DRN-3112522

The complaint

Miss W complains about the advice Portafina Investment Management Limited gave in relation to her defined-benefit ('DB') occupational pension scheme, which was transferred to a self-invested personal pension ('SIPP'). She says the advice was unsuitable for her and believes this has caused a financial loss.

Professional representatives have helped Miss W to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Miss W's.

What happened

In 2018 Miss W contacted a national free advice service about discussing the possibility of releasing tax free cash (TFC) from her employer's previous DB pension scheme when she turned 55 the following year. The national advice service referred Miss W to Portafina.

Portafina completed a fact-find to gather information about Miss W's circumstances and objectives. It found that Miss W:

- Was 54, single and wanted to release TFC from her pension early.
- She'd been a member of her employer's former DB scheme until 2015 but had left that scheme and now paid into her employer's defined contributions scheme (a different sort of pension plan that doesn't give a guaranteed income), Miss W paid 7% of her salary into that scheme which her employer matched.
- The lease on her car was ending in August 2019 and she wanted to buy and own a new car.
- She wanted the ability for her children to be able to drawdown the remaining funds from her pension in the event of her death.
- The cash equivalent transfer value ('CETV') of her DB scheme fund stood at £79,036.19.

Portafina also carried out an assessment of Miss W's attitude to risk, which it deemed to be "*moderately cautious*". It also produced a pension transfer value analysis report which included cashflow models comparing how an alternative pension plan was likely to perform against the guaranteed benefits of her DB scheme.

On 12 October 2018, Portafina wrote to Miss W. It said its recommendation was that she should not transfer away from her DB scheme. It said that was because a new pension plan was unlikely to grow at the required rate to match the benefits of her existing DB scheme and she would lose guaranteed benefits.

Portafina's letter went on to say that if she wanted to go ahead with the transfer, against its advice, that would be something it could help her with. But in order to arrange that it would treat her as an "*insistent client*". It said that the options it referred to later in its letter would apply once Miss W reached her 55th birthday the next year. It included an *options form* which gave Miss W two choices:

- To disregard Portafina's advice and continue with the transfer from the DB scheme as an insistent client.
- To accept its recommendation and remain in her employer's DB scheme.

The letter asked Miss W to tick the box next to her preferred choice. The box next to the first option – not to accept Portafina's advice – said:

"*I understand your recommendation to leave my* [employer's DB] *Pension scheme where it is. However, I want you to continue reviewing my pension, setting up a flexi-access drawdown plan so that I can release £19,759 tax-free cash and reinvest the remaining £59,277.*"

The letter said that if Miss W chose the first option she would also need to sign the appended insistent client form. The form set out that Miss W understood that:

- The proposed pension plan for her reinvested pension fund was unlikely to grow at the "*rate required of 5.20%*".
- The critical yield (the investment return required to match the existing DB returns) was 9.3% based on Miss W taking a TFC) lump sum and a reduced pension.
- She would be giving up the option of taking a reduced guaranteed income of £1,993 a year and a tax free sum of £13,290 when she reached the DB scheme's normal retirement age of 65.
- If she didn't take the tax free lump sum her DB scheme would allow her to take a full pension of £3,213 a year, when she reached 65. A new pension plan would require a critical yield of 11.2% a year in order to match that.
- If she transferred out of the DB scheme to a new plan, she could take £19,759 TFC immediately and invest the remaining funds until her current scheme retirement age of 65. And that a new pension could give her an annual income of £2,900 from age 65, in the form of an annuity.
- By disregarding Portafina's recommendation not to transfer out of the DB scheme and instructing it to continue with the transfer, she was an insistent client.

The insistent client form also asked Miss W to explain in her own words why she wanted to go against Portafina's recommendation and continue with the transfer from her DB scheme.

Five days later (17 October 2018) Miss W returned the options and insistent client forms. She said she wanted to continue with the transfer. She wrote that her reasons for doing so were because her car lease ran out the following year. She couldn't afford to make the "balloon payment" to own the car outright when her lease came to an end and she didn't want to take a new lease or finance to buy a new car. So she wanted to take her TFC in order to buy a new car. She said she was currently paying £235 a month for her car lease. She said if she stopped paying that she could put that money towards her savings and increase her contributions to her current employer's pension scheme.

After Miss W returned those forms Portafina called her. It asked her if she was aware of the benefits that she would be giving up by transferring out of her DB scheme. Miss W said that she was. She said that this was something she'd thought about carefully and discussed with her son and a colleague and that she hadn't taken the decision lightly. She said she understood that Portafina's advice was that she'd be better off leaving her pension where it was. She added that by transferring out of the DB scheme and buying her own car she would be a little bit better off, and repeated that she could increase her contributions to her current employers scheme and add to her savings.

On 31 October 2018 Portafina sent Miss W a pension transfer suitability report. Amongst other things it said it strongly advised that she should not transfer funds out of her DB scheme. But it also said that – on an insistent client basis – it was recommending that she reinvest her pension funds into a SIPP from which she could access TFC from her 55th birthday. It said her current objective was:

"*My car is a lease car of which I'm paying £235 per month which is never going to be mine. If I buy my own car, I will have a saving of £235*"

The suitability report went through some of the things Miss W would be giving up by transferring out of the DB scheme. It said that to replace her current scheme benefits with a comparable income from an insurer (what's known as a transfer value comparator) would cost her £170,493. That meant that the same retirement income could cost her an additional £91,443 more by transferring out of the DB scheme.

The report said that while its advice was that Miss W should not transfer out of the DB scheme it could arrange that for her on an insistent client basis. It recommended a SIPP to her which it said matched her attitude to risk. Portafina's fees came to £5,242.17 for doing that. It said it would take £2,080.72 at the point of transferring and the remaining £3,161.45 once Miss W had received her TFC. It said that the total running costs, including Portafina's ongoing management fee, of her invested funds would be 1.88% of that fund each year.

On 14 November 2018 Miss W confirmed that she wanted to go ahead with the transfer and Portafina arranged that for her.

Miss W complained in 2020 to Portafina about the suitability of the transfer advice because, amongst other things:

- it hadn't advised her of the benefits she would lose by transferring out of the DB scheme.
- Its suitability report was confusing as it said that Portafina recommended that she shouldn't transfer out of her DB scheme but also made a recommendation to transfer to a SIPP.
- It didn't highlight that the recommended SIPP would have to perform particularly well in order to meet the benefits of her DB scheme.
- Owing to the accessibility of the SIPP Miss W is at risk of drawing out too much cash and leaving herself with too little income in retirement.
- It was unclear if Miss W had the option of accessing her pension without transferring from the DB scheme.
- Portafina didn't stress that transferring was not in Miss W's best interests.
- The DB scheme had guaranteed death benefits for Miss W's beneficiary which were lost.
- It was very unlikely the critical yield of 9.3% would be met.
- Miss W couldn't remember discussing her attitude to risk with Portafina.
- Miss W's DB scheme didn't require her to pay fees but the SIPP did.
- Portafina acted negligently as Miss W lost the inflation proofing of her DB scheme.
- Portafina should have explored alternatives in order to meet Miss W's objectives.

Portafina didn't uphold Miss W's complaint. It said, amongst other things:

- It had clearly advised Miss W not to transfer out of her DB scheme outlining the risks and benefits she would lose by doing so.

- Miss W had confirmed she was aware the SIPP was unlikely to achieve the growth rate to match her existing scheme and that Portafina's recommendation was not to transfer.
- By going against Portafina’s advice it treated her as an insistent client and had explained why.
- Its suitability report explained the applicable charges.
- It had asked Miss W questions about her attitude to risk and deemed her to be a moderately cautious investor, which she had confirmed she agreed with.
- The funds her new plan invested in were not high risk investments and matched her attitude to risk.
- It had clearly warned Miss W about the guarantees and benefits she would be losing and acted in Miss W’s best interest by recommending that she should not transfer out of the DB scheme.

Miss W referred her complaint to our service. An investigator upheld it and required Portafina to pay compensation. She said that access to TFC for Miss W wasn’t worth sacrificing the valuable benefits of her DB scheme for, especially as Miss W already had a car. The investigator hadn't seen evidence that Portafina explored alternative options. Portafina found that Miss W was a moderately cautious investor but that transferring out of the DB scheme came with risks. There was no guarantee of income by transferring into the new plan as it would be subject to investment risk and the new plan was unlikely to grow at a sufficient rate. The investigator added that she didn’t believe that Miss W was truly an insistent client.

Portafina disagreed, it said it had advised Miss W against transferring out of the DB scheme. Miss W was not obliged to sign agreement with the insistent client process. She’d said in her own words why she wanted to go ahead with that transfer and this was in accordance with the regulator’s guidance. It had also phoned Miss W to make sure she understood the benefits she would be giving up and that she was happy to proceed. It was fully compliant with the insistent client process. Portafina had discussed with Miss W alternatives to taking TFC and that further discussions would not have altered Miss W’s decision to go ahead with the transfer. It concluded that it believed Miss W would have tried to access her TFC early with or without its involvement.

The investigator wasn’t persuaded to change her opinion, so the complaint was referred to me to make a final decision.

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.

Both Miss W and Portafina have made many points in bringing the complaint and in replying to it. And I've considered carefully everything on file. But in this decision I don’t intend to address each and every issue or point raised. Instead I will focus on the issues that are at the heart of Miss W’s complaint and the reasons for my decision.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I’ve decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator's position

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. In this case Portafina considered Miss W's circumstances, her attitude to risk, her objectives and transfer value analysis report which indicated that if Miss W transferred out of the DB scheme she was unlikely to be better off than if she remained in it. And it advised Miss W against making the transfer. But it said it could arrange that for her on an insistent client basis.

Since 2018, COBS 9.5A includes additional guidance on insistent clients. It sets out three key steps for advisers to take.

1) Where a firm proceeds to execute a transaction for an insistent client which is not in accordance with the personal recommendation given by the firm, the firm should communicate to the insistent client, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent client so that the client is able to understand, the information set out in (2).

2) The information which the firm should communicate to the insistent client is:
    a) that the firm has not recommended the transaction and that it will not be in accordance with the firm's personal recommendation;
    b) the reasons why the transaction will not be in accordance with the firm's personal recommendation;
    c) the risks of the transaction proposed by the insistent client; and
    d) the reasons why the firm did not recommend that transaction to the client.

Acknowledgement from the insistent client - COBS 9.5A.4

(1) The firm should obtain from the insistent client an acknowledgement that:

(i) the transaction is not in accordance with the firm's personal recommendation; and
(ii) the transaction is being carried out at the request of the client.

(2) Where possible, the acknowledgment should be in the client's own words.

Did Portafina fairly treat Miss W as an insistent client?

Portafina said that, as Miss W wanted to go against its advice and transfer out of the DB scheme it treated her as an insistent client and was fully compliant with the FCA's guidance when doing so.

I've looked carefully at Portafina's decision to treat Miss W as "*insistent*", particularly in respect of the regulator's position, to see whether I think Portafina acted fairly.

Portafina's recommendation, both in its letter of 12 October 2018 and in its later suitability report was that Miss W should not transfer out of her DB scheme. But its 12 October letter went on to say that Miss W could transfer out of the scheme if she wanted to and that it could help her to do that.

Portafina presented the possibility of transferring out of the scheme on an insistent client basis, alongside the recommendation not to transfer. But I think this made it far too easy for Miss W to simply decide that it was a suitable alternative to staying in the scheme, when Portafina was aware that a decision to transfer out of the DB scheme was not in her best interests. Had it not given her that option at that time, then it would have placed the onus on

Miss W to contact Portafina again to find out what she needed to do if she did genuinely insist on going against Portafina's recommendations and intended to transfer out of the scheme.

Further Portafina didn't produce its suitability report until after Miss W had told it she wanted to be treated as an insistent client. But its letter of 12 October 2018 told her that by transferring out of the scheme she could enjoy a TFC sum of £ £19,759 *immediately* (actually at age 55) and she could reinvest the remaining pension pot of £59,277. Similarly the enclosed insistent client form summarised both the benefits she could expect to lose but also what she could possibly gain from transferring out of the DB scheme. But it presented that information to her in a raw state, that is without the analysis contained within its suitability and transfer value reports. I find that this undermined the process. That's because I don't see how Portafina could expect Miss W to make an informed decision about going against its recommendation when it hadn't given her all the information she needed in order to make that decision. That is, it gave her some bare-bones information and expected her to make a determination that could start her down the road of the insistent client process without giving her enough details to reasonably make that decision.

Also I've seen that the insistent client form says that, if Miss W did not take TFC at age 65 then she could expect to receive a pre-tax annual income of £3,213 from the DB scheme. The form then went on to say:

"*In comparison I understand that if I transfer my* [existing DB] *Pension plan to a new plan, take £19,759 tax-free cash immediately and invest the remaining money until my current scheme retirement age of 65, my pension could give me an annual income of £2,900, in the form of an annuity, when I reach this age*."

So the insistent client form indicated that Miss W could take her TFC lump sum *immediately* – although this would actually be from her 55th birthday – and also receive an annuity income of £313 a year less than her DB scheme from age 65. I can understand why Miss W would have considered that to be a mouth-watering prospect. That would give her access to a handsome lump sum approaching £20,000 at her next birthday together with the possibility of only a relatively small reduction in her annual retirement income from age 65. The comparator, of £3,213 a year, was some ten years away and wouldn't have paid any lump sum at all. I think that would be an enticing prospect for most people which might well cause them to consider going against Portafina's advice.

But I don't know where Portafina got the £2,900 a year annuity figure from. The transfer value analysis report which I've seen contains cashflow projections about how much Miss W might expect to receive if she transferred out of the DB scheme and bought an annuity. But, unless there's a second report which I haven't seen, the figures in the transfer value report don't say anywhere that Miss W could expect to receive an annuity income of £2,900. Instead, it says that she could expect a pre-tax annuity income of £1,460 if the plan's growth rate was low, rising to £2,352 if its growth rate was medium, increasing again to £3,717 if the return was high. So I can't find a figure of £2,900 anywhere within the analysis report. And given that Portafina considered Miss W a moderately cautious investor, a return at the highest rate seemed very unlikely – in fact, it was likely to be closer to the lowest rate. Further, those sums would drop even further once factoring in a reduction for Miss W taking her TFC from the pot at age 55. So the figures in the transfer value report paint a significantly more difficult financial picture if Miss W transferred out of the DB scheme and bought an annuity, to the sums contained in the insistent client form.

I've noted that Portafina spoke with Miss W to confirm she knew what benefits she was giving up by acting as an insistent client and transferring out of her DB scheme. And when Portafina reminded her of what those were during the call Miss W said that the figures were familiar to her. She said she'd thought carefully about what she was doing, had discussed it with her adult son and a colleague and hadn't taken the decision lightly. She also explained why having access to the TFC would be beneficial to her in the short term. She said that would enable her to buy a car outright. She could also use the money saved from doing so, £235 a month, to reinvest in her other occupational pension and savings. And listening to that call in isolation gives the clear impression that Miss W fully understood the benefits she would be giving up. But I don't think that, at that point in time, Portafina had provided Miss W with all the facts she needed to make such an important decision. And, to my mind, it seems illogical for Miss W to decide to take money out of one pension, simply to allow her to pay money into another pension that was unlikely to match the benefits she'd be giving up.

When it spoke with Miss W Portafina hadn't provided her with its suitability report, it had only sent her a letter with limited information. And, while maintaining that its advice was not to transfer out of the scheme, Portafina told her it could make the transfer happen anyway if that was what she wanted. But at that time it hadn't given Miss W details about its proposed reinvestment strategy. Indeed during the call Miss W asked what Portafina intended for her to do with the remaining sums after she'd taken her TFC. Portafina said that it would send those details to her, then all she needed to do was sign the forms and return them with proof of ID so she could go ahead with the transfer. In other words the call ended with it being a nailed on done deal that Miss W was going ahead with the transfer, even though, at that point, Miss W didn't know what she was transferring to.

A much clearer process would have been for Portafina to provide its advice as a whole, taking into account Miss W's objectives and attitude to risk. That advice should have considered the overall picture – both of transferring out of the DB scheme *together with* the choice of pension and Miss W's desire to take her TFC. Portafina should then have clearly set out in one document why transferring out of the scheme wasn't in Miss W's best interests. Instead, it first gave Miss W advice not to go ahead with the transfer - while at the same time dangling the possibility of a large lump sum to be taken imminently. It was only later that it gave her information about the proposed alternatives in its suitability report, which was after Miss W had already said she wanted to transfer out of the scheme.

Further while Miss W's DB scheme allowed for her to access its benefits at age 65, that applied only to the fund built up from contributions paid into the scheme before June 2012. And funds built up after that date became payable prior to Miss W's 67th birthday (actually when she reached 66 years and 221 days). That meant that her benefits under the DB scheme, as well as being index linked to deal with inflation, would increase before Miss W reached 67, but I can't see that Portafina highlighted this important aspect of her DB scheme benefits.

I've noted that Portafina's transfer value analysis report includes graphs which show her DB scheme income increasing before Miss W reached 67 years. For example it appears that her DB scheme pension entitlement, before tax, increased from around £3,200 at age 65 to over £5,000 before she turned 67. But I can't find any explicit reference to this increase in income in any of Portafina's communications with Miss W. It certainly doesn't refer to it in its letter of 12 October 2018 nor in its follow up phone conversation of 26 October 2018. I think this increase in income is likely to have been something that would be important to Miss W's considerations of whether or not she wanted to transfer out of the DB scheme and to give up this increase. So I believe this is something that, in order for Portafina to give Miss W information that was full, clear and not misleading, needed to be clearly brought to her attention. But I haven't seen evidence that was the case.

It follows that I don't think Portafina communicated with Miss W in a way that was clear, fair and not misleading. And I don't believe Portafina gave her all the facts with which to make an informed decision about whether or not she wanted to proceed on an insistent client basis.

I've noted that Miss W told Portafina – in her own words both in writing and over the phone – why she wanted to go against its advice and for it to treat her as an insistent client. Namely that she wanted the TFC to buy a car and that this would free up other income for her to pay into her other pension.

But while it appears Portafina has accurately recorded what Miss W told it, I've seen no compelling evidence it sought to explore with Miss W what the relevant benefits of the alternatives to transferring out of the DB scheme were. Portafina's role was to find out what Miss W's wants and needs were and why. Its role wasn't simply to do what she wanted without appropriate analysis and challenge of her motives for doing so with the implications of taking those actions with her. But I've seen no evidence of such a challenge even though that was in Miss W's best interests. Indeed I've seen no evidence that Portafina explored with Miss W exactly what car she wished to buy and how much this was likely to cost her. Instead, its suitability report says that Miss W's objective was to release £19,795 in TFC to buy a car. But that sum, £19,795, was simply the amount of TFC available and so not necessarily the amount she needed to buy a new car.

And in any event, I'm not necessarily persuaded that Miss W absolutely needed to purchase a new car. In the call with the adviser, she admitted that while she used her existing car for work, she only worked "*down the road*", but she just wanted a car she could rely on if she had to drive to another site. So, had this objective been tested further, this could have turned into more of a 'nice to have' rather than a pressing need that necessitated giving up her guaranteed pension. It also seems that the objective of releasing TFC was closely linked to Miss W then being able to redirect the amount she was paying for the car lease into her new pension. But I think Portafina ought to have recognised that taking money from one pension, in order to be able to pay more into another, was inefficient and wasn't likely to result in a higher pension for Miss W in retirement. So, I don't think Portafina fully explored what Miss W's wants and needs were. And I don't think it met its obligations to challenge Miss W's objectives in light of what she would be giving up.

Portafina's told us that it did explore alternatives with Miss W to her transferring out of her DB scheme in order to buy a car. But it said she had no savings or disposable income with which to buy a car and she didn't want to take on any further finance in order to do so. And said that, as a result, it believed Miss W would have gone ahead with the transfer anyway.

In my view, accessing funds from her main pension provision ought to have been a last resort. Portafina should have explored other ways of meeting this objective. And I think it ought to have suggested Miss W find the money to buy her car by other means.

As well as having her DB scheme, Miss W was paying into another company pension scheme. I can't see anywhere within Portafina's analysis or reports where it looked at what the size of that pension pot might be when Miss W reached age 55. Nor can I see that Portafina considered whether or not it might have been beneficial for Miss W to take funds from that other scheme to buy a car rather than her DB scheme. And I understand that Miss W's other occupational pension wasn't a defined benefit scheme but a money purchase one. So, unlike the DB scheme she transferred out of, it didn't provide any guarantee of the benefits it could pay to Miss W at retirement. In those circumstances its possible it might have made more sense for Miss W to take funds, if she insisted she needed those, from her other occupational pension fund and not from her DB scheme. But I've seen no evidence Portafina considered or explored that possibility. And that might have been a suitable way of achieving Miss W's objective, without her giving up the valuable guarantees associated with her DB scheme.

Similarly, Miss W's DB scheme would have allowed her to take benefits from it at age 55 although that would be at a reduced income. I've noted that Portafina's value analysis report shows that Miss W could have taken a TFC lump sum of £7,941 and an annual income of £1,191 at age 56 from her DB scheme. Had Miss W taken that option that would have meant that she would have preserved some of the benefits from her DB scheme, albeit at a considerably reduced sum, but still allowed her access to others. One such benefit would have been an increasing, risk free, annual income that she would receive from age 55 for life and which was due for an additional increase before she reached age 67. Had Miss W taken that option she could have used the TFC and annual income from her DB scheme to help fund the purchase of a new car, while potentially still increasing the contributions to both her current occupational pension scheme and her savings. But I've seen no evidence Portafina considered or put this alternative position to Miss W. And I think exploring these alternatives was an important part of the advice process, which Portafina failed to carry out.

Portafina did give Miss W advice not to transfer out of her DB scheme and did bring some of the risks of doing so to her attention. But I don't think it can fairly rely on its recommendation to Miss W not to transfer. That's because its recommendation relied on incomplete or misleading figures. Also it was followed up immediately with information about how she could proceed anyway. And I think that sent mixed messages about what its genuine recommendation was. And the suitability report, while saying that a transfer wasn't recommended, went on to recommend a transfer to the SIPP plan.

So, as I've set out above, I think there were flaws in Portafina's advice process which meant it didn't fully and accurately inform Miss W about her position. On balance, given these failings, I don't think it would be reasonable for me to conclude the process Portafina followed meant that it's fair to truly regard Miss W as an insistent client. So I don't think it acted in her best interest.

Portafina was in a good position to have analysed, tested, challenged and advised Miss W about what was in her best interests for retirement planning. It knows pension pots like Miss W's DB scheme were paid into with the intention of providing for retirement. But Miss W's chosen path was to give up that income in retirement for a shorter term solution, rather than long-term planning. And I don't think that applying an insistent client label to someone when they express that their preference is not to follow advice, is the same as applying the rigorous process of arriving at a fair determination of who an insistent client really is.

It follows that I don't think Portafina did enough to fully advise Miss W of her options before it showed her down the insistent client road. So I don't think it treated her fairly. And, if it had done so and provided the level of advice I think it should have, I think it's unlikely that Miss W would have transferred out of her DB scheme.

Portafina argues that Miss W would have transferred out of the scheme regardless of what it told her. I've considered this carefully, but I'm not persuaded that Miss W would've insisted on transferring out of the DB scheme, against Portafina's advice if it had brought all of her options to her attention. I say this because Miss W was an inexperienced investor with a moderately cautious attitude to risk. And Portafina didn't present her with a complete picture of what she would be giving up, particularly from age 67, and the long-term benefits of the DB scheme. Indeed Portafina's insistent client form informed Miss W that she could take her TFC lump sum at 55 and also receive an annuity income at 65 of £2,900 but I can't find that figure supported in the evidence. So I think it misled her.

Had Portafina accurately represented Miss W's position, including her likely DB income before she turned 67, and contrasted those benefits against the shorter term gain of buying a car, as well as fully exploring the alternatives, I think she'd have heeded Portafina's advice not to transfer. So, if Portafina had provided her with clearer advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

In light of the above, I think Portafina should compensate Miss W for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Miss W, as far as possible, into the position she would now be in but for Portafina's unsuitable advice. I consider Miss W would have most likely remained in her DB scheme if suitable advice had been given.

Portafina must therefore undertake a redress calculation in line with the regulator's pension review guidance 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.

For clarity, as I understand it, while Miss W has accessed her TFC she has not yet retired, and she has no plans to do so at present. So, compensation should be based on her DB scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 Miss W's acceptance of the decision.

Portafina may wish to contact the Department for Work and Pensions (DWP) to obtain Miss W'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 Miss W's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Miss W'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 Miss W 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 could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Miss W within 90 days of the date Portafina receives notification of her 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 Portafina to pay Miss W.

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.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Portafina Investment Management Limited to pay Miss W the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Portafina Investment Management Limited to pay Miss W any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Portafina Investment Management Limited to pay Miss W any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Portafina Investment Management Limited pays Miss W the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Miss W.

If Miss W accepts this decision, the money award becomes binding on Portafina Investment Management Limited.

My recommendation would not be binding. Further, it's unlikely that Miss W can accept my decision and go to court to ask for the balance. Miss W may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 8 July 2022.

Joe Scott
Ombudsman