matter, that the investment had a life-styling strategy. Portal's explanation of what a lifestyle strategy involves was accurate enough in their report; albeit I don't conclude Mr E would have reasonably understood this.

Given Mr E's age, and how close he was to his intended retirement, I don't conclude such a strategy could be considered prudent. However Mr E continued to withdraw funds regularly from the sum invested over the following months and years, and as such this point is moot.

There's no suggestion Portal considered, or were asked to consider ongoing withdrawals and their impact, or that Mr E sought further advice on his pension; as such, as I previously indicated, I haven't considered failures around the investment advice separately from overall failures in Portal's service.

For completeness I don't accept any suggestion Portal accurately recorded that Mr E understood stock market volatility. Where Portal recorded he had no investment preference and he was happy to consider their recommendations, I think it could be more accurately described that Mr E followed Portal's directions.

Putting things right

What Portal must do

Portal's service and advice was inconsistent, inadequate, and unsatisfactory. The only thing they did which I accept was not unsuitable, (and which I think Mr E would have insisted upon, had he been properly advised), was the transfer from the OPS, thus enabling access to the tax-free funds and seeking to ensure the remainder was invested. Here in such a way that was intended to meet a balanced attitude to risk.

Mr E is entitled to a repayment of a portion of the fees received by Portal, including interest to represent the loss at our usual rate. Portal also need to make a payment to Mr E to represent the distress and inconvenience he has been occasioned. I have reduced this to acknowledge Mr E has been represented and due to the circumstances of this case.

Portal need to make a payment to Mr E to represent the loss he has inevitably suffered in his retirement options and benefits as a consequence of the transfer. His short terms needs took priority in 2013, and in such a way the transfer overall can't be considered unsuitable, or on balance, likely to have been contrary to his choice, had he been properly informed and advised.

Based on what I've seen, Portal received £3,394.01 in June 2013 as payment for their work and service. Portal must pay Mr E the sum of £1,500 to represent the cost of work Mr E reasonably expected Portal to have adequately provided, which they failed to do. In reaching this sum, I've balanced it against a reasonable sum for the work Portal did to ensure Mr E's OPS benefits were transferred and invested, and the tax-free cash made available; despite the pre-determined and flawed process.

Interest is to be paid on this sum to be paid at 8% simple a year from the date of payment to Portal to the date of settlement.

Portal must also pay Mr E the sum of £250 to represent his distress and inconvenience here.

I previously indicated that it doesn't appear Portal provided any ongoing advice; nor were they paid any ongoing fee, even thought this was said to be part of the original agreement. I invited further information and representations if this was wrong. I haven't seen anything on this point. For completeness I indicated in my provisional decision that if Portal were provided with any ongoing fees and did not provide any ongoing service, I would intend to also refund such fees or charges with the approach to interest following the approach set out above.

My final decision

For the reasons given I uphold Mr E's complaint against Portal Financial Services LLP in part. Portal need to complete the redress exercise as set out above. In summary:

- To pay Mr E the sum of £1,500, representing a refund of part of the fee he paid for inadequate and flawed service and advice.

- Interest on this sum to be paid at 8% simple a year from the date of payment of the overall fee to Portal in June 2013 to the date of settlement.

- To pay Mr E the sum of £250 to represent his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 21 April 2022.

Louise Wilson
Ombudsman