DRN-5213622

Financial Ombudsman Service

The complaint

Mr B has complained about the high fees charged for the advice he was given to transfer his pensions by HARBOUR ROCK CAPITAL LIMITED trading as Portafina.

What happened

I issued my provisional decision on this complaint on 29 November 2024. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I've copied the relevant part of the decision below, and it forms part of this final decision.

Copy of provisional decision

Mr B's complaint was considered by one of our investigators. He issued his assessment of it on 22 February 2024. The background and circumstances to the complaint were set out in the assessment and are known to both parties, so I won't repeat them all again here. But to summarise, Mr B was advised to transfer four pensions he held with two different pension providers in 2018. Three of the pensions were personal pensions held with one Provider (which I will refer to as Provider 1). And the other pension related to his employment at the time and was held with another provider (which I will refer to as Provider 2). They were all transferred to a new provider – which I will refer to as Provider A.

The total transfer value of the three pensions held with Provider 1 was approximately £74,000. And the transfer value of the pension held with Provider 2 was approximately £92,000. The pension with Provider 2 offered a protected tax-free cash of just under 50% of its value.

Mr B was in his mid-fifties at the time. His house was worth around £250,000, and he had a mortgage of around £38,000. He had debts of around £42,000. Mr B was advised to transfer the pensions so that he could access the tax-free cash to pay off his debts. He was charged an initial advice fee of 4.43% of the transfer value (approximately £7,600), an ongoing advice fee of 1% per year, and product charges of 0.84% per year.

The investigator thought Mr B's complaint should be upheld. He noted that in the suitability report Portafina had referred to some alternative ways that Mr B could raise funds to help with his debts, but that these had been discounted. It had said Mr B didn't want to take on further lending or pay the resulting interest. And he didn't want to re-mortgage because of possible redemption penalties as well as pay interest on any borrowings.

Mr B had said he didn't have any recollection of Portafina discussing alternative finance options. He said that although he was struggling with debt, he had kept up to date with his mortgage payments, but he hadn't approached his mortgage lender about raising additional borrowing. The investigator noted the fact find recorded equity of around £212,000 in the property, with a loan to value of only around 15%. The investigator thought this could have been an avenue to assist with refinancing debt. And he thought given Mr B's circumstances at the time, Portafina ought to have advised Mr B to seek debt management advice and explore other ways he could have removed or reduced his debt burden before

accessing his pension. But he said he hadn't seen any documented evidence that Portafina had recommended debt management advice first, or that any took place before Portafina gave its recommendation to transfer all four pensions.

The investigator referred to the industry regulator's report issued in 2008 titled "Quality of advice on pension switching." He said the report provided examples of poor, compliant and good, examples of advice. He referred to two examples that could constitute poor advice:

- *'A pension that is more expensive than a stakeholder pension, but a stakeholder pension would have fulfilled the customer's needs.*
- *A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was the flexibility of a drawdown option, but there is no evidence this option was needed)'.*

The investigator said the regulator had clearly identified that cost was a factor in providing suitable advice for transfers. He said it wasn't clear what charges applied to Mr B's existing plan from the suitability report. But it was known that on transfer two of his pensions from Provider 1 had an exit penalty of 1% totalling around £750. In addition, Portafina charged an initial advice fee of around £7,600, and an ongoing advice fee of 1% per year. He said it was clear that switching the pensions resulted in higher costs to Mr B. So he said the new plan would have had to perform better just to cover the initial and ongoing costs.

The investigator said whilst using the tax-free cash to repay personal debts may have improved Mr B's short term cashflow, it had been recommended without having explored other options. Mr B had confirmed that he had since dealt with the Citizen's Advice Bureau and he'd entered into repayment agreements with some remaining creditors, paying £5 per month. He said he didn't know this was an option at the time he was advised to transfer. The investigator thought that if Portafina had recommended that Mr B sought debt management advice when it had given its advice Mr B could have avoided the need to access tax-free cash.

The investigator said he thought Portafina ought reasonably to have considered all other options before recommending Mr B switch all of his pensions and draw the maximum tax-free cash. In doing so, he suffered exit penalties, a large initial advice fee, introduced higher ongoing charges to his pension, and lost a valuable protected tax-free cash benefit. Overall the investigator didn't think the advice was suitable.

Portafina didn't agree with the investigator's findings. Mr B's complaint was passed to me to consider.

What I've provisionally 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.

Portafina provided further evidence and arguments when responding to the investigator's assessment of the complaint. I've taken all what it said into account in making my provisional findings set out below. However I've only commented on where I think it's appropriate to do so, given some of my findings are different to the investigator's. Both parties now have the opportunity to provide further evidence and arguments which I will consider before making my final decision.

I think the regulator has made it well known that it considers costs are a key consideration when providing advice to transfer pensions (or technically known as a switch of pension providers in this case). It's only one of a number of factors to consider, but an important consideration non-the-less in considering whether the transfer is financially worthwhile.

On the one hand pensions are primarily aimed to help provide the member with income support during their retirement. And it's generally not considered good practice to access them early unless there is good reason to do so. However on the other, it's not in dispute here that Mr B had significant debts. And he was paying significant interest rates on some of those debts – around 20% on the credit card debts which I understand was thought to be around £21,000 at the time.

Portafina has said it didn't have the relevant permissions to give debt advice. It said it told Mr B he should consider debt counselling or loan restructuring advice and provided details for the Citizens Advice Bureau. It said it could only provide Mr B with generic guidance, and it was up to Mr B to explore these other avenues. And it said Mr B was asked several questions about alternative ways he could reduce his debts as evidenced in the fact find, however Mr B didn't want to re-mortgage or want to take out additional borrowing.

However, ultimately, Portafina recommended that Mr B transfer his pensions to reduce his debt. Mr B's objectives were recorded in the suitability letter as 'Tackling debt' and 'Put into savings'. And the suitability letter went onto say:

"During your paraplanner appointment we talked about other ways you could raise money instead of releasing tax-free cash from your pension.

We believe that transferring your pension to release tax-free cash is the best route for you."

If Portafina wasn't in a position to assess the different options Mr B had to reduce his debts in detail, in particular comparing the figures behind the different options available, I can't see how Portafina was in a position to make that recommendation. And if Mr B didn't have that information I don't think he was in a position to make an informed decision. As the investigator said, Mr B had a significant amount of equity in his property, and given how low interest rates were at that time that would have appeared to have been an obvious avenue to explore. Whether that would have been a possibility is now difficult to say given his lender or other lenders would have made their own assessment of whether to lend more to Mr B. There would have been advantages and disadvantages to all the different options available to Mr B to manage those debts. And I think making a detailed retrospective analysis would be problematic.

I've taken all the above into account in deciding what is fair and reasonable in all the circumstances. As I've said, Mr B did have significant debts. And Mr B had approached Portafina for advice about accessing his pensions to enable him to better manage those debts. Mr B told our investigator that at the time of advice he was struggling financially and was receiving letters chasing late or non-payment of debts and he felt under pressure. He had approached Portafina having seen an advert about releasing tax free cash from a pension.

From what I can see the pension recommended by Portafina was slightly more expensive than the pensions Mr B held with Provider 1 when taking all charges into account. However, Mr B did have significant credit card debts on which he was paying interest at around 20% (some cards a slightly higher rate and some slightly lower). In my opinion I don't think it was unreasonable to transfer the pensions with Provider 1 to pay off the majority of that debt. Whilst charges were slightly higher, I think the benefit of the savings made on the credit card debt would have outweighed those additional costs. Mr B could have taken approximately

£18,500 in tax-free cash from the transfer related to Provider 1. That would have repaid the majority of the £21,000 credit card debt. The suitability letter said Mr B was paying £650 a month towards his credit cards, so repaying the majority of the debt would free up most of that £650 which could be used to reduce down the remainder.

I think one of the key factors to consider in relation to the pension Mr B held with Provider 2 – which he was still a member of and contributing to as it was connected to his employer - provided protected tax free-cash of almost 50%. This was a valuable feature of it – in effect almost 25% extra of the fund would be sheltered from income tax at the rate of 20% (most likely in Mr B's circumstances) when he took those benefits.

The fund value was approximately £92,000 at the time of the transfer. Given the protection was lost on transfer, it effectively reduced the real value of the fund by around £4,600 – about 5%. The cost of the initial advice was 4.4%. So the real underlying value of Mr B's pension with Provider 2 effectively took a 9% hit from the start.

My understanding is that Mr B could have taken the tax-free cash from it (around £46,000) but would have either had to annuitize the remainder or take it as a lump sum (rather than have the option of going into drawdown with the residual fund after taking tax-free cash). We have tried to obtain information from Provider 2 and the current provider of Provider 2's pension (it was subsequently taken over by another company) about the protected tax-free cash and Mr B's options on taking benefits, but it hasn't been able to provide definitive information. In the circumstances, I think it's reasonable to rely on the contemporaneous information available.

So as an alternative to transferring the pensions held with Provider 1, Mr B could have left those pensions where they were and for pension purposes, and still have had more tax-free cash than what he did by transferring all four pensions by taking the protected tax-free cash amount from Provider 2. I accept that he may have had to annuitize at a young age. But given his financial position he would have had use for that income. And it would only have been taxed at basic rate – which it would likely be taxed at in retirement in any event.

There were clearly significant additional 'costs' in transferring the pension held with Provider 2. Taking all the above into account, in my opinion those costs outweighed the potential benefit, and I'm not persuaded the advice to transfer the pension with Provider 2 was suitable in the context of all the circumstances.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr B as close as possible to the position he would probably now be in if he had been given suitable advice.

Taking everything into account, I don't think Mr B would have transferred the pension held with Provider 2 – I think he would have left it invested for retirement purposes if he'd been given suitable advice to do so.

I think there would likely be difficulties obtaining a current notional valuation for Mr B's pension with Provider 2 and therefore also applying the protected tax-free cash formula to ascertain what that figure would now be. I therefore currently intend to use a benchmark for comparative purposes, and the 49.85% protected tax-free cash figure referred to in the suitability report.

What should HARBOUR ROCK CAPITAL LIMITED do?

For the reasons I've set out above, I think Mr B has lost out as a result of losing the protected tax-free cash lump sum on his pension. Assuming this as 49.85%, he will likely be subject to 20% income tax on an extra 24.85% of his pension.

So to compensate Mr B fairly HARBOUR ROCK CAPITAL LIMITED should:

1. Calculate a notional value for Mr B's transfer received from Provider 2 assuming it had achieved a return in line with the benchmark shown below – I'll call this value A.

2. From value A deduct 20% on 50.15% of it (representing the income tax that would otherwise have been paid). I'll call this value B.

3. Obtain the transfer value for Mr B's current arrangement and then calculate the proportion representing the transfer from Provider 2. I'll call this Value C.

4. From value C deduct 20% on 75% of it (representing the income tax that would otherwise have been paid). I'll call this value D.

5. Using the same proportion as in step 3 above, any additional sums paid into Mr B's pension with Provider A should be added to the calculation from the point in time when they were actually paid in. Any withdrawals from the pension with Provider A should be deducted from the calculation at the point they were actually paid so they cease to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if HARBOUR ROCK CAPITAL LIMITED total all those payments and deduct that figure at the end instead of deducting periodically.

6. If value B is greater than value D there is a loss of the difference.

7. HARBOUR ROCK CAPITAL LIMITED should add any interest set out below to any loss calculated.

Given I've found that the transfer from Provider 1 was suitable which would have provided around £18,500 to pay down the majority of the highest interest debts, I don't propose to make further allowance for any interest savings. Mr B would have had additional disposable income to help pay down the remaining credit card debts and service the remaining loans (redeeming loans early may not have been very financially advantageous in any event, depending on the particular terms of each loan).

If there is a loss, HARBOUR ROCK CAPITAL LIMITED should pay into Mr B's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges (but not tax relief as the loss is calculated on a net basis). HARBOUR ROCK CAPITAL LIMITED shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If HARBOUR ROCK CAPITAL LIMITED is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. As the loss is calculated on a net of tax basis no further deduction should be made to account for income tax.

investment	benchmark	from ("start date")	to ("end date")	additional interest
Appropriate proportion of the pension	For 75% of the investment - FTSE UK Private Investors Income Total Return index. For the other 25%: the average rate from fixed rate bonds	Date of transfer	Date of a final decision	8% simple a year from date of a final decision to date of settlement if settlement isn't made within 28 days of HARBOUR ROCK CAPITAL LIMITED being notified of Mr B's acceptance of this decision

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr B wanted capital growth and was willing to accept some risk to his capital.
- For the average rate for fixed rate bonds, the business should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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. 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 their 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 some risk to attain his investment objectives. So, the 75/25 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 25% of his money in a fixed rate bond and 75% 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 provisional decision

My provisional decision is that I uphold Mr B's complaint in part.

I intend to order that HARBOUR ROCK CAPITAL LIMITED calculates and pays compensation to Mr B as set out above under 'Putting things right' above.

Responses to the Provisional decision

I asked Mr B and HARBOUR ROCK CAPITAL LIMITED to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Neither Mr B or HARBOUR ROCK CAPITAL LIMITED provided any further evidence or arguments for me to consider.

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've seen no reason to depart from the findings set out in my provisional decision to uphold Mr B's complaint.

My final decision

My final decision is that I uphold Mr B's complaint.

I order HARBOUR ROCK CAPITAL LIMITED trading as Portafina to calculate and pay fair compensation to Mr B as outlined above in my provisional decision under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 January 2025.

David Ashley
Ombudsman