

The complaint

Mr B complains that Harbour Rock Capital Limited (“HRCL”) failed to provide him with timely advice on the transfer of his pension benefits to a new pension plan.

What happened

Mr B received his advice from Portafina Investment Management Limited. However recently that firm has changed its name to Harbour Rock Capital. So in this decision, given its legally binding nature, it is appropriate that I simply refer to HRCL rather than Portafina as the name of the business that provided the advice to Mr B.

Mr B held pension savings across four separate pension plans. Three of those plans were defined contribution schemes. But one of Mr B’s pensions, an occupational pension scheme (“OPS”) relating to a job he left in 2008, would provide him with defined benefits when he retired. Mr B decided he wished to consolidate his pension plans so he could take a lump sum withdrawal to allow the repayment of his mortgage and to allow him to move overseas. He asked HRCL for its advice in achieving those objectives in February 2022.

Immediately following their initial meeting, HRCL asked Mr B’s pension providers for information about the value of his pension savings. In relation to the defined benefits, HRCL was sent the amount of a cash equivalent transfer value (“CETV”) that was guaranteed for a period of three months as is normal.

HRCL accepts that a backlog of work meant there were some delays in completing the analysis required to provide its advice to Mr B. But it also says some delays were caused by the pension providers not sending all the information that had been requested. By the time HRCL had completed its analysis the CETV guarantee had expired.

HRCL advised, in an abridged advice report, that Mr B should leave his defined benefit pension with the existing provider. But Mr B didn’t agree and asked for a full advice report to be produced, and to be treated as an insistent client. So HRCL issued a full advice report to Mr B. In that report it told Mr B that his CETV had expired and a new quotation would need to be requested from the pension provider.

Mr B completed the necessary processes for HRCL to treat him as an insistent client. It then asked the OPS to provide an updated CETV. But due to the economic circumstances at that time the new CETV provided in November 2022 had fallen significantly from the one provided the previous February. But Mr B still decided to proceed and transferred all his pension savings into a new pension plan. I understand that he has subsequently withdrawn those pension savings and now holds the cash in his bank account.

When Mr B complained to HRCL it accepted that it hadn’t progressed his transfer as quickly as it should – it said it had caused a delay of 54 days. But it didn’t think that, even if no delays had been caused by the firm, Mr B would have been in a position to accept the original CETV. It offered Mr B £500 for the inconvenience he’d been caused. And HRCL also thought that its communication with Mr B had fallen short of what he might expect. So it offered him a further £250 in that regard. Mr B didn’t accept those offers and brought his complaint to us.

Mr B's complaint has been assessed by one of our investigators. He thought that the delay caused by HRCL had been longer – he calculated the delay to be 77 business days. And he thought that HRCL needed to determine whether the extended delay had caused Mr B to lose out. He said that the compensation HRCL had offered Mr B for his inconvenience was reasonable, so he also asked for that to be paid.

HRCL didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr B accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr B and by HRCL. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

In his complaint, Mr B isn't expressing any concerns about the advice he was given to transfer his pension savings. In fact, as I've explained part of the advice was to not transfer his defined benefits. So in this decision I will not be considering whether the advice Mr B received was suitable. I will only be looking at the time it took HRCL to provide that advice to him.

There seems little doubt that the transfer of Mr B's pension savings to the new provider was complex. He held his pension savings with four different providers, and had a mix of guaranteed and cash benefits. The defined benefits that Mr B held were in excess of £30,000 so he was required under the relevant legislation to take regulated advice before those benefits could be transferred. So it wouldn't be surprising that the transfer advice took an extended period of time to be completed.

As I have said earlier, HRCL has accepted that it caused a delay to the transfer of Mr B's pension savings due to work backlogs that it had in its teams. But I think it reasonable that I form my own opinion as to the length of those delays. So I've looked carefully at the actions that HRCL took, and the information it says it needed in order to complete its advice to Mr B.

I think it would be first helpful to set out the way in which the advice process was offered to Mr B. Initially HRCL agreed to provide Mr B with some abridged advice free of charge. That advice could provide just two outcomes – either Mr B would be told that HRCL didn't think a transfer was suitable for his circumstances, or he would need to request, and pay a fee for, a full advice report in order to proceed with a transfer.

The abridged advice report told Mr B that HRCL didn't recommend a transfer of his defined benefits from the OPS. But it did recommend that he transfer his pension benefits from the other three plans. As I've said earlier, Mr B rejected that initial advice and asked that a full advice report be provided looking at the transfer of all four plans. So the provision of the two advice reports, abridged and full, reasonably added some additional time to HRCL's process.

I think it was reasonable that, in order to provide the advice to Mr B, HRCL considered information from all four pension plans. It wouldn't have been sufficient to consider each plan in isolation. So I think it is fair that all the information from each plan needed to have been received before any analysis could proceed.

But having looked at the information that HRCL requested, and in particular the information HRCL says was delayed, I'm not satisfied that the analysis took place at the earliest opportunity, even allowing for the delays that HRCL has already identified.

HRCL says that it asked each of the three defined contribution providers to send information about the performance of Mr B's pension savings over the past five years, broken down by the individual funds into which his monies were invested. It says that information was particularly relevant for one of the providers as it offered Mr B the option to place his pension savings into a drawdown arrangement directly with that firm. It says the information it received didn't cover one of the investment funds in which Mr B had previously held his pension investments. So it says it needed to wait an extended period of time for that information to be sent.

I've thought carefully about the importance of the information that HRCL says it needed. Mr B had made it clear to HRCL that he had no intention of using his pension savings to provide an income - he wanted to take an immediate lump sum withdrawal. And at the time the information was requested Mr B had actually moved all his pension savings out of the fund for which performance data was missing. I also think it likely that this information, had it been critical to HRCL's analysis, could have been sourced independently rather than waiting for a response from the pension provider. So I think seeking that information introduced an additional delay for which HRCL should be considered responsible.

So, like our investigator, I'm satisfied that HRCL held sufficient information to provide its advice to Mr B by 9 March 2022. But HRCL didn't start its analysis for Mr B until 28 June. That is a delay of 111 days. So I think it reasonable that HRCL should consider whether that extended delay has caused Mr B to lose out.

I've looked at the remainder of the time that was taken for the advice process to be completed. Whilst that period of time was no doubt prolonged, I haven't seen anything to suggest (other than the very short additional delay I mention below) that HRCL failed to progress matters in a reasonable time.

From the point at which it had all the information it needed to provide its advice to Mr B, HRCL first needed to complete the abridged advice process. And then, following Mr B's rejection of that advice and request to be treated as an insistent client, HRCL needed to complete a full advice report and discuss its contents with Mr B.

I think it was reasonable, if it were to treat Mr B as an insistent client, that HRCL took steps to document that it had explained the advice to Mr B and that he still wished to transfer his pension savings from the OPS. And, in line with industry best practice, HRCL asked Mr B to complete an explanation of his reasons for that decision in his own words, and handwriting. That might assist with the defence of any complaint that Mr B had been coerced into making the transfer, or hadn't fully understood the advice he'd been given. And gathering that

information takes longer than would be the case for a simple acceptance of the advice being provided.

After Mr B had completed the required documentation it appears that HRCL took around 11 business days to issue its final report to him. I think HRCL, in line with what appear to be its normal standards, might have expected that to happen a little sooner. So I'm going to add a further day here to the delays I've mentioned above.

Mr B needed to provide some final information to HRCL before it could proceed. Once he had sent that information to the firm, it started the process of requesting the transfer of his pension savings from the four providers. Whilst that process again took some time I can see that HRCL regularly chased the other providers for updates. I don't think any delays here were as a result of something that HRCL did wrong.

I think it reasonable, when considering whether Mr B has lost out, to apply the delays I have set out above to the actual timetable that took place. I can see that, as part of the transfer activities, HRCL needed to request a new CETV from the OPS since the original guarantee had expired. That CETV was requested on 25 October 2022. So, had the 112 days of delay I have set out above not occurred, I think HRCL would have been in a position to proceed on 5 July 2022. That is still some way after the expiry of the original guarantee (on 24 May). So I'm not persuaded that HRCL's unreasonable delays are the reason that Mr B failed to receive the guaranteed CETV.

But it is possible that, had the new CETV been requested in July 2022, rather than October, its value would have been higher. And similar differences in value might have arisen with the remainder of Mr B's transferred pension savings. So I think it is necessary for HRCL to go further than the simple payment for Mr B's inconvenience that it offered. As I set out below I direct that HRCL should liaise with the four other pension providers to determine whether the transfer values Mr B would have received had the transfer requests been made 112 days earlier would have been higher.

There is no doubt that the matters forming this complaint have caused a great deal of inconvenience to Mr B, at a time he was looking to utilise the pension savings he had built up over his working lifetime. I can see that HRCL has acknowledged that inconvenience and offered Mr B a total payment of £750. In the circumstances here I think that is a fair offer, so I will also be directing that amount be paid to Mr B as additional compensation, if it hasn't already been paid.

Putting things right

Mr B has told us that he transferred all his pension savings into a new pension plan following the advice from HRCL. And he says he has subsequently encashed all those pension savings and now holds them as cash. I am satisfied that the transfers of the pension savings were each delayed by a period of 112 days due to HRCL's failings. So to put things right HRCL should do the following;

For the defined benefits

- HRCL should request, from the OPS administrator, details of what the CETV for Mr B's pension savings would have been had it been requested 112 days earlier than it was.

- HRCL should determine the date at which the transfer amount would have been paid to Mr B's recipient pension plan on the basis that the application to transfer was submitted to the trustees 112 days earlier than it was. It may use the actual amount of time it took the OPS administrator to pay the transfer amount after the application to transfer had been submitted.

For the other benefits

- HRCL should request, from the pension providers, details of what the transfer values for Mr B's pension savings would have been had they been requested 112 days earlier than they were.
- HRCL should determine the dates at which the transfer amounts would have been paid to Mr B's recipient pension plan on the basis that the applications to transfer were submitted to the providers 112 days earlier than they were. It may use the actual amount of time it took the providers to pay the transfer amounts after the applications to transfer had been submitted.

Investment performance

- HRCL should calculate, assuming that Mr B's pension savings were invested in the new plan immediately on the day they would have been received and using the same investment approach, what their notional value would have been at the point Mr B encashed his new pension plan.
- If that amount is greater than the encashment amount Mr B received he has lost out, and needs to be paid compensation.
- HRCL should calculate the encashment loss suffered by Mr B by applying the same income tax treatment to the additional amount as was applied to Mr B's original encashment, including any consideration of additional tax-free income that could have been received. But to be clear, any reduction for taxation is only notional and will not result in any payment to HMRC that might be reclaimable by Mr B.
- Since encashment Mr B has been deprived of the use of the additional monies. So HRCL should add simple interest at a rate of 8% per annum to the compensation calculated above from the date of the original encashment to the date of settlement. HM Revenue & Customs requires HRCL to take off tax from this interest. HRCL must give Mr B a certificate showing how much tax it's taken off if he asks for one.

HRCL should additionally, unless it has already done so, pay the £750 compensation it has already offered to Mr B for the inconvenience he's been caused. That payment should be made regardless of whether any compensation is calculated above as being due.

My final decision

My final decision is that I uphold Mr B's complaint and direct Harbour Rock Capital Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 October 2023.

Paul Reilly

Ombudsman