

The complaint

Mr M has complained that HARBOUR ROCK CAPITAL LIMITED took too long to arrange a transfer of his pension funds. Mr M believes he lost out as a result.

At the time of the events Mr M complains about HARBOUR ROCK CAPITAL LIMITED was trading under the name of Portafina Investment Management Ltd (Portafina). As all of the relevant documents and correspondence were issued in the name of Portafina, I will only refer to Portafina throughout this decision.

What happened

Mr M took early retirement. He approached Portafina for advice about his pension and retirement provision in March 2021. He was a member of his former employer's defined benefit ('DB') occupational pension scheme. He also had a defined contribution ('DC') scheme pension. Both pensions were administered by the same company.

Portafina requested information about Mr M's pension funds from the pension administrators. The administrators replied. They said they were waiting for Mr M to confirm he wanted Portafina to gather information on his behalf before they would share Mr M's details with it.

On 18 May 2021 the pension administrators told Portafina Mr M had confirmed he was happy for them to share his information. The administrators sent Portafina some documents on 8 June 2021 including a cash equivalent transfer value ('CETV') for Mr M's DB scheme of around £575,000. The administrators also said that Mr M's DC scheme had a value in the region of £78,780. The CETV figure was guaranteed until 27 August 2021. But the administrators didn't give Portafina all the information it wanted, so it asked for more detail. Portafina received that information on 17 June 2021.

Portafina rang Mr M in July 2021 and ran through some fact-find questions to establish his circumstances and objectives.

On 28 July 2021 Portafina sent Mr M the result of the first stage of its advice process, known as abridged advice. It said it had insufficient information to make a recommendation about a DB pension transfer at that stage. It asked Mr M if he wanted Portafina to give him full advice. It said that if he wanted full advice he would have to agree to pay a fee of £19,000.

Portafina rang Mr M for a response to the abridged advice on 13 August 2021. It said Mr M told it that he hadn't read the abridged advice yet because he'd been unwell.

Mr M's CETV expired on 28 August 2021.

Portafina left voicemail messages for Mr M to contact it on 15, 22, and 27 September 2021.

Portafina sent correspondence chasing a response from Mr M on 29 September 2021, 28 October 2021, 11 November 2021, 3 December 2021, 23 December 2021 and 18 January 2022.

In the meantime, on 22 December 2021 Portafina left another voicemail asking Mr M to contact it.

On 24 January 2022 Mr M signed a declaration that he wanted Portafina to provide full advice and agreed to pay its fee. Portafina then obtained an appropriate pension transfer report ('APTA') including a transfer value comparator. It said it tried to contact Mr M to confirm his circumstances hadn't changed since its initial fact-find – either by phone or in writing – on 3 February 2022, 8 February 2022, 25 February 2022, 14 March 2022, 30 March 2022 and 31 March 2022.

Portafina spoke with Mr M on 27 April 2022. It then asked for further up-to-date information from the scheme administrators. It chased that information several times in May 2022. After receiving that information Portafina asked for a further CETV in June 2022. The scheme administrators provided that in July 2022. The DB scheme CETV had fallen to £474,000. The DC pension pot value had fallen to around £72,840. Portafina then obtained an up-to-date APTA and sent Mr M its suitability report setting out its analysis on 9 August 2022.

Mr M rang Portafina on 15 August 2022 and asked for a call back. He had to chase that reply and on 22 August 2022 Portafina did ring him back. Mr M wasn't happy with Portafina's service. Amongst other things he complained that because of its delays his pension had reduced.

Portafina replied to Mr M's complaint in October 2022. It didn't uphold it. Portafina said that while the process was delayed, the delays were caused by the DB scheme administrators or Mr M not getting back to it. It also pointed out that it was still waiting for Mr M to send it identity verification documents so it could complete the transfer process.

On 25 January 2023 the pension transfer was completed. A tax free cash lump sum was paid to Mr M on 26 January 2023.

In the meantime, on 6 January 2023, Mr M brought his complaint to us. One of our Investigators looked into it. She didn't think Portafina was responsible for the fall in Mr M's CETV. Mr M didn't agree so the complaint's been passed to me to decide.

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.

In arriving at my determination I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

And, while I've considered everything on file, I don't intend to address each and every point or issue raised. Instead I will focus my decision on what I see as being the key issues at the heart of Mr M's complaint at the time he brought that to us and the reasons for my decision.

Should Portafina have completed the advice process before the original CETV guarantee date expired?

I have to determine whether Portafina could have completed the advice process before the original CETV guarantee date had passed in August 2021. And, if there were any avoidable delays, whether they were a result of any error or omission by Portafina.

DB pensions are a valuable resource and their benefits are often considered to be difficult to match (at a similar cost) compared with other pension products available on the open market. Transferring from a DB scheme is a one-off event; once transferred there's no going back – the benefits are lost forever. So, when giving DB pension transfer advice Portafina was required to understand Mr M's wants and needs, not just his wishes and desires. And only once it was convinced, on contemporary evidence, that a transfer was in his best interests could it fairly make a positive recommendation to transfer.

There are typically a number of stages involved in the DB transfer process. Portafina effectively offers a two stage process. The first is known as abridged advice, which Portafina offers without charging the consumer for that advice. This is a shorter form of advice requiring fewer pieces of evidence to complete and is less complex. It only has two possible outcomes:

- A recommendation not to transfer.
- A conclusion that the short form of advice is inconclusive about whether a transfer is suitable.

And, generally, a client would only move on to the second stage – full advice – if Portafina has identified that the abridged advice was inconclusive.

The abridged advice process requires less information than full advice. But at the abridged advice stage the regulator still requires Portafina to gather what it calls “essential facts” about Mr M's knowledge, objectives and circumstances. That includes detailed evidence about his income and assets both currently and into retirement.

So, before Portafina could complete the abridged advice stage it needed to know what Mr M's pension entitlements were from both of his pensions. I've seen that Portafina requested Mr M's pension information at an early stage, but the scheme administrators didn't provide that information until June 2021. In my view the principal cause of the delay up to this point was because Portafina was awaiting information from third parties. In other words most of the delays were outside of its control.

Portafina then gathered further information from Mr M and gave him its abridged advice on 28 July 2021. Its conclusion was that it had insufficient information to make a recommendation and asked Mr M if he wished to proceed to full advice. If he wanted to do so, Mr M would need to agree to pay Portafina's fee of £19,000 for full advice.

At that time the CETV was only guaranteed until 27 August 2021. I'll explain that the “guarantee” date is set by the scheme administrators acting on behalf of the scheme trustees. So the guarantee date isn't anything Portafina had any control over and it couldn't secure that date until Mr M had signed all the necessary paperwork confirming he wanted the transfer to go ahead.

Portafina couldn't move to the next stage, full advice, until Mr M had agreed to pay its fee for providing that advice of £19,000. But Mr M didn't reply to Portafina to confirm he wanted to go ahead with full advice before the original CETV date had passed.

In fact, the file shows that Mr M didn't respond to Portafina and confirm he wanted to go ahead with the advice process until January 2022, almost five months after the original CETV guarantee date had expired. Portafina's shown us evidence of its attempts to contact Mr M in the meantime. That includes its note that it called Mr M on 13 August 2021 to discuss its abridged advice. But Mr M said he hadn't read the abridged advice report because he'd been unwell.

The initial CETV guarantee date expired on 27 August 2021 without Mr M confirming that he wanted to continue with the process. And given he hadn't agreed to pay its fee for full advice before that happened I don't think it was Portafina's fault that it didn't manage to complete the advice process before the initial CETV expired.

Should Portafina have completed the advice process sooner?

Portafina's provided evidence of numerous chasers to Mr M asking him what he wanted to do following the abridged advice report it sent to him in July 2021. But he didn't reply until January 2022 when he agreed to pay Portafina's fee and proceed to full advice. I've seen no evidence that the delay between August 2021 and January 2022 was because of anything Portafina did or didn't do. It was clearly awaiting Mr M's instructions. I understand that during this period Mr M had been ill. He also suffered some family bereavements which must have been very difficult for him to deal with. But those things are outside of Portafina's control, so I don't think it's responsible for the delays here.

After he asked Portafina to go ahead with the advice in January 2022 it then tried to contact him on numerous occasions. Mr M's said that Portafina hasn't been truthful about the number of times it tried to contact him. He also said he rang it on "hundreds" of occasions only to receive promises for calls back that didn't happen. Portafina provided us with evidence of the number of times it tried unsuccessfully to contact Mr M. Its call logs show that it wasn't until 27 April 2022 that it managed to speak with Mr M. At that point it took action to gather more information from the scheme administrators. It didn't receive all the information it needed, including an updated CETV, until July 2022. Following receipt of that, it sent Mr M its recommendation report reasonably promptly in August 2022.

As I've said above Mr M told us that Portafina hasn't been truthful about its attempts to contact him and that he made hundreds of phone calls to it. We asked him if he had any evidence of the phone calls he'd made to Portafina, for example by way of an itemised telephone bill, but he didn't reply. In contrast Portafina provided us with a log of the calls it had made to Mr M and of those it had received from him. I've seen that there were some occasions when Mr M had called Portafina and requested a call back that it didn't make promptly. For example Mr M called Portafina on 15 August 2022 wanting to discuss his case but had to make a couple of follow-up calls before he spoke with Portafina's adviser. But I've seen no compelling evidence of attempts by Mr M to progress matters prior to that.

Further I don't think Portafina had anything to gain by delaying the transfer process. It had already done a considerable amount of work for Mr M at its abridged advice stage. And, as it did that work free of charge, it wouldn't have been in a position to collect a fee for its services until it had completed the full advice process. So I don't think it had any reason to want to slow any progress down. It follows that, on balance, I think it's likely that the majority of delays were because Portafina was awaiting for Mr M or the scheme administrators to provide information so it could continue the advice process and were not caused by omissions or mistakes from Portafina.

I'm aware that, by the time the pension administrators provided the revised CETV in June 2022 it had dropped by around £100,000. I can understand how frustrating Mr M must

have found that. But, as I've said above, I don't think the delay between the first CETV expiring and Portafina receiving the second was because of anything Portafina did wrong. And, once it had received all the outstanding information it produced its recommendation report in a reasonable time.

It might also help if I explain that CETVs are typically only guaranteed for three months and they will then require recalculation. That's because they're not only based on the consumer's circumstances, but also what's happening in the wider financial markets. So they are affected by things like interest, gilt and discount rates. That means they can go up and down. And that's what happened in this case; the movements in the economy and the financial markets has seen a drop in CETVs. But that wasn't Portafina's fault. So I don't think it was responsible for the CETV reducing.

I'm also aware that Mr M's plan was to use the 25% tax free cash lump sum available from transferring his pensions to buy a house and then to use the remaining balance to buy an annuity. However, as his CETV balance had gone down the level of his annuity also fell. But, for the reasons given above, as I don't think Portafina is responsible for the drop in the CETV figure equally I don't think it was responsible for any subsequent drop in annuity values.

I've noted Mr M is also unhappy with the amount of time it took for the annuity purchase to be completed. But, this wasn't something that Mr M initially complained to Portafina about in August 2022. And it appears that any delays in the annuity purchase largely took place after Mr M had complained to this office. So, as this wasn't something he had initially complained to Portafina about or it replied to in its complaint response letter of October 2022, it's not something I've investigated or intend to address here.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 October 2023.

Joe Scott
Ombudsman