

The complaint

Mr S says Harbour Rock Capital Limited (HRCL), trading at the time as Portafina Investment Management Limited, gave him poor service as soon as it became his financial adviser and was specifically responsible for delays when he tried to access some of his pension benefits.

What happened

An Investigator established the broad chronology of events in this case in his view of 20 April 2023. Both parties were in broad agreement with this.

Mr S first called HRCL on 24 March 2022 to request a withdrawal from his pension with Aegon and a digital fact find was sent to him. On 7 April 2022, he enquired why he hadn't yet received a call. It explained it was waiting for him to complete and return the fact-find. He returned this on the same day.

HRCL called Mr S on 25 April 2022 explaining there was a backlog for appointments to discuss his fact-find. The discussion took place on 11 May 2022. Following further enquiries, it issued its advice to him on 30 May 2022 with a recommendation that he shouldn't proceed with the withdrawal of funds he'd requested and the reasons why.

In its letter HRCL said if Mr S still wanted to access his pension benefits he would have to sign forms confirming his understanding of its recommendation and explaining in his own words why he wanted to go ahead with the transaction. If he did this he would then be treated as an insistent client.

Mr S contacted HRCL on 21 June 2022 to discuss the report. He confirmed he wanted to proceed with withdrawing funds from his pension and that he would sign and return the report forms shortly.

Mr S called HRCL on 6 October 2022 because he hadn't heard anything about progress since he sent in his forms. It said it hadn't received the signed report confirming he wanted to proceed as an insistent client. He explained he'd sent the forms to it in June 2022. He said he would resubmit the documents. During the call he also raised concerns about the lack of updates he was receiving about his pension performance and the charges it was making.

HRCL received Mr S's insistent client documentation on 10 October 2022. As there were differences in the objectives noted by him on these compared to the earlier fact-find, it called him on 14 October 2022 to discuss and clarify. It also confirmed a suitability report would be issued shortly.

Mr S's case was marked as urgent and recommendation notes were completed. Following this HRCL began the process to complete the withdrawal for him. The suitability report was generated and was sent to him on 2 November 2022.

Mr S raised a complaint with HRCL on 4 November 2022 about the delays and issues he had experienced. He also removed it as the servicing agent for his pension and dealt with the withdrawal of funds from his pension directly with his provider.

HRCL issued its final response to Mr S on 3 January 2023. It accepted that it had got things wrong, for example the delay in issuing his suitability report and offered him £300 for the trouble and upset it had caused. It also said it would refund fees charged between 21 June 2022 until 6 October 2022, to the value of about £400. It said this was because:

“...prior to the Pension Withdrawal Report stage, we had required a declaration form to be returned to us. This was the Recommended Not to Proceed (RNP) declaration. Without this, we were unable to proceed with your withdrawal request and this caused a delay of four months (from 30th May until 6th October).”

“However, we accept that we should have attempted to contact you during the period between 21st June 2022 and 6th October 2022...This part of the service was unsatisfactory. We should have attempted to call you and we apologise for this lack of communication...”

Mr S wasn't satisfied with HRCL's response and he brought his case to this Service. An Investigator considered his case and upheld it. He didn't think it had fully compensated him for the delay it had accepted it had been partially responsible for.

The Investigator noted Mr S hadn't received his pension funds until January 2023. He thought that had HRCL provided the sort of service it should've done then he would've had access to his money from September 2022. He proposed an award of interest on the sum withdrawn for the period between when he should've received it until when he did, to recognise his loss of use of the funds.

Both parties accepted the Investigator's recommendations. But as far as this Service is aware HRCL has yet to settle. So, Mr S's complaint has been passed to me to review afresh and provide 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I've considered the extensive regulation around transactions like those performed by HRCL for Mr S. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr S's complaint.

I'm upholding Mr S's complaint. I'll explain why.

In its final response to Mr S, HRCL acknowledged it had got things wrong in its dealings with him, for example the delay in issuing his suitability report and its failure to follow-up the conversation it had had with him in June 2022. The Investigator thought that the offer it made to Mr S was reasonable. But that it needed to go a little further to put things right. In his view he said:

"...Mr S contacted [HRCL] on 21 June 2022 after he had been in hospital to discuss the report and he confirmed he would return the report signed. I've also noted...[HRCL] should have followed up with Mr S between 21 June 2022 and 6 October 2022, which I believe should have been done within four weeks."

"Taking that into consideration, I believe the report would have been returned by Mr S earlier and received by [HRCL] on 25 July 2022. Mr S would have then been called on 29 July 2022 to discuss the report and his objectives as they did not match."

"From this point, the suitability report would have been generated and sent within three weeks, so 19 August 2022 at the latest. To allow time for postage both ways, I believe the signed suitability report would have been received by [HRCL] by no later than 2 September 2022."

"[HRCL] have confirmed to me that the signed suitability report would be the final step and once received the withdrawal would have been processed accordingly. [HRCL] have also confirmed Aegon's timescales for a withdrawal is 3-4 working days or 5-7 working days for funds that are invested."

"I believe it is fair to allow two days for the form to be processed and then the full 7 working days for the withdrawal to be processed, given Mr S's funds with Aegon were invested. Then, allowing a further two days for the payment to be processed and received, I believe Mr S would have received his funds on 19 September 2022."

Both parties agreed to the Investigator's findings and conclusions. HRCL did so on 17 May 2023, so I recognise Mr S will be frustrated by its delay in settling matters. After reviewing the available evidence, I find no reason to disturb the Investigator's recommendations.

Putting things right

Harbour Rock Capital Limited should honour the offer it made to Mr S of £300 for the distress and inconvenience its failings caused him, as well as the refund of fees it proposed. But it needs to go further.

Mr S lost the use of his pension funds between 19 September 2022 (the agreed notional date for when he should've received his money had the transaction gone smoothly) and mid-January 2023 (when he actually received the sum), the relevant dates.

So, after Mr S has provided evidence to Harbour Rock Capital Limited of when he actually received his pension benefits, it should calculate and pay 8% per annum simple interest on the amount of £37,699 between the relevant dates.

Further, if Harbour Rock Capital Limited fails to settle within 14 days of the date of Mr S's acceptance of this decision, from that point it will need to add a further 8% per annum simple interest to the sum already calculated (for the interest award) until it finalises matters.

My final decision

For the reasons I've set out, I'm upholding Mr S's complaint. I now require Harbour Rock

Capital Limited to put matters right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 September 2023.

Kevin Williamson

Ombudsman