DRN-5064653

The complaint

Mr J, through his representative, complains about the advice he received from HARBOUR ROCK CAPITAL LIMITED trading as Pension Access, to transfer several of his pension arrangements to a self-invested personal pension (SIPP). He says this advice wasn't suitable and has caused him a financial loss. Mr J has also complained about subsequent advice as well as fees and services he received.

Mr J was advised by one of HARBOUR ROCK CAPITAL LIMITED's predecessor firms called 'Portafina'. For ease of understanding, I shall refer to the respondent firm as Portafina throughout this decision.

What happened

The history leading up to this complaint is well known to the parties and has been clearly set out in the investigator's assessment. Therefore, I have only summarised events and key details below.

In January 2021 Mr J submitted an enquiry through Portafina's website to obtain advice regarding his pension plans. He had arrangements with Utmost, B&CE The People's Pension, Phoenix Life, Legal & General, Fidelity, and with his current employer through NEST.

At the time, it was recorded that Mr J:

- was 55 years old, unmarried and cohabitating with his long-term partner in property owned solely by his partner
- was employed, earning around £25,000 per year
- planned to retire at age 70, but this was flexible
- had some debt, including a car lease and Mr J was subject to an IVA for five years, paying £110 per month
- had a moderately cautious attitude to risk (ATR) – reduced from the balanced ATR he was accessed as having
- had a total transfer value, excluding his NEST plan, of approximately £44,600.

It was also recorded that Mr J wanted to finance "home improvements (cosmetic) (non-critical)". Specifically, Mr J wanted to renovate the front and back gardens of his partner's property and potentially some work inside. It was estimated this would cost around £10,700.

Portafina issued its suitability report on 14 June 2021 recommending Mr J move his pension funds, except for his pension with NEST, to a SIPP with a new provider. The report said this would give him access to around £11,150 in tax-free cash. Portafina recommended the remainder be invested in the "Headway Portfolio". The report described this portfolio as "a fairly adventurous portfolio" and stated Mr J's ATR was balanced. Portafina also recommended Mr J have his funds reviewed regularly and managed on a discretionary basis.

The suitability report said this advice was suitable because:

You have said your objective is important.

You do not wish to take out a loan to finance your objective.

You are unable to use your disposable income to meet your objectives.

You are unable to meet your objectives by using your existing assets.

You wish to invest the remainder of your pot with the intention of taking an income at 70.

Your [Utmost, People's Pension, Phoenix Life and Legal & General] schemes do not enable you to release a lump sum from your pension and reinvest the remaining money.

Your income needs in retirement should be met.

It was further explained that the SIPP and provider were recommended because Mr J would have the freedom to access his money, the remainder of his funds would be invested, he'd have flexibility over how it was invested, it was cost effective, and he'd benefit from a discount while Portafina was managing his funds.

The suitability report noted that Mr J's Utmost pension provided a guaranteed annuity rate (GAR) and a guaranteed pension value, including a bonus. This would provide Mr J with a greater income in retirement. But after setting out the risks and explaining what Mr J would be giving up, Portafina reasoned it was worth forgoing these guaranteed benefits to achieve Mr J's objective.

For the advice Mr J was charged 6.57% of the transfer value, equalling £2,930.49. Additionally, Mr J was responsible for yearly fees, including an ongoing management fee of 1% of the plan value, an annual management charge from the SIPP provider of 0.2% and 0.32% in fund fees.

Mr J accepted this advice and between June 2021 and August 2021 his pension funds were transferred. Mr J received around £11,152.43 in tax-free cash and the remainder was invested in the Headway Portfolio.

Mr J received further advice from Portafina about additional withdrawals. A phone call took place on 17 January 2022 where Mr J confirmed he'd paid off his IVA early. And a second income withdrawal took place on 14 Feb 2022 following additional advice from Portafina.

In July 2023 Mr J, through his representative, complained about the advice he received.

Portafina responded that the advice was suitable as Mr J had no other means to release funds for the home improvements he wanted to make. They didn't think the loss of the GAR had or would cause Mr J a financial loss in the future. They said contrary to Mr J's representative's assertions, a fact-find had been completed, Mr J's ATR had been assessed and there was no evidence he'd been a low-risk investor; Mr J was sent the suitability report by post, and they'd disclosed their fees and the SIPP charges. Portafina also said no assurances or guarantees were provided about the Headway Portfolio and that Mr J said he understood and accepted the risks of reducing his retirement income to receive the lump sum immediately.

Mr J's representative also complained that Mr J wasn't provided with advice on his subsequent withdrawal. Portafina said that advice had been provided, and a suitability report issued. So Portafina didn't uphold the complaint.

Dissatisfied with this response, Mr J brought his complaint to this service for an independent assessment. One of our investigators looked into Mr J's concerns and concluded that the advice was not suitable. He recommended that the complaint be upheld and set out a methodology for calculating redress for any financial loss caused by the unsuitable advice.

Portafina didn't agree. They said, amongst other things, that the home improvements Mr J wanted to make were not "'inessential', but him contributing to the household and paying his way." They also said the guarantees Mr J lost in transferring "offered little advantage over what could be obtained elsewhere" and the investigator's comparison of the charges didn't take into account the "implicit" charges that resulted from the "Utmost policy not applying any bonuses".

Mr J's representative responded to clarify that Mr J has been living with his partner for approximately 13 years and has paid in the region of £650 a month towards the mortgage and bills.

Since an agreement could not be reached, the complaint has 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.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for doing so. I have considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching them.
Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

When advising Mr J, Portafina were required to follow the relevant rules set out by the regulator. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Portafina's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

So, amongst other things, to fulfil its duties Portafina had to know its client, act in his best interests and give suitable advice.

Over the years, the regulator also provided guidance to be read alongside the applicable rules.

In 2009 the then regulator, the Financial Services Authority (FSA) published a report on the quality of advice on pension switching. The report identified four main areas where consumers had lost out:

- *They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason.*
- *They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age.*
- *They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances.*
- *They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.*

In 2012 the FSA produced finalised guidance – 'FG12-16 Assessing suitability: Replacement business and centralised investment propositions.' The guidance pointed out several examples of good and poor practice the regulator had seen in the replacement business cases it had reviewed.

Amongst other things, its key findings said:

> *Replacement business*
>
> *2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.*
>
> *2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.*
>
> *2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation.*

In 2016 the Financial Conduct Authority (FCA) published guidance on its website for 'assessing suitability'. The guidance said that when undertaking replacement business, firms need to ensure they:

- *consider objectively your clients' needs and objectives*
- *collect necessary information on your clients' existing investments and the recommended new investments, such as the product features, tax status, costs and the performance of the underlying investments*
- *implement a robust risk-management system to mitigate the risk of unsuitable advice and poor client outcomes*

The 2016 update by the FCA also referred to the FSA's FG12-16 guidance. So I believe the FCA considered FG12-16 to still be appropriate and relevant.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint. My reasons are much the same as the investigator's and I don't have much to add. In short, I don't think the switches were justified by the reasons Portafina gave. In particular, I do not think that access to funds for non-critical home improvements was sufficient reason for Mr J to switch to a more expensive product and forgo guarantees.

I think the regulator has made it well known that it considers costs are a key consideration when providing advice to move pensions. It's only one of a number of factors to consider, but an important one nonetheless in considering whether a transfer is financially worthwhile.

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.

I've not seen sufficient evidence that persuades me that the SIPP was a more cost-effective product. And even if the annual management charge for the SIPP was lower than Mr J's existing plans, overall, the SIPP would cost Mr J more than his existing plans. This is because, off the top, Mr J's fund value was reduced by 6.57% to cover the cost of the advice. There was also an ongoing management service fee of 1% paid to Portafina and another 0.52% in SIPP and investment fund fees. So, in the first year alone Mr J would have paid over £3,000. Notably, Mr J said he was looking for only about £9,000-£10,000 for the home renovations. Overall, in the circumstances I don't consider Mr J's objective justified the cost he incurred by moving his pensions.

I am also not persuaded that Mr J actually needed ongoing advice and management from Portafina. From the information I've been provided, it seems this need arose solely from the advice to switch to a flexi-access drawdown arrangement in a SIPP. And it makes sense that Mr J subsequently took advantage of a service he was being charged for. But had Mr J remained with his previous pension schemes, I am not persuaded that this service would have been necessary.

Mr J was assessed as having a moderately cautious attitude to risk (though the suitability report said his ATR was balanced) and Portafina advised him to invest in a portfolio they described as "fairly adventurous". But funds that suited Mr J's attitude to risk would have been available from his existing arrangements and I haven't seen that Portafina considered this option. Instead, Portafina focused its advice on enabling Mr J's access to tax-free cash.

I understand that Mr J wouldn't have been able to simply take 25% tax-free cash from his existing plans. But, from what I've seen, although Mr J was interested in home renovations – mainly to the garden areas of the home he lived in with his partner – these were described by Portafina as "cosmetic" and "not critical". Further, Mr J said that he pays rent as the home is owed solely by his partner. Therefore, this was not an urgent need but rather a “like to have.” I can see that Portafina briefly discussed other ways of funding these r renovations, but no meaningful discussions were had about these options as Mr J said he wasn’t interested. Of course, accessing these funds from his pension plans would have seemed like a far easier way to get what he wanted. So this isn’t surprising.

But while Mr J may have been interested in accessing some of his pension benefits, Portafina wasn’t there to just transact what Mr J might have thought he wanted. The adviser’s role was to really understand what Mr J needed and recommend what was in his best interests.

Ultimately, I am not persuaded the advice given to Mr J was suitable. I consider suitable advice would have been for Mr J to have remained in his existing schemes. And had this advice been provided to him, I don’t think Mr J would have insisted on accessing his funds for non-urgent home renovations.

Putting things right

I’ve adopted the redress suggested by the investigator as being a fair and reasonable way to put Mr J, as far as possible, in the position he’d be in now if Portafina had given him suitable advice. I think suitable advice would’ve been that Mr J retain his existing plans. But I can’t be certain that the previous plan providers will be able to provide a notional up to date value for Mr J’s pension plans, had he retained them. So I’ve said, in that case, a benchmark should be used to ascertain what, if any, loss Mr J has suffered.

I understand that some changes may have been made to the portfolio since the SIPP was started. But I’ve just referred to the SIPP. I’ve decided against saying that redress should be calculated up to when any changes were implemented. That’s because I think the SIPP was unsuitable overall and not just by virtue of the funds that were recommended. So it’s fair and reasonable that redress is on the basis that the switches were unsuitable from the outset and that Mr J has remained throughout in a pension vehicle that isn’t suitable for him and despite any adjustments to the recommended funds.

Fair compensation

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What must Portafina do?

To compensate Mr J fairly, Portafina must:

- Compare the performance of Mr J's investment with the total notional value if it had remained with the previous providers – Utmost, The People's Pension, Phoenix Life, Legal & General and Fidelity. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Portafina should also add any interest set out below to the compensation payable.

- Portafina should pay into Mr J'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 J'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 J won't be able to reclaim any of the reduction after compensation is paid.

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

- As Mr J has already taken his tax-free cash from these policies, the loss would be taxed according to his likely income tax rate in retirement – presumed to be 20%.

In respect of the guaranteed annuity rate (GAR) that Mr J has lost, Portafina should do the following:

1. Ask Utmost to calculate the notional value of Mr J's policy on the date of calculation, as if the policy had never been transferred.

2. Obtain details of the GAR applying at age 58 on a monthly in arrears basis with a 50% spouse's pension with no guaranteed period.

3. Look up annuity rates on the date of calculation to determine a rate payable on the open market on the same basis as above.

4. Assuming 2 is greater than 3, and as Mr J has already taken his tax-free cash, increase the value in 1 by the ratio (value calculated under 2 divided by the value calculated under 3). Otherwise, leave the value in 1 unchanged.

5. Obtain the fund value at the date of calculation from the provider Mr J switched to following the original advice.

6. The loss to Mr J's pension funds at the date of calculation is the difference between the value calculated in 4 and the fund value provided in 5. If the answer is negative, there is a gain and no redress is payable.

Income tax may be payable on any interest paid. If Portafina deducts income tax from the interest it should tell Mr J how much has been taken off. Portafina should give Mr J a tax deduction certificate in respect of interest if Mr J 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 SIPP	Still exists and liquid	Notional value from previous providers/as below	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 being notified of Mr J's acceptance)

Actual value

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

Notional Value

This is the value of Mr J's investment had it remained with the previous providers until the end date. Portafina should request that the previous providers calculate this value.

Any additional sum paid into the Aegon SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Aegon SIPP should be deducted from the notional 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 notional value instead of deducting periodically.

If the previous providers are unable to calculate a notional value, Portafina will need to determine a fair value for Mr J's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr J wanted income with some growth and was willing to accept some investment risk.

- If the previous providers are unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr J's circumstances and risk attitude.

Mr J’s insolvency practitioner has told us they have an interest in any redress award paid directly to Mr J but not if it is paid into his pension plan. Mr J should bear in mind his obligations to the insolvency practitioner in respect of any redress he receives. A copy of this final decision will be sent to his insolvency practitioner.

My final decision

I uphold the complaint. My decision is that HARBOUR ROCK CAPITAL LIMITED trading as Pension Access should pay Mr J the amount calculated as set out above.

HARBOUR ROCK CAPITAL LIMITED trading as Pension Access should provide details of its calculation to Mr J in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J to accept or reject my decision before 18 June 2025.

Jennifer Wood
Ombudsman