

The complaint

Mr M complains about the service he was given when transferring the benefits of a defined-benefit (DB) occupational pension scheme to a type of personal pension arrangement, in 2021.

Mr M says that the business he paid to advise him and then transact the transfer, took far too long. He says the effect of this delay caused his pension's transfer value, often referred to as a cash equivalent transfer value (CETV), to expire. And when a new CETV was recalculated, it was considerably lower. So, Mr M got less than he'd been anticipating.

Portafina Investment Management Limited is responsible for answering this complaint. To keep things simple I'll therefore refer mainly to "Portafina".

What happened

Mr M was a deferred member of two DB schemes. Because of their respective values, Mr M was required by law to obtain regulated financial advice if he was intending to transfer these away to a personal pension arrangement.

Mr M's larger pension had a CETV of around £124,000 but Portafina didn't recommend that he should transfer this. This pension is therefore not the subject of any complaint.

However, his smaller pension had a CETV of around £77,696 and Portafina recommended that Mr M should transfer this as he'd told the business he wanted to pay off some debts and his mortgage. The recommendation was that he would transfer the CETV to a type of low-end risk index account linked to the stock market, take some tax-free cash and then draw down taxable income as he needed. I think it's reasonable to say that the funds were expected to be depleted within a relatively short time – a few years or so.

So, to be clear, the only DB pension complaint I'm addressing here is about the smaller pension. And Mr M isn't complaining about the transfer itself being unsuitable – I've confirmed with him that he definitely wanted to transfer – it's about the length of time the transfer process took.

Typically, a CETV lasts for a limited time period before the provider has to revalue it again and produce a new figure. Usually the CETV will be valid for a few months and this is well known within the pensions industry. Mr M's complaint now is that because Portafina took so long, his CETV actually fell by £5,096. Portafina eventually went on to transact the pension transfer for this lower amount, in the late spring of 2021.

Mr M complained about this to Portafina. He said there were unnecessary delays despite Portafina initially assuring him that the pension transfer would be completed quickly. He says the adviser became difficult to get hold of and didn't return his calls. Portafina says the delays weren't its fault as they were caused by a combination of the Covid-19 pandemic and failures by the pension companies who administered Mr M's larger pension.

Mr M referred the matter to our Service and one of our investigator's looked into what had happened. They thought his complaint should be upheld and that Portafina ought to pay him the £5,096 difference, as mentioned above. Portafina made a modest financial offer to resolve the complaint, but Mr M didn't want to accept this. As the complaint couldn't be resolved informally, it's come to me for 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.

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 Principles for Business and the Code of Business rulebook ('COB'). And 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.

Introduction

I think it's fair to say that Mr M had a limited understanding of these types of financial matters. From the outset I think Portafina would have known this even from its initial contacts. It should have also known, having done this, that the transfer of the funds was important to Mr M from a financial perspective. Not unreasonably, he was relying on the actual amount of £77,696 he'd been originally quoted and so it was therefore important that Portafina's communications were clear and timely.

I also think it's fair to say that Mr M believes he's been caused a financial loss because of Portafina's inactions, but he's not entirely knowledgeable about whether any losses might be due to income tax rules – for example receiving the payment in one tax year rather than another - or whether the loss relates to having been first quoted a CETV, but eventually getting a lower amount because the quote had expired.

However, I see our investigator did a good job of clearing these matters up when they issued their 'view'. What the investigator explained was that a loss due to income tax liability was somewhat difficult to speculate on in these circumstances. This is because a higher or lower CETV might eventually mean slightly different tax liabilities.

So I've taken the view that Mr M's expectation was that he'd get the original CETV paid before the end of the tax year during which this advice was given and he was broadly satisfied with the estimated tax liability he'd have to pay. This means I'm putting the tax issues to one side because the real crux of the matter here is relatively simple – was the delay which caused the CETV to expire and fall from £77,696 to £72,600 Portafina's fault?

I think it was – and I also think it needs to pay that money to Mr M.

The timeline

Our investigator set out in clear terms what the timeline was. Mr M's smaller DB pension CETV was issued on 30 November 2020. It looks to me as if it was dispatched to Portafina on 3 December 2020 and looked at by Portafina by 9 December 2020 at the very latest. The CETV expiry date, which Portafina would have been fully aware of, was 28 February 2021.

There's no value in my repeating the timeline in every single detail as it has already been set out clearly by the investigator for the parties to comment on. However, I'd like to assure both

sides that I've read it with great care and examined all the relevant documentation to confirm accuracy. I've also read with care the responses by Portafina where it gives a perspective on the time delays.

Portafina agrees the whole process began in November 2020. However, whilst we're focussing here on the smaller DB scheme, Portafina says the two pensions needed to be considered holistically so that Mr M was given the right advice. Ultimately, only the smaller DB scheme is being complained of here as that's the one which was transferred but I can accept why both pensions might be considered together.

In response to Mr M's initial complaint directly to Portafina, it categorised the delays as being related to the pandemic. I accept this was a difficult time for businesses, but Portafina didn't really explain why this caused it to miss the CETV deadline of 28 February 2021. It did explain, however, that much of the delays in the process were due to awaiting information from the larger DB pension provider. As this was important to the overall advice process, Portafina says it meant the smaller DB transfer was affected by these delays.

However, as well as looking at all the documentation from the time of this advice, I listened to telephone calls between the two parties and with our Service. Calls with the adviser took place on 12 and 15 February 2021 and these directly followed a long 'fact-find' call earlier in February.

As I say, I can accept this unique period did cause some delays. But Mr M was being charged £5,161 for the regulated advice relating to his pension transfer. Portafina also has a significant history in this market and everything I've seen shows the CETV expiry date was long known to be 28 February 2021. Neither the 'fact-find' call nor the calls with the pension transfer adviser himself adequately highlighted the obvious risk to Mr M's CETV and Portafina would, or certainly should, have known this CETV could easily change when the guaranteed period ended.

As I've said, Mr M wasn't an experienced investor and from what I've seen (and listened to) it was clear there was a degree of vulnerability about his lack of financial understanding in this context. So I think Portafina should have known that Mr M almost certainly didn't understand the relevance of the CETV expiry date and / or that a revaluation could see a reduction – a reduction which for Mr M was a lot of money.

Were Portafina's actions reasonable?

Firstly, I think that Portafina could still have carried out substantial preparatory and information gathering work whilst still in 2020. It decided to not fully engage with Mr M in this regard, by for example, setting up the 'fact-find' call and then carrying it out so as to be placed in an agreeable position should the transfer be deemed suitable. Whilst I accept that it's Portafina's right to decide how to conduct its business, it already knew by early December 2020 of the upcoming CETV expiry date. And I think any reasonable assessment of how long that was away – just over two months - particularly in such an unusual time period, would have shown this timescale would have been quite tight.

But that wasn't reflected in Portafina's dealings with Mr M, so by the time the other pension provider had supplied the details Portafina was chasing, it was already on the 'back foot'. Put another way, it was Portafina which chose to delay the preparatory work until information from the unrelated pension came in. And if it had carried out that work first, it would have been much further ahead in the advice process.

Secondly, our investigator additionally explained that even then, there was still time to transact the transfer ahead of 28 February 2021 deadline. And there was certainly time to

tell Mr M about the obvious potential for a revaluation to become necessary and that this could result in a lower CETV. Portafina itself says the information it had been waiting for came through in mid-January, but says it then needed to re-engage with Mr M. However as I've explained, this further work was only necessary as a result of Portafina's inactions thus far.

I've read everything Portafina has said about the delays. This includes it saying,

“we required information regarding both of the schemes ... and make our recommendations. Despite our best efforts we were not able to provide the advice before the [smaller DB scheme] CETV expired. Once we received the information from [the larger DB scheme] on 18 January it took six days for the analysis to be completed. Whilst this was not a material factor in the [expiry of the smaller scheme's CETV] it does not represent the level of service that we strive to provide”.

Having considered all the evidence and information we have, and as I've comprehensively explained, I think Portafina's inaction resulted in a loss for Mr M and it therefore needs to compensate him.

Summary

In this decision I have set out why I don't think Portafina acted in Mr M's best interests.

From November 2020 it began dealing with Mr M and it should have been obvious that the communication and advice to him needed to be very clear and well explained. From early December 2020 I think Portafina should have been well aware of the relatively short-term nature of Mr M's CETV, expiring as it did on 28 February 2021.

Mr M was heavily reliant on Portafina for advice – and he was paying a considerable sum for that advice. However, by not carrying out reasonable preparatory work with Mr M himself whilst waiting for information elsewhere, this only added further tensions in the timeline and meant completing all the necessary steps was always going to be a challenge before the end of February 2021, when the CETV expired.

By mid-January 2021, Portafina had the information it was seeking from elsewhere, but its own failures up to that point meant it had to re-engage with Mr M, thus using up more valuable time. As February 2021 arrived, I think Portafina must have known that meeting the deadline was unlikely. Nonetheless, it continued to portray positive messages to Mr M who seemed blissfully unaware of the potential consequences. Even as late as 25 February 2021, Mr M was still led to believe his CETV was unchanged at the higher amount.

Up to and indeed after this point, Mr M had made concrete plans for his future which included paying off borrowings he had outstanding. I think changing these plans after several months of consideration was unlikely, as by the spring of 2021, he was fixed on the idea of getting some cash he hadn't really been expecting until he rediscovered his deferred pensions in 2020. He desperately wanted to put the cash to good use to help his future life plans, so he went ahead with the transfer process, led in doing so by Portafina.

But we now know Mr M lost out financially because of Portafina's inactions. Missing the CETV deadline cost Mr M £5,096. And for these reasons, I'm upholding Mr M's complaint.

Putting things right

Portafina transacted the transfer after a revaluation of the CETV which meant Mr M lost out on £5,096. It therefore needs to compensate Mr M for the loss of this £5,096.

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if he had been given suitable and timely advice in accordance with the regulator’s expectations.

I accept that Mr M may have invested differently. It’s not possible to say precisely what he would have done differently. But I’m satisfied that what I’ve set out below is fair and reasonable given Mr M’s circumstances and objectives when he transferred, took some tax-free cash and invested the remainder.

What must Portafina do?

To compensate Mr M fairly:

- Portafina should pay into Mr M's pension plan to increase its value by the total amount of £5,096 compensation. 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 M'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 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 M won’t be able to reclaim any of the reduction after compensation is paid.
- For example, if Mr M is likely to be a basic rate taxpayer, the reduction would equal the current basic rate of tax.
- Portafina should also then compare the performance of Mr M's investment with the added compensation to that of the benchmark shown below. If the value is greater then there is an additional loss and additional compensation is payable.

Portfolio name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
Pension Plan	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	28 February 2021	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)

My final decision

I uphold Mr M’s complaint.

I now direct Portafina Investment Management Limited to pay the compensation amount of £5,096 and apply the calculations as set out above.

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

Michael Campbell
Ombudsman