DRN-4922883

The complaint

Mr C has complained about advice he was given in 2022 regarding the transfer of his defined-benefit (DB) pension scheme, to a type of personal pension plan known as a SIPP[1].

Harbour Rock Capital Limited is now responsible for answering this complaint. Therefore, to keep things consistent, I'll refer mainly to "HRCL".

HRCL initially recommended that Mr C *shouldn't* transfer his pension. But it then processed the transfer to the SIPP on an 'insistent client' basis, a term used in the financial industry where a client wishes to proceed against the recommendation made by their adviser.

Mr C now says he was badly advised by HRCL and the process it followed was wrong; he says that in reality he never was a true insistent client. He now thinks transferring has caused him a financial loss for which he should be compensated.

What happened

Mr C first became interested in assessing whether he might access some of his pension savings in 2021. He says this followed an on-line advertisement by HRCL offering its services as a pension adviser. Mr C was then 54 years old and approaching 55, the age at which he'd be able to access his pension under the rules in place at that time. We know that HRCL had an initial dialog with Mr C where his basic objectives were briefly discussed. HRCL then wrote to Mr C in late August 2021 saying his pension check was underway and that *"as you are currently under 55, we need to let you know that you will only be able to take tax-free cash from your pension once you have reached the age of 55"*.

HRCL wrote to him again on 25 January 2022. The letter stressed it didn't contain financial advice but that there was *"great news"* about his pension *"pot"* in that he had a cash value of £513,555 and that the tax-free cash element he could draw straightaway upon reaching 55 would be £128,388.

A detailed telephone call between Mr C and an HRCL paraplanner then took place where all his financial affairs and pension objectives were discussed. Information gathered during the call about Mr C's circumstances was broadly as follows:

- He was 54 years old and married. He was employed and said he had an annual income of around £25,967. His wife didn't currently work.

- Mr and Mrs C lived in rented accommodation and had no demonstrable savings. They had some debts which were around £20,000.

- The normal retirement age (NRA) of this DB scheme was 65. The pension also contained options for early retirement from the scheme which would be subject to actuarial reductions depending on age. Mr C also had a modest defined contribution

[1] Self-Invested Personal Pension.

(DC)[2] pension with around £32,000 invested (this isn't the subject of any complaint).

- The cash equivalent transfer value (CETV) of the DB scheme was originally £513,555 but this had expired in February 2022 and was later significantly reduced to just £346,964[3].

Mr C confirmed to HRCL that his purpose in contacting it was that he wanted to free up some money from his existing DB pension to help pay down some debts / arrears, go on an as yet undisclosed holiday, and set up an 'emergency' cash fund for the future.

On 7 March 2022, HRCL sent Mr C a recommendation letter entitled *"Your pension review report"*. It showed, amongst other things, a transfer value comparator (TVC) analysis. This type of analysis was required by the regulator at the time, and it stated that his DB pension scheme's CETV was approximately £513,000 (although this was already an expired figure[4]) but that the cost to replicate the benefits of his DB scheme if Mr C transferred to a type of personal pension, was £747,000. This basically meant that to buy a pension in a type of plan which had similar benefits to his existing DB scheme, this would cost around £234,000 more than what he was being offered in the CETV.

With this analysis in mind, there was a recommendation in the letter which advised Mr C not to transfer his DB pension.

However, the letter also included a section entitled, *"What happens if you still want to go ahead and transfer against our advice?"* In this section HRCL stated that if he still wanted to transfer, it would need to treat Mr C as an *"insistent client"*. At the end of the letter, under a section headed, *"What you need to do now"* HRCL said there were two options that were open to Mr C. These were described in an 'Options Form' which was included with the letter. It said Mr C should read the form, select the option that was right for him and return it. HRCL went on to say that if Mr C intended to proceed against its recommendation, then he should also complete the Insistent Client Declaration and return that too.

On 12 March 2022, Mr C signed the Options Form, ticking the box for option number two which stated, *"I understand your recommendation not to proceed; however, I still want to continue against your advice so that I can release a total cash lump sum of £128,388."* The documents also included an Insistent Client Declaration section where Mr C also ticked boxes that said he understood he was now an insistent client, the benefits he was giving up and the risks associated with the transfer. Mr C also wrote down, in his own words, why he wanted to proceed with the transfer – his signature on this was dated 15 March. A further two 'phone calls took place with HRCL where Mr C was asked if he understood what he was giving up by transferring away from his existing scheme.

On 27 April 2022, HRCL sent Mr C another letter enclosing its full Pension Review Report (PRR). For reasons I'm not clear about, HRCL decided to name this document the same as the one I've outlined above i.e. "*Your pension review report".* However, this was different (and much longer) document which set out confirmation that Mr C wanted to disregard HRCL's recommendation. And thus, as an insistent client, HRCL further recommended that he transfer his DB scheme to a type of personal pension plan with a provider I'll call 'Firm A'. It also said that after withdrawing the initial cash he wanted, his remaining transferred funds should be managed in a discretionary fund management (DFM) arrangement. HRCL asked

[2] With a DC pension (sometimes called money purchase) you build up a pot of money that you can use to provide an income in retirement. Unlike DB schemes, which promise a specific income, the income you might get from a defined contribution scheme depends on factors including the amount you pay in, the fund's investment performance and choices you make at retirement.
[3] CETVs are usually valid for 3 months, so if a transfer doesn't occur in that time, another valuation has to take place. In this case, HRCL didn't carry out its advice quickly and so the CETV had to be calculated again. Mr C was personally charged for a second valuation.
[4] Expired 25 February 2022.

Mr C to read this PRR and if he agreed with its recommendation – and also agreed to sign up to HRCL's DFM service – then he should sign the enclosed forms and return them.

The PRR also stated that Mr C had a cautious attitude to risk. His apparent objectives for making the transfer were cited as being to release tax-free money totalling £128,388 which happened to be the exact maximum amount which could be generated tax-free by this transfer process. Mr C gave his reasons for requiring this money as outlined above. Mr C went ahead and transferred from his DB scheme to a personal pension arrangement, later in 2022. The cost of the advice charged by HRCL was £19,000.

Mr C first raised a complaint about HRCL's advice in December 2023. He said he wasn't correctly advised, and he now thought that he may have lost money as a result of transferring away from his DB scheme.

In response, HRCL didn't agree that it had done anything wrong. It said it had first advised Mr C not to transfer away and that the transfer only happened when Mr C became an insistent client. HRCL says that only when Mr C insisted, did it then go on to proceed with the transfer process and also make a second recommendation about where the remaining transferred pension funds should be invested. This was with a new personal pension platform operated by Firm A and that the remaining monies should be invested in certain funds consistent with Mr C's risk attitude.

Dissatisfied with HRCL's response, in February 2024, Mr C referred his case to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld. The investigator said that Mr C couldn't be properly regarded as an authentic insistent client and that the correct process as set out by the regulator's rules hadn't been applied. HRCL didn't agree with this, and it made a number of points in response to what our investigator said.

As the matter hasn't been resolved informally, it now falls to me to make an ombudsman's 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.

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 C's best interests.

I have considered also, the regulatory landscape with regard to insistent clients. At the time when Mr C dealt with HRCL there were specific rules in place. Since 2018, COBS 9.5A included additional guidance on insistent clients. It sets out three key steps for advisers to take.

1. *Where a firm proceeds to execute a transaction for an insistent client which is not in accordance with the personal recommendation given by the firm, the firm should communicate to the insistent client, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent client so that the client is able to understand, the information set out in (2).*

2. *The information which the firm should communicate to the insistent client is:*

a) *that the firm has not recommended the transaction and that it will not be in accordance with the firm's personal recommendation;*

b) *the reasons why the transaction will not be in accordance with the firm's personal recommendation;*

c) *the risks of the transaction proposed by the insistent client; and*

d) *the reasons why the firm did not recommend that transaction to the client.*

Acknowledgement from the insistent client - COBS 9.5A.4

1. *The firm should obtain from the insistent client an acknowledgement that:*

   i. *the transaction is not in accordance with the firm's personal recommendation;*

   and

   ii. *the transaction is being carried out at the request of the client.*

2. *Where possible, the acknowledgment should be in the client's own words.*

<u>Who is an insistent client?</u>

COBS 9.5A2 also state that a client should be considered an insistent client where:

(1) the firm has given the client a personal recommendation;

(2) the client decides to enter into a transaction which is different from that recommended by the firm in the personal recommendation; and

(3) the client wishes the firm to facilitate that transaction

Further to all these matters, in assessing this case I've also been mindful of the additional information the regulator had obtained from its research and analysis on insistent client cases. This included a thematic review of so-called insistent client occurrences, results of which were published in an FCA industry release in 2016. Concerns that were exposed in the review included cases where:

- There was an inadequate assessment by firms of the other options (other than transferring) that would meet the client's objectives.
- Excessive numbers of insistent clients appearing to result from the adviser's advice not being sufficiently clear.
- An identified risk of clients' preferred course of action not having been clearly enough explained.
- The exercise was merely a 'papering exercise', for example the adviser had processed the case on an insistent client basis, but this clearly did not reflect what had happened in practice.
- The client was advised not to transfer out of the DB scheme (although the client insisted) but then recommended a product that was not suitable.

Further specific examples of concerns were later released to the industry by the FCA. These examples included the improper use of templated paragraphs about insistent clients within suitability reports or recommendations.

Having considered everything in this complaint with great care. I think there were major failings in the insistent client process used by HRCL.

I'm therefore upholding Mr C's complaint.

Introduction and Mr C's circumstances

The firm representing Mr C in bringing his complaint portrays him as having had no investment experience to call upon. And I think this is borne out in the evidence I've seen and listened to which tends to show Mr C didn't fully understand his pension and the investment options available if he transferred. In my view, the evidence at the time pointed to Mr C, if eventually transferring to a personal pension, was likely to need ongoing help and advice to manage those funds in the years ahead, thus incurring costs which weren't present in his existing DB scheme. His future business as a new client was chargeable by HRCL at an annual fee of 1% of his existing balance. I think HRCL saw the commercial value in retaining his investment business as a result of transferring to a personal pension, which HRCL would then manage on his behalf.

The 'insistent client' process used by HRCL

Overall, I think there were significant shortcomings in HRCL's use of the insistent client process. In my view Mr C wasn't genuinely an insistent client and this label was applied to him by HRCL to progress the transfer.

It's important to note that it was HRCL which was the regulated party here and not Mr C. HRCL was also charging a very substantial sum for providing its advice, and so Mr C had every right to assume it was acting in his best interests and that the advice would be comprehensive. Nonetheless, against this backdrop there were major weaknesses and failings present in HRCL's advice processes which meant it didn't properly act in Mr C's best

interests or give him crucial information that he needed. I think the evidence shows that HRCL was always pre-disposed to seeing that Mr C transferred his DB pension to a personal plan arrangement and its processes at the time were designed to encourage such an outcome if at all possible.

For example, I note that as early as January 2022, and before the advice process was fully underway, HRCL was already promoting the idea of Mr C transferring away from his existing DB scheme. Before any regulated advice was even provided, HRCL expressed to Mr C the *"great news"* about his pension and told him he could receive a more or less immediate tax-free lump sum of £513,555. I think that in Mr C's financial situation achieving such an amount would have seemed a very attractive proposition as this would have represented a lot of money in his case. But I think to a substantial degree this letter was misleading. This is because this letter highlighted and quoted - set out in bold - the transfer amount of £513,533 Mr C could obtain *only* by transferring away from his existing DB scheme and into a type of personal pension. It follows that the tax-free £128,388 also set out in the letter could also *only* be obtained by him transferring away.

In providing information in this way HRCL was already substantially promoting the transferring away option when it knew, or should have known, that the regulator's starting position was that such transfers are usually not suitable. In reality, Mr C had other options which included obtaining a tax-free lump sum from his current DB scheme, but this was not promoted or mentioned at this point. HRCL already knew that these types of DB scheme usually allow for earlier access to funds, and it was in possession of information from his DB scheme which confirmed this. This option certainly wasn't promoted or offered to Mr C by HRCL in the processes it used.

After this, there was a detailed 'fact-find' telephone call between the parties. However, I bear in mind that Mr C's case had not yet been assessed by a regulated financial adviser from HRCL and he hadn't received a full suitability / recommendation report. But I've noted that the later documentation summarising this telephone call was termed *"Pension Release Fact-Find Report"*. I therefore think this further indicates that HRCL's starting point was directly opposed to that of the regulator in that this was again assuming this case would ultimately result in Mr C accessing his pension early, most likely by transferring away from the DB scheme. I think this observation is strengthened by listening to the conversation during the call itself. It started out by again mentioning the 25% tax-free lump sum that could be obtainable *only* by transferring away and into a type of personal pension plan.

There then followed the letter of 7 March 2022 from an HRCL pension adviser which essentially served as an initial recommendation letter. I acknowledge that if viewed through a certain and very narrow lens, the introductory wording contained at the beginning of this letter did set out relatively clear reasons as to why transferring wasn't suitable for Mr C. It highlighted the pension guarantees he would be giving up in the DB scheme at his NRA if he transferred and it said he could end up with lower retirement benefits. So, on the face of it, HRCL did appear to conform at this point with the regulator's rules about setting out the rationale for not transferring.

However, I've noted that at the time of this letter we know that Mr C's CETV of £513,555 had already expired and so was no longer valid. And I don't think that Mr C was aware that its subsequent drop in value would be so substantial. I've also thought about the *entirety* of this letter and the circumstances in which it was being sent. I've thought very carefully about whether HRCL *genuinely* acted within the spirit of the regulations and whether it communicated with Mr C in a way that both met his information needs and in a way that was clear, fair and not misleading.

I don't think HRCL did this.

I've already set out the initial steps which promoted transferring ahead of the other options Mr C had. But the most egregious failure was that it was this letter which specifically introduced the whole concept of Mr C becoming an insistent client rather than Mr C himself. In fact, I doubt whether being an insistent client was a concept he himself had yet considered, and I'm sure he'd never heard of the term before. So, whilst this letter of 7 March 2022 began with a 'do not transfer' recommendation, within the same letter it then directly provided an immediate and easy route for Mr C to just transfer away anyway. This is because the letter stated that if he still wanted to transfer, HRCL would treat Mr C as an insistent client, and it told him what he needed to do. It said there were two options open to Mr C which were either not to transfer or disregard the recommendation not to transfer and go ahead with it.

However, portraying his options in this limited way provided no indication that Mr C could access his existing DB pension early without any need to transfer, and was therefore simply an open invitation for him to completely disregard HRCL's narrow and limited advice. An Options Form was enclosed together with an Insistent Client Declaration and all Mr C therefore had to do was return these with the enclosed, addressed and pre-paid envelope which HRCL had included for him.

I think by attaching an immediate option to simply disregard the initial advice and become an insistent client in the same letter, this served to seriously undermine the whole process. The circumstances in which these failures occurred were also important. As I've previously said, Mr C was not an experienced investor and from the telephone calls I've listened to between him and HRCL he had already demonstrated that his knowledge and understanding of pensions was very limited. The latter had also come on the back of previous misleading correspondence showing he could access £128,388 tax-free. However, this was only achievable by transferring - and the original CETV of £513,555 had already expired anyway.

So, I think he would have found this undermining approach to be confusing. This is because HRCL was evidently signposting that he could just go ahead with transferring – and that this was an approach it was both suggesting and endorsing.

One option Mr C should have been told about was accessing his existing DB scheme somewhere between the ages of 56 – 65. This basically consisted of him remaining in the DB scheme and drawing the benefits earlier than the NRA. He could also have accessed a reasonable tax-free lump sum straightaway if this was something he really needed to do to pay down his debts. And, for example, if Mr C remained in the DB scheme right up until the NRA of 65, the estimated tax-free amount Mr C could access would be over £80,000 together with a guaranteed annual pension for life.

These options were not set out at all on the Options Form in the way the above two other limited 'options' were. So, there were other choices available to Mr C which appeared to fulfil his objectives, and which HRCL did not add any weight to.

Nor had the HRCL adviser comprehensively considered Mr C's other pension. It seems to me that Mr C's requirement for immediate cash mainly related to his debts which were only around £20,000. It's not my job to tell HRCL what other alternatives it could or should have provided to Mr C. But as he was being charged the very substantial sum of £19,000 for this advice, I think the above observations show that the service and advice Mr C received from HRCL was both limited and poor. Mr C wasn't told what he could access in his DC scheme or how it might be better to use this instead of transferring away from his DB scheme - I think this further strengthens the pre-determined and laissez-faire approach HRCL was taking to Mr C's pension affairs.

What happened after 7 March 2022?

As I've said, the letter of 7 March appeared to constitute a recommendation report of sorts. However, the lengthier Pension Review Report (PRR) I've mentioned earlier was received after Mr C had already returned his Options Form and the Insistent Client Declaration (both of which I've explained were wholly initiated and led by HRCL, rather than Mr C). The PRR was a wider document with more in-depth analysis and information about the challenges of maintaining an income in retirement which I think Mr C would have found useful before being invited to irreversibly leave his DB scheme.

As can be seen by the sequence of events I've set out above, HRCL's full PRR was dated 27 April 2022 and thus came substantially *after* Mr C had already been invited to become an insistent client and to return the relevant forms to get this process rolling as soon as possible. I can't say why HRCL appeared to conflate the recommendation letter of 7 March with a further and more detailed PRR the next month, but HRCL's overall approach in this particular matter was consistent with the failures I've mentioned, and which Mr C would have again found confusing.

I have considered HRCL's point that its original advice *not* to transfer was indeed suitable, a recommendation I'd agree with. I've also considered that Mr C was invited to explain in his 'own hand' why he wanted to go ahead against the advice. But I think his written comments serve to show Mr C's lack of understanding of what his other options were and how transferring away from a guaranteed DB scheme, which represented the vast majority of his pension provision, might affect his future years in retirement. He only mentioned when writing 'in his own hand' that he wanted to pay off some debts and go on a holiday, both of which we know amounted to no more than £25,000. There were no effective challenges from HRCL to the obvious inconsistencies on why he'd want much more than this at that time i.e. such a large cash lump-sum in addition to this £25,000. And it seems that he had no direct personal dealings with an adviser, as opposed to less qualified HRCL staff, anywhere throughout this entire process.

I've noted that Mr C was eventually informed by HRCL that his CETV had markedly reduced following a second valuation. However, the insistent client and transfer process was, by this time, well underway. That HRCL sent Mr C only an *"addendum letter"* about this change considerably undervalued the serious drop in the overall CETV and the resultant drop in the potential tax-free cash. And even if he confirmed his intention to press ahead after this drop in value, this decision was taken against the backdrop of the many failures I've mentioned above, including the failures to promote to Mr C that he already had viable options available with his existing DB scheme (and therefore he had no need to transfer away at all).

Would better practice have changed anything?

I have considered whether, if HRCL had acted in Mr C's best interests and not consistently promoted the options of transferring and also of disregarding proper advice, he would have taken a different course of action.

But I think the evidence is persuasive that Mr C would have probably stayed in his DB scheme. I think he'd have probably either arranged his debts differently, used his existing DC pension or come up with a combination of using both these methods to pay down some debt, whilst still retaining his DB scheme. I've seen no evidence that his debtors were unreasonably pressing for full repayments; the opposite seems to be true, and their approach(es) seem very much to have been demonstrative of a measured and consultative relationship. I do accept that Mr C had a genuine desire to release some cash to pay down his debts and arrears. But HRCL simply 'shoehorned' his so-called financial objectives to neatly fit the £128,388 tax-free amount provided by the transfer by adding a holiday cost and then keeping a large sum of cash as some type of undisclosed emergency fund.

I believe that if he'd been treated in the way the rules were genuinely intended, with all his alternative early DB pension options carefully and professionally explained to him, I don't think he'd have insisted on transferring in his own right.

Fund selection

As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C and I don't think he would have insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to further consider the suitability of the investment recommendation. This is because he should have been properly and genuinely advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

Despite paying a very substantial amount to HRCL, the firm failed to provide Mr C with comprehensive information and advice. In my view, HRCL did not act with due care and skill, and it did not act in Mr C's best interests.

Given the serious failings I've set out above, I don't think it would be reasonable for me to conclude that Mr C can even be properly regarded as an insistent client. This transfer process did not begin because Mr C was an insistent client – it began because HRCL's processes were clearly designed to push clients like Mr C down that route. In my view, the approach HRCL took from the outset fitted with the regulator's description of an insistent client process which was no more than a 'papering exercise'.

Having set the scene for transferring away from his DB scheme, I believe HRCL then purposely led Mr C into a process which he neither asked for, nor really understood. This narrative simply gathered pace and although Mr C was first told that transferring didn't look suitable for him, he was told in the same documents that he could just disregard that advice and proceed, nonetheless.

HRCL's documentation was leading and heavily templated. It repeatedly provided him with CETV and tax-free figures which had already expired. The wider process it adopted capitalised on Mr C's lack of knowledge of pensions and investment matters. And Mr C was presented with only a narrow range of options by HRCL, which was misleading.

I am therefore upholding Mr C's complaint.

Putting things right

A fair and reasonable outcome would be for HRCL to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would have most likely remained in the occupational pension scheme if suitable advice had been given and retired at the scheme's normal retirement age of 65.

HRCL 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 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 C'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, HRCL should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C 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 the DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts HRCL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr C 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 C's end of year tax position.

Redress paid to Mr C as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. In line with DISP App 4, HRCL can 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 C'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 HRCL pays the balance.

My final decision

Determination and money award: I am upholding this complaint and I direct Harbour Rock Capital Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £415,000.

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

If Mr C 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 C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 27 April 2025.

Michael Campbell
Ombudsman