DRN-4909625

The complaint

Mr R complained about the advice he was given in relation to the transfer of benefits from a defined-benefit (DB) pension scheme to a self-invested personal pension (SIPP). Mr R says the information he received and the regulated advice he paid for was materially inaccurate and unsuitable for his circumstances. He believes these failings have caused him a financial loss.

Although trading under a different company name at the time, Harbour Rock Capital Limited is responsible for answering this complaint. I'll therefore refer to the business concerned as "HRCL".

The crux of Mr R's complaint is that he was consistently led to believe by HRCL that the cash equivalent transfer value (CETV) of his DB scheme was £62,072[1] and it was on this basis that he transferred to the SIPP - a transfer that was advised on and facilitated by HRCL. However, during the months it took to complete the transferring process, the CETV reduced significantly to £39,183 (although this was reassessed again to £42,422).

Mr R says HRCL consistently, and wrongly, led him to believe he would be receiving around £62,072 when transferring away. He says he was shocked to find after transferring, that what he had actually received was a much lower figure – around £20,000 lower. Upon being contacted with the finalised and much lower transfer amount after this transaction had taken place, Mr R requested that the whole process be cancelled, and the funds returned to his DB scheme. However, it was confirmed the transfer once transacted, was irreversible.

Mr R says if he'd been advised correctly by HRCL and given the correct information, he wouldn't have transferred from the DB scheme at all.

What happened

The pension concerned referred to an 'old' policy which Mr R had built up from a previous employment many years before. In October 2022 he was contacted by the pension administrator to remind him that he was a deferred member of the DB scheme, and that the normal retirement age was 62. As Mr R had reached this age, he was informed that he was entitled to an annual pension of around £2,700 per year. He was also told by the administrator that the CETV was £62,072 if he would rather transfer to a different type of scheme.

With this information to hand, Mr R became interested in assessing whether he might be better transferring this DB pension to a type of personal pension plan, such as a SIPP. This is because he wanted to access 25% as tax-free cash – around £15,518 - to pay down some mortgage debt. Mr R also had other financial assets and given that the pension was relatively small and somewhat unexpected, he was prepared to take some cash 'now' and invest the remaining amount with the hope of it growing until he was around 70 years old.

Rules in place at the time meant that transferring away from a DB pension with a CETV of over £30,000 required the pension holder to obtain regulated financial advice. Mr R

[1] All CETVs quoted are pre any fees taken by HRCL.

approached HRCL for this advice and in November 2022 he gave it his authority to act for him by obtaining full details of is DB scheme from the pension administrator. On 13 February 2023 the DB pension administrator provided HRCL with information about Mr R's DB scheme which it copied him into. It doesn't look like this repeated the figure of £62,072 as a CETV but it did say that transfers could go ahead where the CETV changes[2], provided the change didn't exceed 10% difference up or down.

Information was gathered about Mr R by HRCL. In its 'fact-find' dated 21 March 2023 HRCL recorded his circumstances of that time as follows:

- Mr R was aged 63.
- His marital status was single, and he intended on working for a few more years yet.
- Mr R was a self-employed financial services professional. However, this was in mortgages and there's no evidence his experience extended to an expertise in pensions.
- Mr R earned around £30,000 per year. He also derived income from a number of investment properties which paid him rent.
- He had, by the standards of many people, a solid savings base comprising (but not limited to) £50,000 in premium bonds, £80,000 deposit savings, £15,000 in stocks and shares and £6,000 in an investment bond. He had significant equity in his rental properties.

On 29 March 2023, HRCL received a statement of entitlement from Mr R's pension administrator. This contained a new and much lower CETV of £39,183. This figure was guaranteed from 27 March 2023 and therefore had an expiry date of around 27 June 2023. HRCL failed to notify Mr R of this drop in value and evidently failed to update many of its own records pertaining to him.

HRCL first produced free 'abridged advice'. This was on 3 April 2023 and the advice was that Mr R should retain the valuable guarantees found in the DB scheme and *not* transfer. It said if he wanted full advice (which would comply with the requirement to get regulated advice before transferring) then HRCL could provide this at a cost of £4,224.

HRCL commissioned a transfer value analysis (TVAS) exercise to help determine if transferring away from the DB scheme was merited. There then followed an initial pension review report and a suitability report dated 12 April and 3 May 2023 respectively.

Mr R was encouraged and led by HRCL to proceed through an 'insistent client' process which is a term used within the industry to demonstrate where a client has supposedly gone against the advice provided to them. By this, I mean that HRCL began the above reports saying that he shouldn't transfer away, but it then immediately raised the concept of him becoming an 'insistent client'. Although I think there were major flaws in how HRCL operated this process, there's no dispute that Mr R did go ahead and transfer away from his DB scheme and he did so by signing some forms and declarations which said that he was an 'insistent client' who had initially been advised *not* to transfer.

As I've said, Mr R later became shocked when the transfer went through much later in 2023. This is because the amount of CETV transferred across to his new SIPP was materially

[2] Typically, a CETV is only valid for a certain time. In this case it was for three months after which another calculation was needed.

below the £62,072 he had been expecting. He initially thought his 25% tax-free cash had been removed from the transferred funds and he could expect this to be sent through independently. But when this didn't happen, he began enquiries with HRCL. It then became apparent that the CETV had been substantially reduced, first to £39,183 and then revised again to £42,422. The latter of these was the final transfer value.

In September 2023 Mr R formally complained to HRCL about the CETV being much less than he was led to believe. But it didn't uphold his complaint. It said it should have been clear to Mr R that the figure of £62,072 was only ever an initial estimate. HRCL also said that, in its initial pension review report (12 April 2023), it had notified Mr R that the CETV had expired. Therefore, it said he was made aware that this figure was no longer valid. But HRCL also admitted its staff should have been aware that the correct CETV valid from late March - to- late June 2023 had changed to £39,183 and that it should have informed Mr R of this. HRCL admitted that it should also have produced an illustration based on the lower revised CETV. However, as he would never have been able to secure the higher CETV, HRCL offered Mr R only a £1,000 distress and inconvenience payment in the circumstances. Mr R didn't accept this offer as he still believed he was far worse off than he ought to have been due to HRCL's mistakes.

Mr R then raised a complaint with the Financial Ombudsman Service. One of our investigators looked into Mr R's complaint and they used our inquisitorial remit to clarify what Mr R would have done and what his specific points of complaint were. Mr R clarified that if he'd been presented with such a revised / low CETV, then he wouldn't have transferred away from his DB scheme as the calculations he'd made about the value of doing so would have shown this wasn't the right outcome for him. He said he would firmly have decided not to leave his DB scheme and would have started to use the pension scheme in the way it was originally intended.

In June 2024, our investigator issued a written 'view' to the parties. This comprehensively set out why Mr R's complaint ought to be upheld. The investigator explained that because the CETV information passed to Mr R by HRCL was so wrong, it was evident that Mr R hadn't been given clear enough information. It appeared that HRCL had known before it even issued its initial pension review and suitability reports, that there had been a substantial reduction in the CETV to just £39,183[3]. The investigator explained how HRCL had failed to notify Mr R about this and had published in important correspondence the much higher figure several times. The investigator's 'view' letter set out why this was misleading. And had Mr R been given information by HRCL that was clear, then he wouldn't have transferred away. The investigator therefore said this was a complaint that should be upheld in Mr R's favour and that HRCL should undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice.

HRCL didn't accept the investigator's 'view'.

I then issued a provisional decision (PD) about this case on 6 February 2025 setting out why I was minded to uphold this complaint.

Mr R accepted my PD. HRCL replied and confirmed *"that we accept your decision and will arrange for a redress calculation in accordance with the guidelines laid down by the Financial Conduct Authority. We will pay* [Mr R] *for any redress identified and make a payment of £1,000 for the distress and inconvenience this has caused as per your instructions"*.

[3] Later revised for a second time to £42,422.

I am grateful to HRCL for accepting my PD and agreeing to pay Mr R. In the light of this development, I will shorten my Final Decision. However, I would urge all parties to read the Final Decision in conjunction with my PD of 5 February 2025.

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.

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook (COBS). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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 HRCL'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 and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority (FCA), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, HRCL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests.

I have considered also, the regulatory landscape with regard to insistent clients. At the time when Mr R dealt with HRCL there were specific rules in place. Since 2018, COBS 9.5A included additional guidance on insistent clients.

I have also considered The Consumer Duty. This Duty sets the standard of care that firms should give to customers in retail financial markets. Details can be found in *FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty (July 2022)*. In particular I have given careful thought to firms' responsibility to *"communicate and engage with customers so that they can make effective, timely and properly informed decisions about financial products and services and can take responsibility for their actions and decisions"*.

Having considered everything in this complaint with great care, and with regard to feedback from both the parties to my PD, I am now upholding this complaint.

Introductory Issues

There were some unfortunate delays in this complaint process which I comprehensively dealt with in my PD and which I see no further need in explaining.

The substance of Mr R's complaint is, in my view, very simple. He was led to believe his CETV would be £62,072 and transferrable to his new SIPP, but this was reduced to only £42,422 without his knowledge. So, the first Mr R heard of this large reduction was when the money was irreversibly transferred later, in the summer of 2023. As he'd paid HRCL for advice and eventually, to transact the transfer, I think its unsurprising that he's unhappy.

Suitability

Having said repeatedly – both at the time of the advice and after the complaint was made – that transferring from the DB pension to a SIPP *wasn't* suitable, it would clearly be hard for HRCL to claim now that it *was* suitable. This issue therefore isn't in dispute, but for the record, I agree with HRCL on this point. Transferring wasn't suitable: Mr R was giving up a guaranteed, index-linked pension and I think a pension of this type would have positively complemented the other financial assets he had, which although helpful, lacked the certainty for life provided by the DB scheme.

Was Mr R an insistent 'client'?

HRCL's starting position is that its advice to Mr R was for him *not* to transfer from his DB scheme and it was Mr R himself who insisted.

I understand the point being made, not least because I've seen a great many HRCL cases where it has similarly issued an apparent recommendation to its customers *not* to transfer from a DB scheme only for the person in receipt of that advice to then immediately become an 'insistent client'.

In this particular case involving Mr R, I think HRCL's processes were flawed. HRCL's documentation about becoming an 'insistent client' was unreasonably leading and heavily templated. In other aspects it was inaccurate, referring as it did to Mr R's 'workplace pension benefitting from current employer pension contributions'[4]. This wasn't the case, and the pension was from work he'd left decades ago.

Overall, HRCL's processes substantially failed to comply with the regulator's guidance on 'insistent clients', and its approach to the transfer fitted with the regulator's description of being no more than a 'papering exercise'. Put another way, I think HRCL's processes from the start were intentionally designed to suggest, enable and then secure a transfer of Mr R's DB pension, despite what was said on certain forms.

I would normally go on to explain in considerable detail, the specific and many HRCL failures in the way it adopted and managed its so-called 'insistent client' process in this case. But in the event, I don't need to deal with these issues. That's because the use of the 'insistent client' process in this particular complaint isn't the real issue in dispute. Had the correct CETV really been £62,072 I think it's possible that Mr R would have indeed wanted to transfer. He was experienced around money and investing, and he hadn't been expecting this pension. The annual DB pension itself was relatively modest by his standards and the evidence showed he'd worked out for himself how transferring the above figure to a more flexible personal type of pension plan would suit his needs. Mr R was happy to proceed with the transfer on the information and estimate he'd been given and which he believed to be accurate.

[4] 'Declaration' Mr R was asked to sign on 31 May 2023

The CETV failures

Having read through all the documentation and listened to several telephone recordings relating to this complaint, I think HRCL failed in many areas. As I've implied, these areas included a poor explanation of the suitability of transferring and very poor use of the 'insistent client' process. But its most egregious failure was that it consistently told Mr R that his CETV for this DB pension was £62,072. This was a sizable failing on HRCL's part.

We know that Mr R's original CETV of £60,072 was, in fact, only valid for three months. Its validity had expired on 21 January 2023 and so everything that flowed after this date caused Mr R to be substantially misled. HRCL said this date was before it provided Mr R with any transfer advice and, *"therefore this figure was only used for reference purposes…"*. It went on to say that its initial recommendation letter, abridged advice, suitability report and the insistent client letter had all used the original CETV of £62,072. But HRCL said that these all had said the CETV would need to be recalculated.

In my view, this simply isn't a correct and fair representation of the facts. HRCL had a duty to provide information that was clear, fair and not misleading and it comprehensively failed to do this. I've looked, for example, at HRCL's abridged advice of 3 April 2023. This said his CETV was £62,072 but included an asterix (*) reference saying this could change. However, HRCL admits that the new CETV of just £39,183 was already known to it at this time (having been issued for the three-month period between 29 March – 29 June 2023). So, providing Mr R with the much higher CETV was misleading and wrong.

I've considered the point about there being a reference to the CETV having expired. But this was, in my view, substantially outweighed by several references to the larger figure which HRCL knew to be wrong and which it needn't have used. Therefore, to portray this figure as some sort of "reference point" lacks credibility. This figure was completely wrong and should not have been included in any part of this document.

This error was repeated in the TVAS of 6 April 2023. It's not clear if Mr R would have seen this, but this was the document that the adviser would have used to assess their overall transfer advice. So, when calculating whether or not transferring was worthwhile from a financial viability perspective, HRCL's data was clearly wrong because it was based on the higher figure which it already should have known was worthless as it had expired and had already been replaced by a much lower value. I've also noted further discrepancies in the TVAS which indicate to me that an incorrect normal retirement age was used, this further rendering HRCL's processes unreliable and inconsistent.

There was then an initial pension review report of 12 April 2023. Again, the higher CETV was falsely set out by HRCL, and it was also explained here that by transferring to a personal pension, Mr R could generate £15,518 as tax-free cash. In addition to these things, I've noted that the 'insistent client' forms which Mr R was asked to sign said, *"I understand your recommendation not to proceed; I still want to continue against your advice so that I can release a total tax-free cash lump sum of £15,518".* As 25% of the £62,072 is indeed £15,518 this reinforced that the higher CETV was accurate, and the one Mr R reasonably understood he was signing up to. This too was misleading and wrong.

On 25 April 2023 Mr R was sent an illustration from the new SIPP provider recommended to Mr R by HRCL. The evidence to me is clear that this was generated by information HRCL had supplied and the illustration was quite clearly copied back to HRCL when sent to Mr R, with the adviser's name and FCA registration number included on the form. This showed the amount of tax-free cash being generated by the transfer was going to be £15,518 and the remaining investment for later drawdown was £46,544. This totals £62,072 and so once again Mr R was falsely being told the higher CETV was accurate.

The suitability report was evidently issued on 3 May 2023. In a way that demonstrates the failures present in HRCL's 'insistent client' process, this was effectively a full suitability report, but this was issued *after* Mr R had already been encouraged to sign pre-determined and templated forms to say he apparently wanted to go against HRCL's advice. Once again, there were also significant inaccuracies present as this document said, *"you have been offered a cash equivalent transfer value of £62,072 in exchange for giving up any future claims to a pension from the scheme".* Further down, when comparing DB and DC[5] pensions, it said the transfer value offered was £62,000. This was therefore misleading and wrong.

Summary

HRCL didn't act with due care and skill or in Mr R's best interests. As I've shown, it failed in a number of areas, and it didn't provide information that was clear, fair and not misleading. HRCL failed to put Mr R in the position of being an informed consumer and it consistently misled him about the CETV he could expect.

Mr R was first contacted by his pension administrator and told his CETV was £62,072. I think it's reasonable to assume that Mr R would have known that this figure might change but he would have been reassured that any changed beyond 10% 'either way' would be reported to him for his consideration prior to transferring.

Mr R then engaged HRCL to advise him. As a regulated financial adviser, it had a duty to act in his best interests and I think Mr R had every right to expect that the adviser would use their skills and experience to make recommendations accordingly. HRCL charged Mr R a significant sum for its services.

In my view, there were a number of failings and inaccuracies present in HRCL's processes, documentation and phone conversations. But the most relevant and significant of these failures was its repeated and inaccurate depiction of Mr R's CETV which it said was £62,072. In responding to the complaint, HRCL effectively said this figure was never guaranteed or achievable. It also previously sought to point out that its expiry pre-dated its involvement with Mr R and was only ever used for "reference purposes". However, this isn't correct. There's reliable evidence of HRCL having had close involvement in its dealings with Mr R as early as November 2022. And as I've shown, Mr R was consistently led to believe his CETV would be at or around the higher figure.

As things turned out, there were two further changes to the CETV caused by the extended time taken to provide the advice and get to a position that the DB pension was transferrable to a SIPP. I agree that transferring probably wasn't suitable using a number of different metrics for Mr R. But I also agree that Mr R probably preferred to transfer nevertheless, even at the expense of giving up some useful DB guarantees. All this was based on his calculations that he'd be getting the much higher amount. This later markedly changed – first to £39,183 and then again to £42,422. Neither of these changes were notified by HRCL to Mr R and the transfer went through because the final CETV was within 10% of the £39,183.

With all this in mind, transferring from his DB scheme wasn't suitable, and Mr R was misled.

I am therefore now upholding his complaint.

[5] With a defined contribution pension, you build up a pot of money that you can use to provide an income in retirement.

Putting things right

A fair and reasonable outcome would be for HRCL to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would have most likely remained in the occupational pension scheme if suitable advice had been given.

Harbour Rock Capital Limited must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Compensation should be based on the scheme's normal retirement age of 62, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr R's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Harbour Rock Capital Limited should:

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr R accepts HRCL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr R for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr R's end of year tax position.

Redress paid to Mr R as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, HRCL may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr R's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £415,000 plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £415,000, I may recommend that Harbour Rock Capital Limited pays the balance.

Distress and inconvenience

Our investigator originally recommended an award of £300 for the distress and inconvenience caused to Mr R by HRCL.

I've considered this and I think HRCL's failures are likely to have caused Mr R anxiety, disappointment, loss of expectation, upset and stress. In my view, the impact of HRCL's failures lasted over many months. It is therefore fair to think about the likely disruption caused to Mr R and award a greater amount. A higher award reflects the repeated nature of this mistake and the serious short-to-medium term impact it has had. I've also considered that Mr R is now over 65 years of age and still hasn't made limited progress with his complaint. I believe his retirement plans and preparations have accordingly been badly affected by this uncertainty.

I've noted that Mr R has also unsuccessfully sought answers about the original advice charge which appears to have been based on the higher transfer value and not apparently recalculated since. I have also considered that whilst denying responsibility overall, HRCL itself appeared to acknowledge that distress and inconvenience had indeed been caused to Mr R by its actions and inactions here.

With all these considerations in mind, I am awarding an additional sum for distress and inconvenience of £1000. I am directing that HRCL should pay this ***in addition*** to any compensation due as a result of the redress calculation formula shown above.

Following my PD, HRCL has now agreed in writing to pay this in full compliance with the above.

My final decision

Determination and money award:

I uphold this complaint and direct Harbour Rock Capital Limited to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £415,000.

Harbour Rock Capital Limited should *also* pay £1,000 for distress and inconvenience it caused Mr R through its actions and inactions.

Recommendation:

If the compensation amount exceeds £415,000, I also recommend that Harbour Rock Capital Limited pays Mr R the balance.

If Mr R accepts this decision, the money award becomes binding on Harbour Rock Capital Limited.

My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 March 2025.

Michael Campbell

Ombudsman