

## **The complaint**

Mr C says Harbour Rock Capital Limited (HRCL), trading as Portafina Investment Management Limited, was responsible for the delay in transferring his defined benefit (DB) pension into a personal pension. He says this caused him trouble and financial detriment.

## **What happened**

In his view letter, the Investigator set out the chronology of events that led to Mr C's complaint. This was constructed from his testimony, evidence from HRCL and information from his DB pension administrator (Mercer). Neither party to the case initially contested the broad sweep of this timeline. I won't rehearse the details in full. Nevertheless, it's necessary to summarise the main interactions.

In June 2020, Pension Bee on behalf of Mr C obtained a transfer quote from Mercer. The transfer value was guaranteed until August 2020.

In September 2020 Mr C was in contact with HRCL. He gave it his authority to obtain information about his DB pension from Mercer. It requested a transfer value quotation and chased this. On 22 September 2020 Mercer confirmed it had received the information request and it would send HRCL the policy information subject to carrying out necessary checks.

Mercer emailed Mr C on 17 November 2020 confirming that as he'd already had his free quote for the year, a new estimate would be required and he'd have to pay for this. He confirmed on 25 November 2020 that he was willing to pay for another quote. Mercer says it sent Mr C a copy of the new transfer value on 23 December 2020. This had a guaranteed period until 16 March 2021.

During this period HRCL had been requesting information from Mercer about his DB pension. But Mercer said it couldn't share anything because of a problem with its record of his personal details.

Between September 2020 and 6 January 2021 it seems matters became bogged down between all three parties due to Mr C's change of address. Although he called HRCL to inform it on 23 September 2020 of his change of address, and there was subsequent to and fro on the subject between the parties, it wasn't until 4 January 2021 that a personal information form with his new details was provided to HRCL. It then emailed this to Mercer shortly afterwards.

On 6 January 2021, HRCL sent another request to Mercer for Mr C's DB pension information. On 18 January 2021 Mercer sent HRCL a copy of the transfer value quote it had provided to him in December 2020. This was incomplete and HRCL chased Mercer for the missing information which was received on 27 January 2021.

HRCL completed a free pension review for Mr C on 5 February 2021. He called on 8 February 2021 to book a discussion with an adviser, which took place on 11 February 2021. Following this call, an abridged advice report was sent to him on 17 February 2021. It recommended that he didn't transfer his pension. It also confirmed the transfer value was

guaranteed until 16 March 2021 and if the transfer wasn't requested in that time, the value would need to be recalculated and he could be charged.

On 5 March 2021 Mr C called HRCL to confirm he'd changed his mind about how he wanted to take his benefits. He now wanted to take his full tax-free cash (TFC) allowance and the remaining 75% as a taxable lump sum. As a result, a new abridged advice report had to be drawn up.

Mr C called for an update on 23 March 2021. HRCL told him the information was with his adviser to make a recommendation. He called again on 6 April 2021 and was told the abridged advice letter would be sent soon. The new report was sent on 12 April 2021.

HRCL called Mr C on 19 April 2021 to confirm if he'd received the new report and to ask how he wanted to proceed. He returned the report declaration on 21 April 2021 and HRCL received this on 27 April 2021. It then sent him a 'recommendation not to proceed' letter on 10 May 2021. It received completed forms from Mr C on 7 June 2021 confirming he wanted to proceed with full advice for which there would be a fee.

A suitability report was produced for Mr C on 15 June 2021. He requested assistance from HRCL to complete the paperwork on 23 June 2021. The completed forms were received by it on 8 July 2021 and were sent to his chosen personal pension plan provider the same day.

As the transfer value had expired in March 2021, HRCL says it chased Mercer for the recalculation details on 13 July 2021. Mercer confirmed on 28 July 2021 that no fee would be required because Mr C was entitled to one free quote each year. However, HRCL incorrectly sent a recalculation declaration form to Mr C causing confusion and more delay.

HRCL chased Mercer for the recalculated transfer value of Mr C's DB pension on 26 August 2021. This was then received on 1 September 2021. It completed the transfer value analysis the same day. The revised value was guaranteed up until 23 November 2021. But the updated paperwork wasn't sent to Mr C until 10 September 2021.

Mr C called HRCL on 17 September 2021 to request help to fill in the transfer forms. During this process he was incorrectly told he didn't have to sign and date the checklist form. This meant when the forms were reviewed, they had to be returned to be fully completed. The forms were sent back to Mr C on 29 September 2021. The amended forms were received by HRCL on 26 October 2021.

HRCL didn't send the completed transfer forms to Mr C's chosen personal pension provider until 15 November 2021. On 26 November 2021 it received an email from Mercer saying it still hadn't received any transfer forms yet. And on 16 December 2021 it told HRCL that as the transfer value quote had expired a further fee would be required to calculate this.

HRCL initially said that as the transfer forms were signed and sent within the guaranteed date it thought there shouldn't be another fee. But Mercer confirmed it hadn't received the paperwork until 9 December 2021. HRCL eventually agreed to cover the cost emailing Mercer to that effect on 18 February 2022. A declaration form was sent to Mr C the same day. It resent these on 7 March and it received the completed form from him on 14 March 2022.

Mr C sought an update from HRCL on 16 March 2022. It told him it was waiting for an invoice from Mercer for the latest transfer value recalculation. This was received from Mercer on 19 March 2022. However, it wasn't processed until 7 April 2022.

HRCL then chased Mercer by email on 12 April 2022. Mercer replied on 14 April 2022 confirming it was processing the recalculation. It chased again on 20 April 2022. This was acknowledged by Mercer on 26 April 2022 and a further update was sent on 5 May 2022 in which it noted it was awaiting information from the scheme actuary. The information wasn't provided to HRCL until 20 May 2022.

Mr C called HRCL for an update on 23 May 2022 and was told it had now received the recalculated transfer value and was completing the necessary analysis. The new transfer value declaration and transfer forms were sent to Mr C on 27 May 2022. He returned these on 31 May 2022. However, he'd written "haha" against one of the questions (through frustration at how long the process was taking), so they couldn't be used.

HRCL didn't contact Mr C about the problem with the forms until 16 June 2022, but couldn't get through to him. It tried again the next day without success. Mr C called it on 24 June 2022, however, he wasn't told about amending the forms. HRCL tried to call him again on 28 June 2022 and 4 July 2022 but there was no answer. Mr C called again on 5 July 2022 asking why it had tried to call him, but the call handler didn't know and said it would call him back.

Mr C called HRCL again on 6 July 2022 and was told he would need to amend the declaration as it was a legal document. He agreed to do this. The transfer forms were then sent to his new pension provider on 13 July 2022. It had sent the forms to Mercer on 26 July 2022 and were waiting for a response.

HRCL chased Mercer on 2 August 2022 for an update. It was then established the transfer authority form for his new pension provider had expired, so a new one was required. Mr C says he was never made aware this could expire.

Mercer emailed HRCL on 4 August 2022, copying Mr C in, saying it required ID documents as they'd been unable to verify him through their online service provider. It said they could accept copies of the driving license or passport, but the birth/marriage certificates must be originals or certified copies. Mr C called HRCL about this on 8 August 2022. He was also told a new transfer authority form for Aegon was required and this was sent to him.

Mr C says he spoke with Mercer on 9 August 2022 and was told they needed ID information to be sent to them by HRCL. So, he called the adviser firm to make it aware of this. HRCL emailed Mercer the same day to chase the transfer and to question the ID requirement, as their transfer pack said consumer identities would be verified electronically.

Mercer replied on 12 August 2022 saying electronic checks had failed on their end, so it needed original documents or certified copies. It hadn't said in its earlier email that it could accept electronic, uncertified, copies of either a driving license or passport.

There were various exchanges between the parties over the course of the next six weeks to make sure the proper forms were in place and that Mr C's identification had been properly verified. During this period Mr C raised a complaint against HRCL, setting out his concerns about the process for transferring his pension which had taken over two years. He highlighted its poor service and a lack of professionalism.

Mercer finally made the pension transfer payment to Mr C's new pension provider on 28 September 2022. The new firm paid out his TFC on 4 October 2022. The balancing taxable lump sum was also paid a couple of days later.

HRCL issued its final response to Mr C's complaint on 19 October 2022. It upheld his case and said it had caused approximately 15 and a half weeks of delays. However, it said Mercer had caused 18 weeks of delays and Mr C himself had caused 31 and a half weeks of delays. It offered him £600 for the distress and inconvenience it had caused him.

As Mr C wasn't satisfied with HRCL's response, he brought his case to our Service for an independent review.

An Investigator considered the evidence and upheld his complaint. He noted that both Mercer and his own actions had a significant impact on the timetable for transferring his pension. But he also found that rather than being responsible for just over 15 weeks of delay that it accepted responsibility for, HRCL's acts and omissions had caused over 23 weeks of delay.

Based on these findings, he thought Mr C's pension transfer would've happened on 8 April 2022, but for HRCL's failings. He recommended it contact Mercer to understand what the transfer value would've been at this time, and if it had been higher than the value used in the transfer, it should make good the difference, and that it should add interest of 8% simple to these awards until October 2022.

Mr C had also asserted in his testimony that had he had access to his funds earlier he'd have paid off his mortgage and saved on the monthly repayments. The Investigator thought if he could provide appropriate evidence about this HRCL should meet the interest payments between when he should've received his pension funds until he did.

The Investigator considered that the amount HRCL had offered Mr C for the distress and inconvenience its failings had caused him was reasonable.

Mr C was broadly content with the Investigator's findings and conclusions. However he thought HRCL should be required to refund the fees it charged him. He also wanted his complaint to cover the issues caused by Mercer.

HRCL didn't respond to the Investigator's view.

As both parties couldn't agree with the Investigator's recommendations, Mr C's complaint was passed to me to review afresh. I issued my provisional decision earlier this month. This time Mr C asked for the timeline of events to be reconsidered. He reiterated his view that HRCL should refund some of the fees he paid. And he sought clarification about the redress I'd proposed. I'll cover these matters in this 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'm upholding Mr C's complaint. But I've arrived at a slightly different position on redress than the Investigator did. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by HRCL for Mr C. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R 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 and treat them fairly.
- Principle 7, which requires a firm to 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.

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 C's complaint.

There is broad agreement between the parties about important failings in this case, namely the delays Mr C experienced in transferring his DB pension funds to a new personal pension. A journey that was initiated with HRCL in September 2020, but which didn't come to fruition until October 2022.

The Investigator thought all parties involved in this complaint including HRCL, Mercer and Mr C had a case to answer in terms of the delays he experienced. But in terms of making findings and drawing conclusions he was necessarily restricted to focussing on the role of the complainant and the respondent.

Drawing on HRCL's stated service level standards and an analysis of the timeline of events, considering evidence provided by all parties, the Investigator concluded that HRCL was responsible for 118 working days of delay. Taking this in isolation would mean that had it provided the service it should've done, then the notional date for the transfer of Mr C's pension would've been 8 April 2022.

Reconstructing a timeline from sometimes conflicting information and somewhat after the events isn't a scientific endeavour. In responding to my provisional decision, Mr C said:

*"I think perhaps that HRCL are liable for more delays than are attributed to them. In particular for the period 14/7/21 to 20/5/22."*

I understand Mr C's argument. I've reviewed the very detailed timeline of events constructed in the Investigator's view. Mr C hasn't identified any specific weaknesses in the rationale set out there, be that events arising or timescales ascribed to these. Having reviewed the file, I remain of the opinion the assessment of HRCL being responsible for 118 working delays is reasonable, given all the caveats I've already set out.

Mr C did think that his complaint should be dealt with in the round, so taking into account Mercer's role in what happened to him over the period of his pension transfer. I can understand why he'd like that to happen, it would certainly make things more straightforward. However, I can only deal with his complaint in front of me about HRCL.

I haven't made any findings or conclusions against Mercer, the administrator the DB pension scheme he was a member of. That wouldn't be fair or appropriate. If Mr C chooses to raise a

complaint against Mercer then in the first instance he will need to engage with it directly. And if he isn't satisfied with the outcome, he can take his case to the Pension Ombudsman.

Mr C also thought HRCL should be required to refund the fees it charged him. It's an argument he reiterated in his response to my provisional decision. Again I understand his view, given the poor service he experienced on too many occasions. But it is the case HRCL provided him with a service that enabled him to achieve his objective.

The point here is the redress I've provided for already returns Mr C to the position he'd have been in now, or as close to that as reasonably possible, had it not been for HRCL's failings. And in addition to the assessment of financial detriment to be put right, it also considers the trouble and upset he experienced.

### **Putting things right**

The first calculation Harbour Rock Capital Limited should undertake concerns the transfer value Mr C received for his DB pension. It should contact Mercer to establish what the value would've been had the transaction been completed by 8 April 2022. If this is more than Mr C ended up receiving, then the loss should be made up. And this calculation should assume he'd have taken the benefits in the same way he did in October 2022, so allowing for any TFC entitlement, with the balance taken as a taxable lump sum.

If further payment is due to Mr C, then Harbour Rock Capital Limited should apply 8% simple annual interest on the total, from when he should've received the payment until it settles.

If the transfer value that Mr C would've received in April 2022 would've been lower than that he received in October 2022, then no additional payment is due to him in this regard. And Harbour Rock Capital Limited may offset any notional 'over-payment' against the second calculation I require it to undertake.

The second calculation Harbour Rock Capital Limited should conduct concerns the loss of use that Mr C suffered as a result in the delay of the payment of his pension funds between 8 April 2022 and when they were paid in October 2022. I can confirm Mr C's understanding of the approach to this part of the loss calculation – but bearing in mind the provision I've made with regard to the first calculation.

The requirement here is for HRCL to add 8% interest to the sums Mr C initially received, for the relevant period. Any redress related to the value of the transfer value is catered for by the first calculation.

The sum of these two calculations is the gross redress Harbour Rock Capital Limited is responsible for in respect of the financial detriment caused to Mr C by its failings. If this shows a loss to him, HRCL will need to make this good.

Income tax is due on this amount and he should provide the firm with information about his tax status at the time in order for it to be able to make an appropriate adjustment. If Mr C feels he's been overtaxed, he can approach HM Revenue & Customs with his details to enquire about any refund due.

When I'm considering a complaint like Mr C's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Harbour Rock Capital Limited has offered to pay Mr C £600 for its failings and the distress and inconvenience this caused him. Given the circumstances of the case and the role played by other parties in what happened to him, I think this is fair. If it hasn't already done so, HRCL should honour this payment to him.

### **My final decision**

For the reasons I've already set out, I'm upholding Mr C's complaint and require Harbour Rock Capital Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 December 2023.

Kevin Williamson

**Ombudsman**