

## The complaint

Miss G complains about the advice given by Portafina Investment Management Limited ('Portafina') to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). She says the advice was unsuitable for her.

Miss G is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Miss G.

## What happened

Miss G has said she saw an advert for Portafina online which talked about potentially being able to release money from her pension. So, she approached Portafina around April 2019 to discuss this. Miss G completed a pension review form indicating there were two pensions that she wished to discuss – both of which were DB schemes.

Portafina gathered information about both schemes, including the cash equivalent transfer values ('CETV'). The larger pension had a CETV of £34,101, while the smaller had a CETV of £2,156.27. It also carried out a transfer value analysis ('TVAS') – to assist in analysing if a transfer was appropriate – in respect of both pensions.

I understand Portafina also gathered some information from Miss G about her circumstances and attitude to risk, although we haven't been provided a copy of the fact-find document, so it isn't clear the extent of the information gathered. I understand from the information Miss G has provided as part of her complaint that she was 54 at the time, was not working and in fact was medically retired and in receipt of benefits.

Portafina wrote to Miss G on 24 July 2019 with its initial recommendation. In that letter it thanked Miss G for providing details about her circumstances and summarised that her objective was to raise funds to take a holiday lasting 4-5 months and complete some home improvements. The letter said that during the conversation Miss G had indicated she'd need approximately £4,000 for the holiday and an additional £1,000 for the home improvements. It also said that Miss G had agreed she was likely to need an income of £9,744 per annum in retirement to meet her needs.

The letter went on to say that Portafina did not recommend that Miss G transfer her larger DB pension. It said, amongst other things, this was because she had a low capacity for loss, she'd lose valuable guaranteed benefits, the reason for transferring and withdrawing funds didn't justify the loss of benefits and her retirement needs would likely not be met if she did.

Portafina did however say that it recommended that Miss G transfer the smaller DB scheme and *"take the whole of your [smaller DB scheme pension] as a lump sum."*

*It went on to explain "As this would fall within your personal allowance, there should be no tax to pay, however, you may have to reclaim any emergency tax taken. It would also be safely within the capital thresholds and not affect your State benefits. We realise this is a lower amount of cash than you originally wanted and may mean you*

*have to re-think how best to use the funds, but it does mean your retirement will be a more comfortable one.”*

The letter said that Miss G could either opt to ignore its recommendation and still transfer both pensions, in which case she'd be considered an insistent client, or could accept the recommendation – noting that the transfer couldn't be completed until her 55<sup>th</sup> birthday later that year.

Miss G completed a form indicating that she wished to accept the recommendation and only make changes to her smaller DB scheme.

Then, on 29 August 2019, Portafina sent Miss G a suitability report. This confirmed that Portafina recommended transferring the smaller DB scheme to a SIPP and taking the entire pot as a lump sum. It noted £539 would be tax free but also that the remainder should also not incur any tax due to Miss G's circumstances.

The suitability report again said that Miss G's objectives were to take an extended holiday and complete home improvements. But it stated that Miss G had told Portafina she'd need £1,156.27 for the holiday and £1,000 for the renovations – the total happening to be the transfer value of the DB scheme. It said that releasing this money was very important to Miss G, she didn't have any disposable income with which to meet her objectives, didn't want to take out finance and even after the transfer her retirement needs should still be met. After the recommendation had been explained the report summarised the benefits that would be lost as a result of the transfer and also the fees Miss G would pay Portafina for its advice and the SIPP provider for administering the policy. It said that the fee would be deducted from Miss G's pension so she wouldn't have to find the money and that its advice had taken this into account.

The transfer went ahead in January 2020 in line with Portafina's recommendation.

Miss G later complained to Portafina that the advice it provided to transfer her smaller DB scheme was unsuitable. She said Portafina had emphasised releasing money from her pension from the first contact she had with them, so hadn't acted objectively and the process it followed of recommending this before providing a suitability report had made it difficult for her to make an informed decision. She said that the transfer had not given enough money to meet her objectives, even less so when considering fees. And these objectives were not essential anyway. So, she thought the transfer was not in her best interests given the guaranteed benefits she gave up. And had she been correctly advised by Portafina, she wouldn't have transferred. She added that the fee for Portafina's advice hadn't been collected and it was chasing her for payment, but she wasn't able to pay.

I understand Portafina disagreed and the complaint was referred to our service. One of our Investigator's looked into the complaint and thought it should be upheld and Portafina should pay compensation, waive the advice fee and pay £350 for the distress caused. In summary he found that the transfer was always likely to leave Miss G worse off financially. He didn't think the objectives which were to be funded by the transfer were essential. And he didn't think they were in fact achievable anyway based on the amount released and the charges levied and questioned the change in the amount quoted as being required.

Portafina did not agree. It felt the advice was suitable, noting it had recommended not to transfer the larger DB scheme. It said the value of the pension that was transferred was small, the loss of income not significant and that Miss G's retirement needs would still be met after the transfer. And it said achieving Miss G's objectives were important to her and it was entitled to rely on the information it had been given about how much she needed to raise.

The Investigator wasn't persuaded to change their 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.

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 complaint centres around the advice to transfer the smaller DB scheme. Portafina did not recommend that Miss G transfer her larger DB pension. And Miss G is not complaining about that advice. So, my decision largely will just focus on the recommendation, which was followed, to transfer the smaller DB pension.

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. So, Portafina should have only considered a transfer if it could clearly demonstrate that the transfer was in Miss G's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in her best interests.

As I've mentioned, Portafina commissioned a TVAS report. This said that if Miss G remained in the DB scheme she could've, at age 60, either taken a full pension of approximately £143 per year and a tax free cash ('TFC') sum of £373, or a reduced pension of £112 and TFC of £747.

The TVAS report detailed the critical yield - the investment return that would be required of the new pension to match the benefits of the occupational pension at retirement – as being in excess of 20%. Although I think it's likely that figure is inaccurate and could've been higher still as the TVAS used an assumption about the level of fees which was significantly lower than those actually charged. And the TVAS included a transfer value comparator – what the cost of replacing the scheme benefits at retirement would be – and said this was £5,907. So, the same benefits would cost approximately £3,750 more than the transfer value (before even accounting for fees deducted) – and this additional money would need to be found or earned through investment within six years. This information was included in the suitability report.

It was highly unlikely that such growth could've been achieved if the funds had been transferred and invested. And so, had the transfer been recommended with this intention, I think Miss G would've always been likely to receive benefits of a substantially lower overall value than the DB scheme at retirement.

But Portafina didn't recommend that the pension be invested once it was transferred. It recommended that it be withdrawn entirely and used by Miss G to pay for goods and services at the time. So, Miss G was guaranteed, as a result of the recommendation to be worse off *in retirement* as a result of the transfer. This is because there would be no future pension income at all from these funds.

This significantly contradicts the statement Portafina made in its letter of 24 July 2019 that Miss G's "*retirement will be a more comfortable one*". A lump sum was made available, for Miss G to meet immediate goals. But her retirement income was reduced. So, I think this

statement was misleading. And, from a financial viability point of view, the transfer does not appear to have been in Miss G's best interests as the main purpose of a pension is to provide an income in retirement. But the recommendation guaranteed Miss G's income in retirement would reduce.

Portafina says that Miss G's objectives at the time were important to her and that the transfer allowed her to meet these. So, as the benefits given up in exchange were small, it believed that the transfer was suitable. This is despite the fact it had noted, when looking at the transfer of the larger pension, Miss G had a low capacity for loss and the reason for transferring wasn't justified. And also, despite the fact she'd still lose guaranteed benefits by following its advice.

Portafina wasn't there to just transact what Miss G might have thought she wanted. The adviser's role was to really understand what Miss G *needed* and recommend what was in her best interests

Miss G's stated objectives were to fund an extended holiday and pay for some home renovations. But I haven't seen anything that indicates she had a particular *need* for either of these things. Nor does it appear from what I've seen that the urgency of these objectives was explored in great detail by Portafina. From what I've seen these appear to have been potential uses for any money released but not essential. So, I don't think Miss G had a pressing need for money to be released from her pension.

But in any event, I don't think the recommendation allowed these objectives to be met, and I'm satisfied that Portafina was aware of that.

The letter it sent on 24 July 2019 said Miss G had said in conversation with Portafina that she likely required £4,000 for a holiday and £1,000 for renovations. The recommendation was that she take the entirety of her DB scheme as a lump sum, as this would likely not incur tax. But the DB scheme only had a value of £2,156.27 – significantly less than what Miss G had initially said she'd likely require. And there was no suggestion or recommendation from Portafina as to how Miss G could meet the shortfall.

Indeed the letter of 24 July 2019 acknowledged this was less than Miss G had asked for and that her objectives would not be achievable – saying that Miss G would “*need to re-think how best to use the funds*”. It is difficult to see therefore how the transfer can be argued to have been in Miss G's best interests at that point, when it wouldn't have allowed her to meet her objectives and would leave her worse off in retirement.

The suitability report, sent after Miss G had said she'd proceed in line with the advice, said Miss G required £1,156.27 to pay for a holiday and £1,000 for home renovations. This was significantly less than the initial recommendation was based on and just so happened to match the total value of the DB scheme being transferred.

Portafina has said it is entitled to rely on the information provided to it unless it has reason to doubt this. But I haven't been provided anything that indicates Miss G gave these revised figures. And I think Portafina would've had grounds to question them, even if she had. The holiday that was discussed, the objective with the larger expense, was said to be for a duration of 4-5 months. That is noted in both the letter of 24 July 2019 and the suitability report. So, the duration and extent of the holiday – the objective – was unchanged. Yet according to these figures the initial estimate was incorrect and had been reduced by almost 75%. I think that ought to have given Portafina grounds to question the figures and in turn whether the recommendation would allow Miss G to meet her objectives. But I can't see that it did.

And even if I accepted these revised figures were correct and had been provided by Miss G, I still don't think the recommendation was likely to allow her objectives to be met. According to Portafina, the value of the DB scheme was exactly the amount Miss G required. And it indicated she had no disposable income, savings or other means to meet these objectives. So, she would've needed all of the money released to achieve these objectives. But Portafina charged £500 for its advice. And the suitability report indicated the SIPP provider would levy a charge for administrative purposes as well. And the report said these fees would be deducted from the pension. So, based on the information provided Miss G wasn't scheduled to receive the £2,156.27 she apparently required. It isn't clear if these charges were deducted or if Miss G has in fact been invoiced separately. But given Portafina recorded that Miss G had no disposable income or other assets available, the fees would likely always have needed to be paid from the funds released. Meaning Miss G was not going to be able to meet her objectives by following the recommendation made. Portafina's suitability report said it had accounted for this in its advice. But I fail to see how.

So, in summary, I don't think Miss G had a genuine need for the funds. The recommendation made by Portafina did not allow her to meet her objectives anyway. And it was going to leave her worse off in retirement. While it is true that the pension benefits Miss G would've received under the DB scheme were relatively modest, they were guaranteed. And the benefit amount would've continued to increase in retirement. So, I don't see that giving them up, particularly as doing so didn't even allow her to meet her apparent objectives, was in her best interests. As a result, I don't think the advice provided by Portafina was suitable. And, I think Portafina should've advised Miss G to remain in her DB scheme.

Of course, I have to consider whether Miss G would've gone ahead anyway, against Portafina's advice.

I've considered this carefully, but I'm not persuaded that Miss G would've insisted on transferring out of the DB scheme, against Portafina's advice. Miss G has said she was an inexperienced investor, and I've seen nothing to dispute this. I'm also conscious that she accepted and did not challenge Portafina's advice in relation to her larger DB scheme, when it strongly recommended that she not transfer it.

So, if Portafina had provided her with clear advice against transferring out of the smaller 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 G for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

As I've said, it isn't clear what happened with the fee Portafina charged here. The suitability report suggested this, and the SIPP providers fee would be deducted from the pension. And if this had happened, the redress methodology set by the regulator would, I understand, account for these fees. But Miss G has indicated Portafina's fee wasn't deducted and hadn't been paid at the point she complained. And the statement from the SIPP provider that I've seen seems to suggest this is correct. So, in the event the fee wasn't deducted directly from the pension, which on balance it appears it wasn't, I agree that this should now either be waived by Portafina, if not collected, or refunded if Miss G has paid this directly while the complaint has been ongoing.

Our investigator also recommended that Portafina pay Miss G £350 for the distress caused to her. I don't doubt that Miss G has been caused distress and concern as a result of the disruption to her retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is reasonable.

## Putting things right

A fair and reasonable outcome would be for the business to put Miss G, as far as possible, into the position she would now be in but for Portafina's unsuitable advice. I consider Miss G 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, although Miss G is medically retired, I don't think she'd have taken benefits from her DB scheme until the scheduled retirement age of the scheme, which in this case I understand to be age 60. So, compensation should be based on this assumption

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 G's acceptance of the decision.

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

If the redress calculation demonstrates a loss, I'd normally recommend that the compensation be paid into Miss G's pension plan if possible. But I understand that the funds placed into the SIPP, as a result of Portafina's advice, were withdrawn in full and that the SIPP is now likely closed. So, in the circumstances I think compensation should be paid directly to Miss G as a lump sum.

Usually we'd say that a notional deduction should be made from the compensation to allow for income tax that would otherwise have been paid. But based on the information that I've seen about Miss G's retirement provisions and what her income in retirement is likely to be, I think it seems probable her income will be under the annual tax allowance. So, in this case, I don't think a notional deduction is appropriate.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Miss G 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 G.

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.

In addition to the compensation amount, if the advice fee charged by Portafina was not deducted from the pension - which on balance it appears it wasn't - this fee should be waived or, if it has been paid directly by Miss G, refunded to her in full.

Portafina should also pay Miss G an additional £350 for the distress caused to her.

**My final decision**

I uphold this complaint and require Portafina Investment Management Limited to pay Miss G compensation as set out above in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 15 August 2022.

Ben Stoker  
**Ombudsman**