

The complaint

Mr H complains that Harbour Rock Capital Limited trading as Portafina (Portafina) caused delays in the transfer process of his defined benefit (DB) pension. Mr H says that these delays resulted in the expiry date of his Cash Equivalent Transfer Value (CETV) being missed and the updated CETV being significantly less, meaning that he was financially disadvantaged.

What happened

In April 2022, Mr H contacted Portafina to discuss the possibility of transferring his DB pension scheme. His objectives at that time were to release his tax free cash in order to pay off his mortgage, carry out some home improvements, update his car and caravan, and pay for his wedding. He completed a Pension Information Form, and Portafina contacted Mr H's DB scheme administrator Mercer, in order to obtain a CETV. At the time, Mr H was also contributing to a pension via Nest, which he did not wish to include in the considerations for transfer.

Mercer provided the CETV to Portafina on 30 May 2022, (£286,600) which was guaranteed until 31 August 2022. Portafina completed an analysis on 13 June 2022 and sent a summary to Mr H on 14 July 2022. This summary did not include full advice, which was required in order for a full recommendation to be made.

In order to provide a recommendation to Mr H, Portafina booked a fact-finding meeting with a trainee adviser, following which they arranged for Mr H to provide some further information to them after a 2 week holiday. The information was received by Portafina on 4 August 2022. Portafina state that they attempted to call Mr H to discuss this on 18 August 2022 but were not able to reach him until 24 August 2022. Mr H's CETV guarantee period expired on 31 August.

On 12 September 2022, Portafina made a recommendation to Mr H to retain his benefits within his DB pension scheme. Against this advice, Mr H confirmed he wished to transfer his pension in order to meet his objective of accessing his tax free cash.

The insistent client process was instigated, and on 30 September, Portafina created a further suitability report, which confirmed that Mr H was transferring against their advice, but recommended the Aegon ARC pension plan (invested within the Considered Portfolio) as an appropriate pension into which Mr H's CETV could be transferred. This was sent to Mr H on 3 October 2022.

Following receipt of the second suitability report, Mr H decided to go ahead with the transfer of his DB pension to a personal pension with Aegon. He completed the required forms to return to Portafina on 4 October 2022, however after initially being told he would not need to submit the forms with wet signatures, when he phoned to chase progress, he was told that this was required. These forms were received by Portafina on 21 October 2022.

In early November, Portafina requested a new CETV from Mercer. This was received on 22 November, and was for £198,800, a reduction of approximately 30%. It was guaranteed until

28 February 2023. On 12 December 2022, Portafina made Mr H aware of the reduction in the CETV by letter.

On 14 December 2022, Mr H made a complaint via phonecall to Portafina explaining, in summary, that he was unhappy with the delays that had caused him to miss the expiry of the guarantee period for his CETV, resulting in a £87,800 reduction in the new transfer value offered to him. Although Mr H was not happy with the new CETV, he decided to go ahead despite the reduction in order to meet his objectives.

On 26 January 2023, the transfer completed and Mr H took the maximum tax free cash available to him.

Following an investigation, Portafina partially upheld his complaint in relation to service and communication – they offered £400 to reflect the 22 day for completion of a summary letter, and a 10 day delay in producing a recommendation. They also offered an additional £250 in relation to the lack of verbal communication regarding the requirement for a calculation, meaning the total offered was £650.

Mr H was not happy with this outcome and referred his complaint to this service. The investigator reviewed the information provided by both parties, and concluded that although the delays caused by Portafina were a key factor in the amount of time taken to process Mr H's transfer, if they had adhered to their own service standards, they would not have met the CETV deadline. He recommended that Portafina arrange for a new CETV to be calculated as though it had been requested on 27 September 2022 instead of 4 November 2022, the date he believed that could reasonably have been expected to have been met by Portafina. He also recommended that Portafina honour their offer of £650 for the trouble that they had caused to Mr H to reflect their service.

Portafina agreed to pay distress and inconvenience payment, however stated they were not able to recalculate the CETV. Due to this, the case has been referred to me for a final decision.

Provisional findings

I issued my provisional decision on 10 January 2024. It said:

“Neither party have questioned the suitability of the advice provided to Mr H in relation to the transfer of his DB pension to a personal pension with Aegon. I have therefore not considered this as part of my decision, and instead focused on the key issue, the delays leading to the transfer of Mr H's pension not meeting the expiry of the CETV guarantee period, and the subsequent reduction in transfer value.

Having done this, I am satisfied that the delays in process were as a result of Portafina's errors, and uphold Mr H's complaint. I'll explain why below.

Having considered the information available, it strikes me that there are a number of individual delays which all had an impact on the transfer of Mr H's pension. It is clear that these can all be attributed to Portafina, with no delay on the part of Mr H.

I have considered the times taken at each stage in the process, and whether it would have been possible for the transfer to have been completed prior to the expiry of the first guarantee period, allowing Mr H to secure the higher transfer value, and whether it would be fair and reasonable to say Portafina should have progressed the transfer to allow this deadline to be met. I am satisfied on both counts that this would have been possible.

Based on the timeline of events provided by Portafina, the events between 30 May 2022 (when the CETV was received) and 26 January 2023 (when the transfer completed) can be broken down into a number of clear stages.

Firstly, the provision of the abridged advice to Mr H. Although the abridged advice report was created on 13 June 2022, it was not issued with a summary until 14 July 2022, some 45 days after receiving the CETV. I am not suggesting that Portafina should have sent the abridged advice report to Mr H immediately after receiving the CETV. However, I think that this should reasonably have been possible within two weeks rather than the 45 days it did take. I think it's more likely than not it was Mr H's phone call to Portafina on 11 July 2022 chasing the progress of his transfer that prompted them to issue the summary on 14 July 2022. At that point, Portafina had not communicated further with Mr H, nor told him the value of the CETV available. It is unclear why this delay occurred at such an early stage in the process, which did not require full fact finding to take place, or a full recommendation to be formulated. Portafina have confirmed that this delay was due to high workloads, however I do not think it is reasonable for a company such as Portafina, specialising in an area such as pension transfers to allow such a significant period to elapse prior to providing the initial summary, especially when they should know the potential repercussions of delays.

Following receipt of the summary on 14 July 2022, Mr H was keen to move forward, which required a full advice process to be followed, including fact finding, comparisons and a suitability report. Once again, Portafina did not respond promptly, taking a further eight weeks (12 September 2022) to provide the initial recommendation not to proceed with the transfer. I have considered whether this is reasonable and can not find evidence to indicate that there is a reasonable justification for the delay. As with the abridged advice report, I am not suggesting that the eight weeks taken by Portafina was an eight week delay – it would have taken Portafina time to formulate the recommendation. However, I think that this should reasonably have been possible within a couple of weeks, rather than the eight weeks taken. I note that additional information was required from Mr H, however this was provided by return, with Mr H chasing progress regularly.

Mr H instigated the transfer process in April 2022. Portafina requested the relevant information from Mercer, the scheme administrators, and although they initially experienced a delay in receiving this, it was provided on 30 May 2022. The CETV was guaranteed for three months. It was at this point that the clock started ticking and if Mr H was to transfer his pension, the relevant forms would have had to be submitted to Mercer by 31 August 2022. Whilst no advice had been given at 30 May 2022 and Portafina would not have known whether a transfer was to be recommended for Mr H, as specialists in providing DB advice, they would have been well aware of the time limits, and possible implications of not completing the process in time. I note that in their welcome letter to Mr H on 28 April 2022, Portafina stated "Mercer are dragging their heels" following another email on 1 June 2022 attributing delays to Mercer. As detailed above, once provided, the CETV would be guaranteed for three months. Prior to Mercer providing the CETV, the timescales for the transfer to be completed had not started, meaning that any delays before 30 May 2022 would not have had any impact on the expiry date of the guarantee period being missed.

It is acknowledged that the process of transferring a DB pension is complex, with a number of stages that can cause delays, particularly when the insistent client process is being followed. I also acknowledge that it is not uncommon for CETV expiry dates to be missed, necessitating new CETVs to be calculated. This doesn't necessarily mean an adviser is at fault. Nonetheless, in this particular case, I note that on each occasion Mr H was asked for information, he responded immediately. I also note that his financial affairs were not complicated, with multiple pieces of information and data needing to be gathered and considered prior to the recommendation being made. The timeline provided by Portafina shows that Mr H chased the progress of the application repeatedly between July and

December, to ensure that he could access his tax free cash in order to meet his objectives as quickly as possible. Furthermore, whilst Portafina have inferred that Mercer were instrumental in the delays, I can not find evidence that once they had issued the CETV, that this is the case.

Portafina have acknowledged their part in the delays, however they state they do not believe it would have been possible for the process to be completed prior to the expiry of the CETV guarantee period.

Had Portafina responded promptly at each stage in the process, requested information in a reasonable timeframe as soon as it became apparent that it was required, and provided the initial advice within an appropriate timescale following receipt of the CETV, I have no doubt that the initial CETV expiry deadline would have been met.

I therefore uphold the complaint against Portafina, and direct that Mr H be put into the position he would have been in had it not been for Portafina's errors.

I believe that it should have been possible for Portafina to meet the expiry date, and have submitted the relevant information to Mercer by 31 August 2022. The file indicates that when the transfer form was submitted to Mercer in December 2022, it took approximately one month for the transfer to be completed, and Mr H to access his tax free cash. I therefore conclude that the transfer could have been completed on or around 01 October 2023 with the original CETV of £286,647.

Therefore, in calculating the compensation due to Mr H, Portafina should carry out the following steps;

- The difference between the CETV Mr H should have received, and the recalculated CETV actually received was £286,647 - £198,840 = £87,807 (A). This is the starting point for the calculations.*
- Mr H's objective was to take the maximum tax free cash, but no income. This is supported by the fact that he did access the maximum available to him when his transfer completed in January 2023.*
- So I think it's reasonable to consider that he would still have taken the maximum tax free cash available if the higher CETV had transferred. Therefore the additional tax free cash available to him would have been 25% of the difference between the CETVs (£87,807) – ie £87,807 x 25% = £21,951 (B).*
- Portafina should add interest to this amount at a rate of 8% simple from 1 October 2022 to the date of my final decision. (C)*
- B and C should be paid direct to Mr H.*
- I think it is reasonable to consider that the remaining 75% (£65,855 (D)) would have been invested in the same way that Mr H's fund actually was invested in January 2023.*
- Portafina should therefore calculate a notional value of D as though it had been invested in the same way as the remainder of Mr H's pension on 1st October 2022 to the date of my final decision (E).*
- E should be paid into Mr H's pension plan. The amount paid should allow for the effect of charges and any available tax relief*
- E 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 compensation into Mr H'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 compensation 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 H won't be able to reclaim any of the reduction after compensation is paid.

- *The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.*
- *It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, in which case a reduction of 20% would be applied. This reflects the fact that there is no allowance to be made for tax free cash, which has been accounted for above.*
- *If the compensation payment has not been paid to Mr H within 30 days from the acceptance of this final decision, interest at 8% simple should be added to the compensation payment from the acceptance of this final decision to the date it is paid.*
- *Portafina should also pay £650 to Mr H to reflect the distress and inconvenience caused to him. This can be paid directly to Mr H."*

Responses to my provisional decision

I have received a response from Mr H, who accepted the provisional decision and had nothing further to add. Portafina did not respond to the provisional 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.

Having taken into account the response from Mr H, as no new information or arguments have been provided I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint.

Putting things right

Harbour Rock Capital Limited trading as Portafina should carry out the calculation as detailed above, and make the required payments to Mr H.

My final decision

For the reason given above, I uphold Mr H's complaint.

Harbour Rock Capital Limited trading as Portafina will be required to pay the compensation stated above to Mr H in line with my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 March 2024.

Joanne Molloy
Ombudsman