

complaint

Mrs W has complained that she understood from Portal Financial Services LLP (Portal) that she would be able to take the tax-free cash lump sums from her pensions without having to transfer. She said that it was only later that she discovered that her pensions had been transferred.

background

The first point to note is that Mrs W cannot read or write and was therefore heavily reliant on the advice that she was receiving verbally from Portal. The written information that she was given and signed in my opinion cannot in the circumstances be taken as having been fully understood by Mrs W.

One of our adjudicators investigated this complaint. He wrote to Portal in June 2015 setting out the reasons why he concluded that the complaint should be upheld.

The adjudicator noted that Mrs W was an active member of her employer's salary related pension scheme. She also had a very small personal pension.

Portal had established that Mrs W would be worse off in retirement if she transferred from her employer's pension scheme. Based on a retirement age of 65, it said that Mrs W would be worse off if her pension fund grew by less than 12% a year.

During a telephone conversation with Mrs W on 13 September 2012, Portal noted that Mrs W:

- wanted to take the tax-free cash lump sums from her pensions in order to pay for home improvements including adding solar panels to her house
- did not wish to raise finance for those home improvements
- was then aged 56
- suffered from arthritis, osteoarthritis, rheumatoid arthritis and fibromyalgia
- would have to opt out of her employer's pension scheme
- was aware that the remaining pension would be unlikely to grow sufficiently to match the benefits she could receive from her employer's pension scheme
- felt that, due to her state of health, she would not live beyond normal retirement age
- could not read or write

When Portal wrote to Mrs W on 14 September 2012 it said that it recommended that she did not transfer from her employer's pension scheme. Portal also said that, if Mrs W wished to proceed, it would treat her as an insistent client. It provided an insistent customer form, which Mrs W signed. This set out that she was aware that transferring from her employer's pension scheme was against Portal's advice and that she would be worse off in retirement.

On 18 September 2012, Portal spoke with Mrs W again. Portal recorded that:

- she was confused by the above letter
- she still wished to take the tax-free lump sums
- her manager had helped her complete the forms that it had provided

Portal sent Mrs W a suitability report on 21 September 2012, which it asked her to read carefully. The report set out Portal's recommendation that Mrs W purchase a fixed term annuity. Portal said that Mrs W could receive a lump sum of around £8,268 and that she

would have a guaranteed value of £24,220 at the end of the annuity term. Portal also said that Mrs W was in good health.

When Portal wrote to Mrs W again on 24 September 2012 it said that she would need to transfer away from her employer's pension scheme in order to take the tax-free lump sum.

Portal also said:

"Due to the guaranteed benefits that you will be relinquishing with [the employer's pension scheme], it is against my recommendation to transfer your benefits."

"You have decided to release the money required from your pension. You understand by doing so you will have a reduced amount of money available to you when you come to retire, and you will not have the option to release another tax free lump sum."

You fully appreciate that by transferring the benefits away from your scheme you are giving up a guaranteed pension in return for a pension that is dependent on the investment performance as well as annuity rates. To match your current scheme, this fund would need to grow by 12% per year (as mentioned earlier in this report).

I have not recommended that you do this due to the loss of benefits you will incur by transferring your pension. However, you have insisted that you still wish to proceed with the pension release." (bold in the original)

Portal enclosed a declaration with its suitability report, which Mrs W signed on 26 September 2012. The declaration said:

"I fully understand what the Critical Yield is and I am aware that it is unlikely that my recommended scheme is going to achieve a growth rate of 12% to match the guaranteed benefits held with [the employer's pension scheme]."

I am aware that I will lose the Guaranteed Pension of £2,526 pa payable from age 60 by transferring my benefits to an alternative pension arrangement, and understand that I will be worse off in retirement."

I am aware that by transferring my [personal] pension to an alternative pension, my pension ... will suffer a Market Value Reduction which is a charge to the funds, and that this will lower the pension amount I receive."

Due to the guarantees you will be giving up in proceeding with this plan we recommend that you do not proceed. However, if you still do wish to proceed with the transfer then you will be treated as an insistent client."

I wish to proceed on this basis as my main priority is to make home improvements and have solar heating installed (ahead of retirement planning)."

The transfer from the personal pension was completed in October 2012. Mrs W received a very small lump sum. The remainder was placed into fixed term annuity that did not pay any income. Instead, it had a guaranteed maturity value that could later be used to provide an income. The adjudicator concluded that there had been no material impact on Mrs W's

financial situation by transferring and taking benefits from the personal pension. Neither Mrs W nor Portal disputed that conclusion. Therefore, I have not considered this transfer further.

Before the transfer from her employer's pension scheme could take place, Mrs W had to opt out of that scheme. Portal expected Mrs W to re-join the scheme once the transfer had taken place.

The transfer was completed in February 2013. Mrs W received a tax-free lump sum of £8,334.90. The remainder of the transfer value was placed into fixed term annuity in March 2013. That annuity did not pay any income but had a guaranteed maturity value.

Mrs W told the adjudicator that she had wanted the lump sums from her pension funds to help pay for her daughter's wedding. She said that, because of the time taken, she ended up borrowing from her bank. Mrs W said that she made Portal aware of this and that it told her to take the money anyway. Mrs W was able to repay the bank from other sources. She said that she did not spend the lump sums received on home improvements but wasted them.

Mrs W was retired on ill health grounds in March 2014 and before she had re-joined her employer's pension scheme. A report produced by an occupational health physician in July 2014 said that Mrs W had no reasonable prospect of gainful employment.

Under the terms of her employer's pension scheme, if Mrs W was retired early on ill-health grounds, she might have been considered entitled to an enhancement on the following basis:

*"No reasonable prospect of being capable of gainful employment now or at any age before state pension age (subject to a minimum of age 65). You will get a pension and normally a lump sum based on the membership you have built up so far **PLUS** all the extra membership you would have built up if you had remained a member to state pension age (subject to a minimum of age 65)."*

Mrs W told the adjudicator that it was only after she had been retired that she discovered that her pension had been transferred from her employer's pension scheme.

Mrs W is now receiving an annuity income from the pension funds placed in the fixed term annuities, although that income was delayed because she complained and because of a breakdown in communication.

The adjudicator took the view that Mrs W's complaint called into question not just whether she was made aware that transfers would take place but also the suitability of the transfers.

He noted the rules and guidance set out by the regulator as in force at the time of advice.

"COBS 19.1.2(R) A firm must

...
(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.

COBS 19.1.6(G) When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then

consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests.

COBS 19.1.7A(G) *When giving a personal recommendation about a pension transfer, a firm should clearly inform the retail client about the loss of the fixed benefits and the consequent transfer of risk from the defined benefits pension scheme to the retail client, including:*

(1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme;

The adjudicator said that Portal ought to have been aware that Mrs W would have difficulty understanding the financial implications of transferring. The adjudicator noted that transferring did release more by way of a lump sum than might have been received at normal retirement age from her employer's pension scheme. But he also noted that Portal did not give any quantified indication of the impact on Mrs W's income in retirement if she transferred.

The adjudicator took the view that Mrs W's state of health as recorded by Portal in September 2012 was not so poor that she was unlikely to require an income in retirement. He considered that Portal had failed to take into account all the benefits that she gave up by transferring from her employer's pension scheme.

Portal knew that Mrs W could not read or write. The adjudicator took the view that Mrs W's circumstances placed considerably greater onus on Portal to make sure that she fully understood the implications of transferring. He was not satisfied that it should have arranged the transfer from the employer's pension scheme even on an insistent client basis.

The adjudicator said that Portal should undertake a loss assessment on the basis that Mrs W had remained a member of her employer's pension scheme and had received the uplift described above.

Portal did not agree with the adjudicator. It said that it had afforded Mr W an increased degree of care and diligence, as it had recognised her learning difficulties. Portal said that it had had several telephone conversation with Mrs W in which she was told about the need to transfer to release the lump sums.

Portal said that it would not have been right to discriminate against Mrs W by refusing to handle the transfers because of her learning difficulties.

Portal said that it did not believe that Mrs W would have signed the various forms she was sent if she did not want to transfer or if she did not understand what was to happen.

I note that, in May 2012, Portal obtained projected figures from the employer's pension scheme assuming that Mrs W continued to be a member until 60 and 65 as follows:

	lump sum	annual pension
At 60; either	£2,689.44	£2,203.18
or	£10,402.68	£1,560.41
At 65; either	£3,126.96	£4,071.71
or	£18,566.88	£2,785.05

my findings

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

Portal has argued that it advised Mrs W not to transfer and would only handle the transaction if she signed to say that she was an insistent client. I do not consider that Mrs W would have understood the implications of the actions that she was taking and I consider that she would have signed any papers that she was given by the business.

In a factsheet published in June 2015, the regulator noted that there are no rules specifically in relation to insistent clients. It said that the existing rules required financial business to act honestly, fairly and professionally in the best interests of the client. The regulator said that the factsheet did not reflect any change in policy. For businesses, it said:

"You must ascertain the client's investment objectives before making a recommendation, a request or preference by the client for a particular solution – for example accessing cash from a pension – is not an objective. You must ascertain the client's actual investment objectives so that you can advise on a suitable course of action to meet them."

The regulator also said that it had seen cases where:

"There was an inadequate assessment of the other options which could meet the client's objectives."

Mrs W's objective was recorded as being *"to make home improvements and have solar heating installed."* Portal noted that Mrs W did not want to raise finance to pay for that work. I am not satisfied that it undertook an adequate review of the other options.

Portal also noted that Mrs W considered her state of health to be so bad that she did not expect to live beyond age 65. She was then aged 56. I consider it clear from the information obtained in September 2012 that Mrs W was in ill health. However, in my opinion, Portal should not have assumed that Mrs W would not live beyond 65.

I cannot ignore that fact that Portal knew that Mrs W could not read or write. It was required to act in the best interests of Mrs W. Portal knew that Mrs W would be worse off if she transferred from her former employer's pension scheme. I take the view that Mrs W's circumstances were such that Portal should have acted with considerable caution. If it wished to act for Mrs W, it should have given all the information she needed in order to make an informed decision – and in a format that she would have been able to understand.

Although it advised her not to transfer, Portal should have made Mrs W aware of all of the benefits that she was giving up and the shortfall that she might suffer.

Portal told Mrs W that she would *"lose the Guaranteed Pension of £2,526 pa payable from age 60."* I note that the figure of £2,526 is shown on the transfer value analysis carried out for Portal as the pension that would be payable from 65. That analysis also showed a lump sum of £3,959. Those figures were based on Mrs W continuing to be a member of her employer's pension scheme until April 2012 (age 56).

Portal also said that Mrs W could receive a lump sum of around £8,268 with a guaranteed value of £24,220 at the end of the annuity term. It did not give Mrs W any indication of the

annuity income that she could have received if she transferred or details of the pension that she was giving up.

Portal did not relay the figures it received in May 2012 from the employer's pension scheme to Mrs W.

I am not satisfied that Portal gave Mrs W sufficient detail about the benefits that she was giving up by transferring or what she could receive. In my opinion, had it done so, Mrs W would have seen the extent of the harm that would be caused by transferring and taking her lump sum. I believe that she would then have decided against taking benefits. If Portal having advised Mrs W not to transfer out had not persuaded her of the folly of her actions it should in my opinion have declined to transact the business.

my final decision

I uphold this complaint against Portal Financial Services LLP.

I direct Portal Financial Services LLP to carry out loss calculation using the methodology for the pension review, but using the latest assumptions published for cases that fall outside the review. It should carry out that calculation on the basis that Mrs W had remained a member and that she was given ill health early retirement in March 2014. The assumptions and the relevant calculation date can be found on the Financial Ombudsman Service's website.

If there is a loss, Portal Financial Services LLP should pay redress in line with the guidance. If the redress due cannot be paid into a pension plan then it should be paid to Mrs W as a lump sum after deducting 15%. This deduction is to allow for the fact that 25% of the compensation would be tax free and the remaining 75% would be taxed at a rate of 20%. .

In addition, I direct Portal Financial Services LLP to pay £250 to Mrs W in respect of the trouble and upset she will have suffered through because it arranged the transfer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 March 2016.

Adrian Hudson
ombudsman