

The complaint

Mr S complains that HARBOUR ROCK CAPITAL LIMITED trading as Portafina were negligent in the advice that they gave him, which led to him transferring out of his Occupational Pension Scheme (OPS) in 2019. It is alleged that this has caused him a loss.

What happened

I issued a provisional decision on 21 May 2025 setting out my provisional findings. This is set out below and forms part of this decision:

'The investigator ultimately found that Portafina had fairly treated Mr S as an insistent client and gave him the appropriate information to make an informed decision. He said that he'd in part relied upon the insistent client call with Mr S on 23 December 2019 – this was shared with Mr S's representatives. The investigator said this was evidence that Mr S knew what he was giving up but was insistent he wanted to go against the advice.'

The investigator quoted Mr S during the call saying, "I just want to release my money now, get everything paid off and enjoy my last 10-12 years working." And "I fully understand that... the pensions are performing well... when I get to 65-67, they may well have grown better than what you can do with the rest, in terms of investments for me." And I'm 55 on... I was hoping to get it around then, but that's clearly not going to happen. But yeah, that's it, I fully understand what I'm doing. I've got everything mapped out." And "It's more important for me to have the money now rather than later." The investigator said this was evidence that Mr S was informed and knew what he wanted to do and was truly an insistent client.

However, Mr S's representatives having listened to the call said a number of things in it pointed to Portafina not making sure and missing chances to make sure Mr S was truly insistent. It said this fitted with Portafina's whole process, where it focussed on Mr S being able to access his tax-free cash rather than what he was losing out on by transferring. I think some of the concerns raised are legitimate, I think Portafina's process made it quite easy for Mr S to go down the insistent client route. The advice process was fairly basic it covered the key issues and gave the key figures but the recommendation letter was rather lacking in detail and reasoning – phone calls were short and the key parts of the advice weren't confirmed verbally from what I've seen. There wasn't much in the way of persuasive arguments made, beyond the key figures and short headline statements, about why it was in his best interests to remain in the scheme in the recommendation letter.

The process did give Mr S all the required figures and information but it made it easy for him to make his own mind up rather than attempting to persuade him to make what the adviser thought was the right decision, not to transfer. Acting in Mr S's best interests, I think Portafina ought to have done more here.

That said looking at COBS 9.5A.3G I think Portafina did meet the steps set out here with regards to insistent clients. But this guidance built on previous guidance and the overarching principle of acting in a customer's best interests still applies here.

As I said I think Mr S's representatives have raised some legitimate concerns with the

process Mr S went through. The initial welcome letter for example immediately talks about tax-free cash – and having listened to the calls with Mr S there isn't much challenging of his intention to take his intended course of action.

However, I don't think it is necessary to go into more detail discussing the process followed and the ways it did and didn't meet the guidance in place at the time. I say this because after deciding that the advice process followed wasn't sufficient to meet the guidance in place, I'd then need to decide what difference this made. And whether Mr S would have done it anyway – even if the advice process had been thorough and the adviser had truly acted in his best interests. And having listened to the calls and considered the rest of the evidence, I am satisfied that Mr S would've wished to transfer to take his tax-free cash regardless of how thorough the advice process was.

I say this because in the initial calls with Portafina, Mr S states without prompting that he wants to transfer to access his tax-free cash – but more compellingly he says he has already approached other IFA's who have told him they are not prepared to do the transfer for him. He says this in the call dated 4 July 2019. In the next call, unprompted Mr S says he says there's no doubt the result will come back not to do it, and he will have to sign a waiver or something to say it is his choice. Mr S also explains his reasoning, which essentially comes down to the fact he thinks he'd have a better quality of life now with the money and he values this more than being more comfortable in retirement. He again mentions he had a financial adviser (seemingly a person known to him personally) who didn't want to take the risk and do the transfer.

Latterly, Mr S is told the transfer value has been increased and calls the business on 6 March. This is after the advice not to go ahead but he is proceeding on an insistent client basis. In this call Mr S says that he's now decided to purchase a new house seemingly based on the higher transfer value (which only would produce an extra £6,000 tax free cash) and needs the extra tax-free cash towards a deposit. I think this shows that Mr S was prepared to make big financial decisions fairly instinctively without too much concern for the potential downsides. Agreeing to buying and selling a house before the money needed is realised isn't indicative of someone who isn't prepared to take a risk.

Following the transfer, Portafina called Mr S on September 2020 to find out why he'd removed them as the servicing agent. Mr S says he was tired of waiting to get access to income from his pension, that he wanted to use for house renovations. He said it was taking too long so he went direct to the pension provider.

Listening to these calls (and of course there was also the insistent client call already referenced by the investigator) I think Mr S came with a plan that he knew other advisers wouldn't proceed with. I don't know how far they went in the advice process and what exactly he was told. But regardless, this ought to have put him on notice that it might not be the best course of action. And again regardless of any potential failings in Portafina's process it did set out clearly what Mr S was giving up, the cost of doing so (which was high) and it did give the headline information about why he'd be better off not to transfer.

The facts presented to him about what he was giving up and the risks involved, didn't seem to faze him at all – in the insistent client call Mr S was clear in that he was being recommended not to transfer but that he wanted to do it anyway.

As I've said Portafina could have done more in the recommendation letter to explain why transferring wasn't in his best interests. Such as setting out the likelihood of how much he could be worse off by in retirement and the risk of not having enough money in retirement to live on. But he did have access to the TVAS report which included this information. And the figures set out in the recommendation letter were quite stark in terms of the potential cost to

him of this transfer. If this didn't raise any concerns with Mr S – which listening to the calls it didn't. Then I don't think more information in the recommendation letter would've done so either. I'm also of the view that if Portafina had not introduced the concept of an insistent client in the recommendation letter, Mr S would've asked about this anyway. So I'm satisfied he was an insistent client and Mr S would've transferred even if Portafina had done more to dissuade him.'

In response Mr S's representatives said in summary:

- It disagreed that Portafina had acted in line with COBS 9.5A.3G; as to act in line with this, it had to have communicated clearly, fairly and in a manner which was not misleading.
- Within the additional call recordings provided, Portafina query what Mr S is looking to achieve via the transfer and after receiving his answer it did not push to establish a better understanding of 'objectives' nor did they discuss the possibility of any alternatives; instead they jumped straight into the pension transfer itself.
- Portafina's actions make clear that from the outset they had pre-empted a transfer and proceeded on this basis – the insistent client process simply acting as a regulatory bridge to do what they had intended regardless.
- Whilst the ombudsman agrees there were shortfalls in the advice process, the complaint is rejected on the basis Mr S would've done it anyway. This is to an extent speculation. But Portafina didn't fulfil their regulatory obligations. They ought to be held account for this and there is the possibility that had errors not taken place, Mr S wouldn't have transferred. A complete rejection of the complaint is therefore not fair. An uphold with some apportionment should be made at the very least.

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.

And having done so I see no reason to depart from the findings made in my provisional decision and set out above.

As I said in the provisional decision, I also have concerns with the process followed by Portafina, as raised by Mr S's representatives. However, as I've explained, establishing that Portafina has done something wrong is only part of what is required to uphold this complaint. I'd also need to be persuaded that in doing so it had likely altered events when compared to what likely would've happened had everything been done correctly.

In this situation whilst Mr S's representatives have pointed out shortfalls and potential errors in the process, we have access to the majority if not quite all the discussions held between Portafina and Mr S. And after listening to this and considering Mr S's circumstances I am of the view that Mr S wouldn't have acted differently even if it had carried out a more balanced and detailed advice process. Mr S came to Portafina, already aware that he'd likely have to be an insistent client to transfer and that transferring probably wasn't in his best interests. He was aware other advisers wouldn't sign it off and whilst Portafina provided him with the opportunity he wanted to take his benefits, it did still tell him it wasn't in his best interests and set out the likely cost of doing so.

The process appearing to steer Mr S towards taking his tax-free cash therefore isn't so impactful in my view, given this was what Mr S wanted to do prior to any interaction with

Portafina. The next point is it should've done more to dissuade and challenge Mr S's intentions but having listened to the calls with Mr S and thought about what happened before he came to Portafina, I don't think he could've been easily dissuaded. Mr S was already aware, it likely wasn't in his best interests, had this confirmed by Portafina, was pretty robust in his views about why he wanted to do it, and his subsequent actions also point to someone who would be drawn to spending now rather than saving for later. So, I don't think stronger challenging of his objectives and a more detailed set of reasons as to why he shouldn't transfer, would've made a difference to Mr S.

Just because Portafina did something wrong doesn't mean it needs to do something to put things right, I need to see that its errors caused Mr S a loss. Whilst I understand the point Mr S's representatives are making, my role requires me to decide on the balance of probabilities what would've occurred if not for the error. And in this case, I am satisfied the evidence strongly suggests Mr S would've been an insistent client regardless of whether Portafina did all that reasonably could've been expected of it to make sure Mr S was making an informed choice.

My final decision

For the reasons explained, I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 July 2025.

Simon Hollingshead
Ombudsman