

## The complaint

Mr F has complained about advice he was given in 2021 regarding the transfer of his defined-benefit (DB) pension scheme, to a self-invested personal pension (SIPP).

Harbour Rock Capital Limited is now responsible for answering this complaint although it was trading at the time as a firm called Portafina. I've noted we've previously been communicating with the parties using this name. Therefore to keep things consistent, I'll refer mainly to "Portafina".

Portafina initially recommended that Mr F *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 F now says he was badly advised by Portafina 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 F first became interested in assessing whether he might access some of his pension savings in 2020. He says this followed an on-line advertisement by Portafina offering its services as a pension adviser.

Mr F 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 Portafina had an initial telephone call with Mr F where his basic objectives were briefly discussed. Portafina then wrote to Mr F in late November 2020 saying, *"we have now contacted your current pension providers requesting the information we need. 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"*.

Portafina wrote to him again on 26 January 2021. 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 equivalent transfer value (CETV) of £38,892<sup>1</sup> and that the tax-free cash element he could draw straightaway upon reaching 55 would be £9,723. Mr F was then provided with 'abridged advice'. Abridged advice was explained as being *"a short form of advice that provides a recommendation to either not transfer safeguarded [pension] benefits, or that [at that stage] it is unclear whether to transfer"*. The abridged advice was free and Portafina told Mr F that if he wanted to investigate further the possibility of a transfer then he'd have to get full pension transfer advice from one of its regulated financial advisers and there would be a charge of £2,722.

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<sup>1</sup> This was later revised down upon the expiry of a 'first' valuation. A second valuation said the CETV had reduced from £38,892 to £37,263.

On 29 March 2021, a further and more detailed telephone call between Mr F and a Portafina paraplanner took place where all his financial affairs and pension objectives were discussed. Mr F was told to expect more detailed regulated financial advice about his pension thereafter, for which there was the charge as mentioned above.

Information gathered during the call about Mr F's circumstances was broadly as follows:

- He had now reached 55 years old. Mr F's partner was aged 26. The normal retirement age (NRA) under Mr F's DB scheme was 65 although it also contained options for early retirement which would be subject to actuarial reduction.
- Mr F was currently long-term unemployed, but he was anticipating starting a new job soon. He was co-habiting with his partner in a home which they rented from the local authority. They had a financially dependent infant child.
- Their total household income was around £1,668 per month (net) which comprised of around £500 in monthly state benefits and Mr F's partner's salary. Mr F and his partner had no savings or investments other than his pension.
- Mr F mentioned that he had another pension. However little was disclosed about this, and it appears details of it couldn't be found. I think it's reasonable to assume this other pension was modest (and this itself isn't the subject of any complaint).

On 9 April 2021, Portafina and Mr F briefly clarified some further matters during a short 'phone call which had been initially raised in the call of 29 March. In particular, Mr F confirmed he'd like to free up some money from his existing DB pension for a deposit to buy a home of his own with his partner and child.

On 13 April 2021, Portafina sent Mr F a recommendation letter. 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 £38,892 but that the cost to replicate the benefits of the scheme, if Mr F transferred to a type of personal pension, was £61,800. This basically meant that to buy a pension, in a type of personal pension plan, which had similar benefits to his existing DB scheme would cost around £23,000 more than the current CETV.

With this analysis in mind, there was a recommendation in the letter which advised Mr F not to transfer his DB pension because it wasn't in his best interests. However, the letter also included a section entitled, *"What happens if you still want to go ahead?"*. In this section Portafina stated that if he still wanted to transfer, it would need to treat Mr F as an insistent client. At the end of the letter, under a section headed, *"What you need to do now"* Portafina said there were two options open to Mr F. These were described in an 'Options Form' which was included with the letter. It said Mr F should read the form, select the option that was right for him and return it. Portafina went on to say that if Mr F intended to proceed against its recommendation then he should also complete the Insistent Client Declaration and return that too.

On 15 April 2021 Mr F 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 £13,194 of which £9,723 will be tax-free."* The documents also included an Insistent Client Declaration section where Mr F 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 F also wrote down, in his own words, why he wanted to proceed with the transfer. On 23 April 2021, a further 'phone call

took place with Portafina where Mr F was asked if he understood what he was giving up by transferring away from his existing scheme.

On 10 May 2021, Portafina sent Mr F another letter enclosing its full Pension Review Report (PRR). This set out confirmation that Mr F wanted to disregard Portafina's recommendation. Thus, as an insistent client, Portafina further recommended that he transfer his DB scheme to a SIPP 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. Portafina told Mr F to read the PRR and if he agreed with its recommendation, to sign the enclosed forms and return them to him. The PRR stated that Mr F had a moderately adventurous attitude to risk. His apparent sole objective for making the transfer was cited as being to release tax-free (and some taxed) money totalling £13,194 from his pension for a house deposit. Mr F went ahead and transferred from his DB scheme to a SIPP, in September 2021.

Mr F first raised a complaint about Portafina's advice in February 2024. 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. He says that in the event he wasn't ever able to buy a house or get a mortgage.

In response, Portafina didn't agree that it had done anything wrong. It said it had first advised Mr F not to transfer away and that the transfer only happened when Mr F became an insistent client. Portafina says that only when Mr F 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 F's risk attitude.

In April 2024, Mr F 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 F 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. Portafina 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 Portafina'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, Portafina should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr F's best interests.

I have considered also, the regulatory landscape with regard to insistent clients. At the time when Mr F dealt with Portafina 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.*

*Who is an insistent client?*

COBS 9.5A2 also states 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 significant failings in the insistent client process used by Portafina.

I'm therefore upholding Mr F's complaint.

#### Introduction and Mr F's circumstances

I think it's fair to say that Mr F started out on this journey with very little knowledge about the operation of, and rules concerning, his DB pension. He didn't fully understand what his options might be or whether transferring was the right thing to do.

The firm representing Mr F in bringing his complaint portrays him as a vulnerable consumer. In my view it's certainly reasonable to say that his financial options for the foreseeable future looked very limited and so Portafina ought to have been careful to incorporate these circumstances in its dealings with him. He'd been out of work for 18 months, his partner earned only a part-time salary and she herself had only been working for 5 months with her employer. They had a young child and their joint income was supported with state benefits. Mr F and his partner also had no savings in place and they lived in local authority housing. Mr F had no investment experience to call upon and so, if eventually transferring to a SIPP, I think it's likely he'd 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. If transferring,

his future business as a new client was chargeable by Portafina at an annual fee of 1% of his existing balance. I've noted Portafina documentation referring to him as a "DFM<sup>2</sup> Client" which I think demonstrates that it saw the commercial value in retaining his investment business as a result of transferring to a SIPP, which Portafina would then manage on his behalf.

These circumstances clearly painted a picture of someone who was in a vulnerable financial position. Financial challenges existed for him both in terms of his remaining 'working age' years (late 50s -to- mid 60s) and also when eventually he might enter 'retirement age' (mid-to-late 60s). As regards the former period, there seemed very little prospect of leaving their local authority housing. And as for his retirement phase, even if Mr F held on to his DB pension scheme untouched until he reached the full NRA of 65, he would still only be in line to receive a small ongoing annual pension of £1,741 and he wasn't eligible for the state pension until the age of 67. But if transferring away from his DB scheme and spending some of the cash, this would likely make his future financial situation even worse, with less of an annual pension to rely on with which to complement his state pension.

With these very difficult financial circumstances in mind, I think it's obvious that the chances of Mr F fulfilling his aspiration to buy a home looked highly unlikely. During initial discussions with Portafina staff, a home deposit figure of around £13,000 was arrived at. But no property had been identified and no mortgage advice had been sought. I also think it's evident from the calls I listened to that this £13,000 figure was purely guesswork and as far as I'm aware it contained no provision for contingency costs; only a very broad and uninformed opinion as to the price of local housing from both the paraplanner and Mr F himself was used. This idea to transfer in order to generate a housing deposit therefore ought to have been debunked strongly by Portafina, both when it was first proposed, and when the so-called insistent client process was being adopted later. This is because Mr F's assumptions about house prices and costs associated with buying property looked highly implausible and in any event he would likely have no capacity to obtain or pay a mortgage.

In short, when viewed from the time of this advice, Mr F's financial situation was very tight indeed and he had no apparent scope to make this type of substantial housing change whatever he did – he simply didn't have enough resources.

#### *The 'insistent client' process used by Portafina*

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

It's important to note that it was Portafina which was the regulated party here and not Mr F. As I've shown above, he was financially vulnerable and had very little knowledge about pensions or investments. Portafina was also charging a substantial sum for providing advice, so Mr F had every right to assume it was acting in his best interests. But against this backdrop there were significant weaknesses and failings present in Portafina's advice processes which meant it didn't properly act in Mr F's best interests or give him the information he needed. I think the evidence shows that Portafina was always pre-disposed to seeing that Mr F transferred his pension to a personal plan and its processes at the time were designed to encourage such an outcome if at all possible.

I start by noting that as early as January 2021, and before the advice process was fully underway, Portafina was already promoting the idea of Mr F transferring away from his existing DB scheme. Before any regulated advice was provided, Portafina expressed to Mr F

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<sup>2</sup> Discretionary Fund Management

the “*great news*” about his pension and told him he could receive a more or less immediate tax-free lump sum of £9,723. I think that in Mr F’s financial situation achieving such an amount would have seemed an 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 tax-free element Mr F could obtain *only* by transferring away from his existing DB scheme and into a type of personal pension, such as a SIPP.

In providing information in this way Portafina was already 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 F 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.

After this, on 29 March 2021, there was a detailed ‘fact-find’ telephone call between the parties. However, I bear in mind that Mr F’s case had not yet been assessed by a regulated financial adviser from Portafina 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 Portafina’s starting point was directly opposed to that of the regulator in that this was again assuming this case would ultimately result in Mr F 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. The paraplanner told Mr F that “*to access the £9,700 ...you have to transfer the whole fund out from the [DB scheme] to something more flexible for you*”. I think this contact from Portafina promoted the transferring option to a personal pension above all else.

There then followed the letter of 13 April 2021 from a pension adviser which essentially served as a recommendation letter. I acknowledge that if viewed through a certain 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 F. It highlighted the pension guarantees he would be giving up in the DB scheme if he transferred and it said he could end up with lower retirement benefits. So, on the face of it, Portafina did appear to conform at this point with the regulator’s rules about setting out the rationale for not transferring.

However, I’ve thought about the *entirety* of this letter and the circumstances in which it was being sent. I’ve thought very carefully about whether Portafina *genuinely* acted within the spirit of the regulations and whether it communicated with Mr F in a way that both met his information needs and in a way that was clear, fair and not misleading.

I don’t think Portafina did this.

I’ve already set out the initial steps which promoted transferring ahead of the other options Mr F had. But the most egregious failure was that it was this letter which specifically introduced the whole concept of Mr F becoming an insistent client rather than Mr F doing so himself. In fact, I doubt whether being an insistent client was a concept he himself had yet considered, and I’m sure it’s likely he’d never heard of the term before. So, whilst this letter of 13 April began with a ‘do not transfer’ recommendation, on page 2 it then directly provided an immediate and easy route for Mr F to just transfer away anyway. This is because the letter stated that if he still wanted to transfer, Portafina would treat Mr F as an insistent client and it told him what he needed to do. It said there were two options open to Mr F which were either not to transfer, or disregard the recommendation not to transfer and go ahead with it. However, portraying his options in this way was simply an open invitation for him to

disregard the advice. An Options Form was enclosed together with an Insistent Client Declaration and all Mr F therefore had to do was return these with the enclosed, addressed and pre-paid envelope which Portafina 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 served to seriously undermine the whole process. The circumstances in which these failures occurred were also important. As I've previously said, Mr F was not an experienced investor and from the telephone calls I've listened to between him and Portafina he had already explained that his knowledge and understanding of pensions was severely lacking. So, I think he would have found this undermining approach to be confusing. This is because Portafina was evidently signposting that he could just go ahead with transferring – and that this was an approach it was both suggesting and endorsing.

Of course, there were other options available to Mr F and which Portafina did not add any weight to. These consisted of him remaining in the DB scheme; he could still have accessed his pension early and he could also have accessed a modest tax-free lump sum if this was something he really needed to do. These options were not set out at all on the Options Form in the way the above two other 'options' were. Nor had the Portafina adviser evidently comprehensively considered Mr F's other pension. As I've said, I've assumed this to have not been worth much, but only an elementary attempt ever seems to have been made to trace this pension which could have been meaningful to the overall advice. I think this further strengthens the poor and pre-determined approach Portafina was taking to Mr F's pension affairs.

A further failure was that at the time of receiving the recommendation letter, the CETV had already expired. And so, at the time of being sent the letter in April quoting his CETV as being £38,892 Portafina already knew this figure had expired. We know that upon a further calculation it would subsequently reduce by around £1,692 (a meaningful amount to Mr F) and also cost a further £250 to have the second valuation completed and sent out to all the relevant parties by Mr F's pension provider.

#### What happened after 13 April 2021?

As I've said, the letter of 13 April appeared to constitute a recommendation report of sorts. However, the lengthier Pension Review Report (PRR) I've mentioned earlier was received *after* Mr F had returned his Options Form and the Insistent Client Declaration (both of which I've explained were wholly initiated and led by Portafina, rather than Mr F. 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 F would have found useful.

As can be seen by the sequence of events I've set out above, Portafina's full PRR was dated 10 May 2021 and thus came substantially *after* Mr F 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 Portafina appeared to conflate the recommendation letter of 13 April with a further and more detailed PRR the next month, but Portafina's overall approach in this particular matter was consistent with the failures I've mentioned and which Mr F would have again found confusing.

I have carefully noted all of the comments Portafina's made when responding to our investigator's view that this complaint ought to be upheld. I have noted, for example, all its comments relating to the sequence of events. Specifically, I have considered its point that its original advice *not* to transfer was indeed suitable, a recommendation I'd agree with. I've also considered that Mr F was invited to explain in his own hand why he wanted to go ahead against the advice.



When writing his reasons for supposedly wanting to transfer in his own words, Mr F said he wanted to buy a house and that he also wanted an adequate retirement income. I think these brief comments show how confused and conflicted he had become with the process and merely serve to show Mr F's vulnerability and lack of understanding of what he was being left with. In reality, there was simply no possibility of him having enough resources to buy a property at that time, and his retirement provision looked very modest indeed whichever way it was viewed. There were no challenges from Portafina to these obvious misunderstandings on Mr F's part and it seems Mr F had no direct personal dealings with an appropriately qualified financial adviser, as opposed to Portafina's less qualified staff, anywhere throughout this entire process.

### Would better practice have changed anything?

I have considered whether, if Portafina had acted in Mr F's best interests and not consistently promoted the option of disregarding proper advice, he would have taken a different course of action. I accept that this question is a judgement call and I've thought about Portafina's view that Mr F would have carried on regardless i.e. that he always had a preference for transferring to a SIPP.

But I think the evidence is persuasive the other way. I do accept that Mr F had a genuine desire to successfully provide for his partner and child. But there's certainly no evidence that their living conditions were so poor as to make moving home urgent or absolutely necessary on safety or wellbeing grounds. They were just about managing financially where they were, but the evidence of his situation was that Mr F simply couldn't afford his further aspirations to buy a new home at that time, however much he wanted to. I therefore believe that if he'd been treated in the way the rules genuinely intended he should be, with all these things carefully and professionally explained to him by a suitably qualified person, I don't think he'd have insisted on transferring in his own right. I think Mr F would have decided not to transfer away.

### Fund selection

Portafina recommended that Mr F invest his funds in a personal pension. I've described how Portafina also categorised Mr F as a moderately adventurous investor. To me this simply serves to show the absence of any personalisation really being applied by Portafina to Mr F's situation. Here was a man with no investment experience to call upon, no financial assets, he was living in local authority housing, had a very young child and very little pension provision. Mr F was hoping to emerge soon from long-term unemployment and reliance on state benefits and so he had absolutely no capacity for loss. So, I think Portafina applying such a high attitude to risk category to him is consistent with all its wider failings in this case; Portafina did not treat him fairly.

However, as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for him 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

Portafina didn't act with due care and skill or in Mr F's best interests. Given the failings I've set out above, I don't think it would be reasonable for me to conclude that Mr F can truly be regarded as an insistent client. This transfer process did not begin because Mr F was an insistent client – it began because Portafina's processes were clearly designed to push

clients like Mr F down that route. In my view, the approach Portafina 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, I believe Portafina then purposely led Mr F into a process which he neither asked for, nor really understood. This narrative simply gathered pace and although Mr F 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.

Portafina's documentation was leading and heavily templated. The wider process it adopted capitalised on Mr F's lack of knowledge of pensions and investment matters

I am therefore upholding Mr F's complaint.

### **Putting things right**

A fair and reasonable outcome would be for Harbour Rock Capital Limited (which was trading at the time as Portafina) to put Mr F, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr F 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 65, 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 F'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 F redress as a cash lump sum payment,
- explain to Mr F 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 his DC pension
- offer to calculate how much of any redress Mr F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr F accepts Harbour Rock Capital Limited's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr F 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 F's end of year tax position.

Redress paid to Mr F 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, Harbour Rock Capital Limited 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 F'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 £355,000 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 £355,000, I may recommend that Harbour Rock Capital Limited 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 F the compensation amount as set out in the steps above, up to a maximum of £355,000.

Recommendation: If the compensation amount exceeds £355,000, I also recommend that Harbour Rock Capital Limited pays Mr F the balance.

If Mr F 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 F can accept my decision and go to court to ask for the balance. Mr F 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 F to accept or reject my decision before 5 February 2025.

Michael Campbell  
**Ombudsman**