DRN-3145797

Financial Ombudsman Service

The complaint

Mr B complains that Portafina Investment Management Limited gave him unsuitable investment advice. In particular he says its advice to transfer two pension pots to a Self-Invested Personal Pension (SIPP) and take a tax-free lump sum was unsuitable.

Mr B is represented in this matter by a third party.

What happened

I understand that Mr B discussed pension planning with Portafina in early 2019. It appears that Mr B's main purpose for seeking advice was to look into whether he could obtain a lump sum of £5,000 in order to pay off a loan.

Portafina recorded that Mr B had three pension pots, with a total value of around £45,000.

At the time the advice was given Portafina noted that Mr B was 55 years old, had a physically demanding job and was earning around £36,000 per year. It appears that Mr B had little or no savings (other than his pension pots) or property. Portafina recorded that Mr B wanted to retire, overseas, at age 61, in around six years time.

Portafina advised Mr B to transfer two of his pension pots to a SIPP. One pot was deferred benefits from a money purchase pension scheme and the other pot was a small additional voluntary contribution plan. The total combined value was around £20,000. I understand that the third pension had guaranteed benefits attached to it and Portafina did not advise Mr B to transfer this pension as part of its advice.

It advised Mr B to take the maximum tax-free cash available and invest the remaining funds in a global bond fund and a worldwide equity fund.

Portafina received a fee of £1,409 for its initial advice (7% of the total amount Mr B was advised to transfer to the SIPP). It deducted this fee from Mr B's SIPP. It also took an annual fee of 1% of the funds invested for ongoing advice.

In September 2020 Mr B's representative complained on Mr B's behalf about the advice he had received from Portafina. It said the advice was unsuitable and the investment funds recommended were 'non-standard' and were too high risk given Mr B's capacity for loss.

Portafina did not uphold Mr B's complaint. It said it felt the advice it had provided was suitable and had met Mr B's objective to obtain a lump sum to pay off the £5,000 loan.

Mr B's representative was not satisfied with Portafina's response and referred the matter to this service.

Having carefully considered the matter our investigator said she thought Mr B's complaint should be upheld as she didn't think the advice Mr B had received was suitable.

In particular, she said she wasn't satisfied that Portafina had explored whether there might be other ways Mr B could repay the £5,000 loan, before it advised him to take tax-free cash from two of his pension pots. She also said she didn't think Portafina had adequately explained the risks and disadvantages of this course of action to Mr B.

She also said she didn't think Portafina had carried out an adequate assessment of the ceding schemes to compare the costs and charges for Mr B. Nor had it considered whether Mr B might be better off taking his benefits from the existing schemes, rather than transferring his pension pots to the SIPP it had recommended.

With regard to the funds Portafina advised Mr B to invest in, she said based on the information available, she didn't think the funds were suitable for Mr B. She noted that Portafina had assessed Mr B's attitude to risk as moderately cautious.

She said she felt the worldwide equity fund was too high risk for Mr B's capacity for loss. In particular, she noted that on an investment risk scale of one to seven (with seven being high) the worldwide equity fund Portafina had recommended was rated as a six. Even when the lower risk bond fund Mr B had also been advised to invest in was taken into account, she said she felt the level of risk Portafina had advised Mr B to take was too high in view of his very low capacity for loss.

She noted that Mr B's representative had said the investment funds Portafina had recommended to Mr B were non-standard investments. She said that although she was of the view the risk profile of the funds recommended was too high, given Mr B's capacity for loss, there was nothing to suggest the funds were 'non-standard' investments.

Having considered this matter she said she didn't think Portafina had taken sufficient steps to demonstrate that its recommendation was suitable, and she set out the steps she felt it should take to put matters right.

Portafina did not accept our investigator's view. In summary it said it felt its advice was 'correct' and that the only way Mr B could have repaid the £5,000 loan was by releasing tax-free cash from two of his pension pots. It also said it would have charged its 7% fee (£1,409) even if it had advised Mr B to retain his existing pensions and take the benefits from two of his plans.

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 think Mr B's complaint should be upheld. I don't think the advice he received was suitable for his personal and financial circumstances. I'll explain why.

Portafina says that it *'… did not simply facilitate the client's wants or needs but considered his whole circumstances and made a professional decision to recommend a drawdown option…'*

It also says that *'…it was concluded that there were no further options for [Mr B] to raise the funds other than accessing his tax-free cash.'*

It does not appear, however, that it obtained any information about the loan (which I understand had been taken out in Mr B's ex-partner's name) to determine whether there were any early repayment charges, or advantages to repaying the loan early. It is therefore not clear to me that Portafina established whether repaying the loan early was in Mr B's best interests. I accept that Mr B wanted to repay the loan, but, as Portafina has noted, its role

was not to '*simply facilitate the client's wants or needs but considered his whole circumstances'.* I think the absence of information about the loan indicates that Portafina did not consider Mr B's *'whole circumstances'.*

There also appears to be a fundamental oversight in the advice Portafina provided to Mr B. In its final response letter to Mr B it said:

Your longer retirement objectives were to eventually cash all your pension in and move to Thailand in six years and live with your new partner. You explained that would have additional savings you could utilise due to not paying the car finance each month and the cost of living would be cheaper in Thailand. This information, along with everything else gathered in your factfind call, was then passed to the adviser to make a recommendation for you.

But it appears the adviser failed to consider how Mr B could meet his objective to retire at age 61, when his state pension would not be payable until he reached 67 years old. In a response to this service Portafina said:

Mr B informed [name of paraplanner] that he had an outstanding loan of £5,000 that he wanted to clear. This was a car loan in his ex-partner's name, but he was sending her the money each month to clear. He felt it was best to pay the debt off in full... Portafina's adviser also agreed with this assessment. However, the adviser also considered Mr B's other retirement provisions to assess the suitability of the transfer. It was noted that Mr B would have his state pension, residual from the potential drawdown fund (from the pension pots it had advised him to transfer) and his [name of employer] pension plan with guarantees (not transferred but maintained), all available at retirement. The adviser then assessed his future income requirements as follows:

• *Total yearly expenditure in Retirement: £4,020.00*

• *The anticipated state pension benefit based on pension credit top up equates to* ***£8,697.00****.*

• *This in addition to the 4% residual balance of* ***£547.67*** *will provide a minimum of* ***£9,244.67*** *annually.*

The adviser demonstrated how Mr B's core expenditure in retirement could be met and thus, the drawdown option for his [name of pension plans it had advised him to transfer] was feasible. It was assessed that Mr B could draw a potential income of 4% per annum from the fund in retirement based on the residual transfer value as shown in the analysis above.

It is not clear to me why the adviser did not explain that it was very unlikely Mr B would be able to afford to retire at age 61, even if he then moved to a country with a lower cost of living, as he would have little or no income to support himself until his state pension became payable at age 67.

It appears the adviser failed to adequately consider Mr B's objective to retire at age 61 and instead simply focussed on the 'current objective', *'I just want to pay off the car loan.'* In view of this I am not persuaded that Portafina did consider Mr B's *'whole circumstances'.*

I cannot say with any certainty what Mr B would have done if the adviser had explained to him that it was unlikely he would be able to meet his objective to retire at age 61, unless he was able to save significant amounts over the next six years. But I cannot safely find that Mr B would definitely have gone ahead with the recommendation to take the maximum tax-free cash from two of his pension pots and transfer the remaining amounts to a SIPP.

I am also of the view that, without a detailed assessment of the amount Mr B would be able to save (to meet his objective to retire at age 61), if he did choose to repay the £5,000 loan early, it is not clear to me that the adviser did consider Mr B's '*whole circumstances'.*

In reaching this view I have taken into account that even if he were able to save all the money he had previously been making in loan repayments this would only amount to £5,000 (£173 x 29 months). This is significantly less than the £24,120 (£4,020 x 6) Mr B had indicated he could live on once he retired at age 61, until his state pension became payable. Even allowing for the income Mr B might receive if he withdrew funds from his SIPP and took the benefits from his remaining workplace pension it is not clear to me that he would be able to achieve an income of £4,020 each year.

I am also concerned that the £4,020 per year income seems very low, even allowing for Mr B's intention to live overseas, and I think the adviser should have explored whether this figure was realistic.

I therefore cannot safely find that the advice Mr B received was suitable for his personal and financial circumstances. And I am not satisfied that Portafina did adequately consider Mr B's *'whole circumstances'* before making its recommendation.

I note the comments Portafina has made in relation to the suitability of the funds it advised Mr B to invest in. But, like our investigator, I think the risk profile of the funds recommended was too high given Mr B's very limited capacity for loss. I appreciate that Mr B's funds were invested in a worldwide equity fund and a lower risk global bond fund, but I don't think the lower risk fund adequately offset the higher risk of the worldwide equity fund. From the information available I am not satisfied that he had the capacity to withstand any significant investment loss. In reaching this view I have taken into account that Mr B only had six years to his intended retirement at the time the advice was given.

That said, I agree with our investigator's view that Mr B could afford to take a small amount of risk with his pension savings, rather than no risk at all, and I have reflected this in the redress I have set out below.

Having carefully considered this matter my decision is that, for the reasons I have set out above, I am not satisfied that the advice was suitable and I think Mr B's complaint should be upheld.

Putting things right

Fair compensation

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr B would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

What must Portafina do?

To compensate Mr B fairly, Portafina must:

- Compare the performance of Mr B's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

- Portafina should add interest as set out below:

- Portafina should pay into Mr B's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Portafina is unable to pay the total amount into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr B is likely to be a nil rate taxpayer at the selected retirement age, so no reduction would apply in this case.

- Pay to Mr B £150 for the trouble and upset caused.

- Repay the adviser's fees together with simple interest at 8% a year, from the date the fees were paid to the date of the settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fees with interest.

Income tax may be payable on any interest paid. If Portafina deducts income tax from the interest it should tell Mr B how much has been taken off. Portafina should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Aegon Retirement Choices SIPP	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Portafina should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the Aegon Retirement Choices SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Portafina totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr B wanted Capital growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Portafina Investment Management Limited should pay the amount calculated as set out above.

Portafina Investment Management Limited should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 23 August 2022.

Suzannah Stuart
Ombudsman