

## The complaint

Mr C complains about the advice given by Harbour Rock Capital Limited ('Harbour Rock') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr C was advised by one of Harbour Rock's predecessor firms, Portafina. For ease of reference however, I shall refer to the respondent firm as Harbour Rock throughout this decision.

## What happened

In May 2022, Mr C approached Harbour Rock and authorised it to obtain information from his two occupational pension schemes – his DB scheme and a defined contribution ('DC') scheme. Shortly after, Harbour Rock approached Mr C's pension schemes requesting the information it needed to begin advising him. It also wrote to Mr C stating, *"Great news! Your pension check is underway. You're one step closer to taking control of your future."*

Harbour Rock received the information about Mr C's DC scheme in June 2022. The information showed that he had joined the scheme in November 2021 and that the last contribution had been paid in March 2022. The fund had a value of £202.37.

Also in June 2022, Mr C received the information about his DB scheme that Harbour Rock had requested. The information showed that Mr C had accrued 3 years and 5 months of pensionable service and that at the scheme's normal retirement date ('NRD') he was entitled to receive an annual pension of £1,066.52 or a tax-free cash ('TFC') lump sum of £4,948 and a reduced annual pension of £742.56. Harbour Rock had also requested an early retirement quotation from the DB scheme administrators. That showed that if Mr C wanted to retire immediately (aged 56) he would receive an annual pension of £748.80 or TFC of £3,680 and a reduced annual pension of £552.24. The DB scheme administrators also gave Mr C the option to take the full cash equivalent transfer value ('CETV') of his benefits – £23,048.29 – as a one-off cash sum of which 25% would be tax free and the remainder subject to his appropriate income tax rate. Finally, the information mentioned that Mr C also had the option to transfer his CETV to a personal pension arrangement or to leave it deferred to a later date. A declaration form was enclosed setting out the five options available and inviting Mr C to tick one of them.

Harbour Rock wrote to Mr C on 14 September 2022. The letter started by stating, *"Great news on your pension! We have all the information we need and your pot is currently worth £23,250.66."* It went on to invite Mr C to book a telephone appointment after which it would let him know the next steps.

On 15 September 2022 Harbour Rock completed a fact-find to gather information about Mr C's circumstances and objectives. It noted the following: -

- Mr C was aged 56 and separated.
- Mr C was unemployed and lived in social housing.
- Mr C was looking for work, had no debt nor any savings, investments or assets.

- Mr C had been declared bankrupt in the past.
- Mr C was in receipt of means tested state benefits of £664.61 per month. Mr C's monthly outgoings were the same as his monthly income.
- Aside from his full state pension entitlement Mr C had no other pension provision bar his DB and DC schemes. He said he intended to retire at age 70.
- Mr C anticipated that his monthly expenditure in retirement would be £646.61.
- Mr C's immediate financial objectives were noted as requiring £4,000 for a holiday, £6,000 for a funeral plan, £11,438 on home furnishings and £1,812.66 on more home furnishings, a total of £23,250.66. He told Harbour Rock that he was *'looking to decorate and furnish a new property, go on holiday with my family and pay for my funeral'*.
- Mr C ticked the box on the fact-find which stated that his immediate need for tax-free cash ('TFC') was important and that he wanted to proceed even if this risked a shortfall in his long-term retirement provision.
- Mr C had no other means of raising funds. He did not want debt. His disposable income was insufficient for his needs.

Harbour Rock also carried out an assessment of Mr C's attitude to risk, which it deemed to be 'moderately cautious'.

In a follow-up phone call on 26 October 2022, Mr C told Harbour Rock that if he had any money left over after transferring then he would like to buy a second-hand car so he could visit family. He also said he would not want to take out finance to buy a car. Mr C said as well that he wanted to pay for his own funeral as he didn't want his children to have to do so. And he told Harbour Rock that he was moving home in six weeks' time and would need carpets, curtains and all new furnishings. He said he wanted to kit it all out and get it properly decorated.

On 3 October 2022, Harbour Rock sent Mr C a pension transfer value analysis report ('TVAS') in respect of his DB scheme. The report compared the guaranteed benefits he was giving up with the flexible benefits on offer in a SIPP. The report included a transfer value comparator which showed that the capital cost of providing the same benefits as those Mr C was giving up under his DB scheme was £40,300, some £17,300 more than the value of his CETV. The report also set out that at age 65, Mr C would receive TFC under his DB scheme of £5,912 together with a reduced annual pension of £887. Finally, the report also said that the annual investment return (also known as the 'critical yield') his SIPP would need to achieve if it was to match the benefits Mr C was giving up was 11%.

Harbour Rock wrote to Mr C on 6 October 2022 enclosing a pension transfer advice summary, a Pension Review Report/recommendation, an options form and an insistent client declaration. The letter stated, *"The **options form** is for you to complete to let us know if you wish to follow our recommendation. If you wish to continue to transfer your pension and proceed against our advice, then please also complete the **insistent client declaration** to state in your words why you do not wish to follow our advice and that you understand the valuable benefits you would be giving up by going ahead."*

Harbour Rock's pension review report dated 6 October 2022 recommended that Mr C did not transfer his DB scheme but did release the full value of his DC scheme. The report said the reasons for not recommending the transfer of Mr C's DB scheme were of the valuable guaranteed benefits he would be giving up, that he would exceed his income tax personal allowance, that he would lose his entitlement to state benefits, and because he could meet his objectives via other means. Within the same report, there was a section entitled, *'What happens if you still want to go ahead and transfer against our advice?'* where Harbour Rock explained that in such a circumstance it would treat Mr C as an 'insistent client'. The report

asked Mr C to read and complete the enclosed options form and, should he decide he wanted to proceed against its advice, to complete the insistent client declaration.

Mr C signed the options form on 10 October 2022 ticking the option that said, *"I understand your recommendation not to proceed; however, I still want to continue against your advice so that I can release the entire proceeds of my pension as a lump sum."* He also signed Harbour Rock's Insistent Client Declaration, ticking the box that stated, *"I understand [Harbour Rock's] recommendation not to proceed. By disregarding this recommendation and instructing [Harbour Rock] to continue with the transfer, I understand I will be going against [Harbour Rock's] advice and I am therefore an insistent client...I confirm that I have read and understood the benefits I will be giving up by proceeding...Guaranteed income for life from age 65...which will increase each year to protect against inflation..."* The exact guaranteed amounts Mr C was giving up were also listed. Further down the declaration the risks of proceeding were listed and Mr C ticked the box to say he understood them. Finally, Mr C wrote, in his own words, why, despite it being against Harbour Rock's recommendation, he wanted to go ahead with the transfer.

On 31 October 2022, Harbour Rock wrote to Mr C enclosing a full Suitability Report. It's covering letter again confirmed that he wanted to disregard its recommendation not to proceed with the transfer and that he wished to proceed as an insistent client. The letter said that as he was an insistent client it was recommending that he transfer his DB scheme to a SIPP with a provider I shall refer to as A. Harbour Rock went on to say that if he agreed with its recommendation and instructed it to act upon it then he would receive his entire pension as a lump sum payment of which £5,812.66 would be TFC. It asked Mr C to read the enclosed documentation and to sign the necessary forms.

Mr C signed a declaration on 9 November 2022 which again confirmed he understood what he was giving up, the risks involved and that he was proceeding against Harbour Rock's recommendation as an insistent client. On the same date Mr C signed the Suitability Report summary, A's transfer authority forms and his DB scheme's consent form.

Harbour Rock wrote to Mr C on 23 November 2022 acknowledging receipt of his signed forms and letting him know that his CETV had now expired. Harbour Rock said that it had asked his DB scheme provider to recalculate the CETV and that there could be a fee charged for doing so.

An updated transfer pack was received from the DB scheme in December 2022 which stated that the new CETV was £16,962.37.

On 14 January 2023 Harbour Rock provided Mr C with a revised TVAS based on the new CETV. There it said it would now cost £30,800 to replicate the benefits on offer under Mr C's DB scheme which was £13,900 more than the revised CETV. The critical yield Mr C's SIPP would need now need to achieve had increased to 13.4%. Harbour Rock stated that it strongly recommended that Mr C did not proceed but acknowledged that he still wished to do so. It pointed out that the TFC he would now receive upon transfer had reduced to £4,240.59 and his financial objectives were revised to needing £4,000 for a holiday, £6,000 for a funeral plan and £5,693.21 for home furnishings. Harbour Rock asked Mr C to complete the necessary transfer forms and a further client declaration.

Shortly after, Mr C's DB scheme was transferred into a SIPP with A and invested in its cash fund where it was noted that Mr C had chosen to withdraw his pension in full comprised of a TFC payment and a single income payment. Harbour Rock charged Mr C £1,201.53 for arranging and advising on the transfer and A charged Mr C an income drawdown fee of £75.

Mr C complained to Harbour Rock, through his representative, in March 2024. He said he had been unsuitably advised to transfer his DB scheme and had suffered a financial loss as a result.

When no response was received from Harbour Rock, Mr C complained to the Financial Ombudsman Service. Sometime after Mr C had made his complaint, Harbour Rock issued its final response and stated that it didn't think it had done anything wrong. It said that Mr C had driven the transfer whilst it had recommended that he did not proceed.

One of our Investigators then looked into the complaint and recommended that it was upheld. She didn't think that Harbour Rock's insistent client process was conducted fairly or that Mr C could be said to be truly insistent.

Harbour Rock did not respond to our Investigator's findings so the complaint was passed to me to make a 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, 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*

What follows 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 Harbour Rock'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, Harbour Rock 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 Harbour Rock there were specific rules in place. Since 2018, COBS

9.5A includes 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 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 all the evidence in this case I am minded to uphold it for similar reasons to our Investigator. I'll explain why.

### *Suitability of the advice*

Harbour Rock says that it followed the correct insistent client process and provided Mr C with a recommendation (not to transfer) that was in his best interests. Mr C says Harbour Rock's advice was negligent and he's suffered a loss as a result.

The correspondence and paperwork from the time of the transfer states that the transfer of Mr C's DB scheme wasn't in his best interests and was not recommended. Despite being repeatedly told throughout the process that Harbour Rock did not recommend he transfer his DB scheme, Mr C opted to proceed anyway as an insistent client. I'll consider the insistent client process deployed by Harbour Rock in detail below, but as to whether the transfer was suitable, as all parties agree that it wasn't, I don't see the need to address this matter in any great detail.

In brief, the reasons given to Mr C by Harbour Rock as to why it didn't consider the transfer to be in his best interests were because: -

- he would lose his valuable guaranteed benefits;
- he would lose his means-tested state benefits;
- he could meet his financial objectives by using alternative methods such as waiting until he returned to work and re-examining his finances then whilst taking his DC scheme in the meantime.
- He would be pushed into a higher tax bracket by making the withdrawal.
- The reasons for the transfer and withdrawal did not justify the loss of guarantees offered by his DB scheme.

As I agree with these reasons for why transferring was not suitable for Mr C, I will now go on to consider the insistent client process Harbour Rock followed and whether it fairly treated Mr C as an insistent client.

### *The 'insistent client' process used by Harbour Rock*

Having carefully considered all of the evidence presented, and despite the numerous statements made that it was not recommending a transfer, I think there were weaknesses and failings in Harbour Rock's advice process, which meant it didn't act in Mr C's best interests.

I say this because on 6 October 2022 following the fact-find call between Harbour Rock and Mr C on 15 September 2022 regarding his circumstances and objectives, it sent him its recommendation in the form of a short 'Pension Review Report'. The report contained the outcome of its advice and an 'overview' of his DB scheme pension. Harbour Rock said that it strongly recommended Mr C did not proceed with the transfer for the reasons I have set out above.

Despite setting these reasons out, I don't think Harbour Rock's 'Pension Review Report' explained to Mr C the risks associated with his preferred course of action. And whilst

Harbour Rock later sent a more detailed suitability report, which I will refer to later on, at this stage Mr C had minimal information to go on to decide if disregarding Harbour Rock's advice and proceeding as an insistent client was truly in his best interests.

There were clearly significant risks to Mr C in proceeding with the transfer and taking his whole pension in one lump sum. Principal among these was the fact that Mr C would lose his entire income in the form of his entitlement to means tested state benefits. Whilst I can see that the Pension Review Report/recommendation of 6 October 2022 stated that the transfer wasn't in Mr C's best interests for this very reason, there was no further information or advice given about which benefits he was in receipt of, what their loss would actually mean for him in practice and the risk he was exposing himself to if he went ahead and lost them.

At the time of the advice Mr C relied completely on his means tested benefits for income. Yet the encashing of the entire value of his DB and DC pensions, given their combined value was in excess of £23,000, meant he would exceed the savings threshold for receiving universal credit. And Mr C's finances were precarious as he had no savings, assets or any disposable income left over each month. So, any change to his income – especially one as significant as losing his benefits – would clearly impact his standard of living, however, there was no analysis or provision of information about this in Harbour Rock's Pension Review Report. But by enclosing its Options Form and Insistent Client Declaration for Mr C to complete at this stage in its process, without explaining the impact the transfer would have on his income, it meant Mr C was without all the information he needed to make a fully informed decision about whether the transfer was in his best interests or not.

I think that, on the face of it, the forms and the letter appear to conform with the regulator's regulations I've set out above. But I've thought about whether Harbour Rock genuinely acted within the spirit of the regulations and communicated with Mr C in a way that was fair, clear, not misleading and taking into account his information needs; and I'm not persuaded that it did. It was asking him to decide to accept or decline its recommendation without explaining to him the effect the transfer would have on his income, or providing any analysis or insight about how he would manage to cover his outgoings without his monthly benefits. So, I think the risk to Mr C's income by transferring was grave and Harbour Rock, in not providing Mr C with *all* the information he needed about the risks associated with his preferred course of action, failed to have due regard to Mr C's information needs and to ensure he fully understood the risks of proceeding as an insistent client.

In failing to ensure Mr C was fully informed in this respect Mr C was unaware that, in proceeding with the transfer, he was creating financial hardship for himself. As a result of proceeding with the transfer, Mr C would likely be unable to afford his rent and living expenses and the money he gained from encashing his pension in full would inevitably have to be used to replace his lost income rather than for the financial objectives he had cited. But Harbour Rock failed to draw this to his attention during the advice process. Consequently, Mr C made the decision to proceed to transfer from an uninformed position and Harbour Rock failed to act in his best interests in the process. And whilst Harbour Rock asked Mr C to write, in his own words, why he wanted to proceed against its recommendation, I don't think what he wrote demonstrates that he fully understood what he was doing, and the effect it would have on him, as he merely listed his three objectives (paying for his funeral, home furnishings and taking a family holiday).

Furthermore, at the time of the advice, Mr C had been unemployed for eight months and whilst Harbour Rock noted that he was looking for work there was no detail about what kind of work he was looking for, how any such job could alter his finances or what would happen to his finances if he transferred, lost his entitlement to benefits and didn't find another job.

And in enclosing its Options Form and Insistent Client Declaration with its Pensions Review Report/Recommendation, Harbour Rock was asking Mr C to decide what to do without sight of its full suitability report (which was not sent to Mr C until after both forms had been completed and returned and he had decided to proceed as an insistent client). So, Mr C was being asked to complete both forms from an uninformed position. I think that presenting Mr C with the option to disregard Harbour Rock's advice from the outset – unprompted by Mr C himself – wasn't appropriate and made it easier for him to identify as an insistent client. In so doing I think its processes undermined Harbour Rock's recommendation not to transfer.

So, it strikes me that Harbour Rock's process here was geared towards facilitating the transfer. In this situation I'd expect the emphasis of the documentation to be the reasons why the transfer was not in Mr C's best interests. But the information on the form enclosed with the recommendation letter, which Harbour Rock asked Mr C to complete and return, was limited to the loss of guarantees, the tax implications of accessing his pension early and the growth required to match his existing benefits. While Harbour Rock later sent a more detailed suitability report, at this stage Mr C had little information to go off to decide if being an insistent client was truly in his best interests.

So, I think that there were serious shortcomings in the early stages of the advice Harbour Rock gave Mr C and up to the point it asked him to complete its Options and Insistent Client forms. Mr C's information needs were not met, Harbour Rock's communications were not clear, fair and not misleading and it failed to ensure Mr C fully understood the risks of his preferred course of action. For the reasons I've given here, Mr C didn't have enough information before him on 6 October 2022 to make a fully informed decision about whether to proceed as an insistent client.

I think if Harbour Rock firmly believed in its advice and recommendation, and it was acting in Mr C's best interests, it could have made greater effort to make sure he understood what he was giving up when he gave the reasons he did for wanting to transfer. Where it was clear Mr C didn't understand, Harbour Rock could have declined to execute the transfer for him. It wasn't obliged to continue with the transfer of Mr C's DB scheme. Instead, it proceeded to effect the transfer in a situation where, I think it can reasonably be said, its client demonstrated he didn't fully understand what he stood to lose by agreeing to proceed. I've listened to the two insistent client calls between Mr C and Harbour Rock and it is clear from the first that he did not understand the nature of the benefits he was giving up. And at the end of that call Harbour Rock rehearsed with Mr C what he needed to say when it called him again so that it could get the transfer 'over the line'.

During the second call, at the start of which Mr C repeated what he had been told to say during the first call, he does indeed list out Harbour Rock's reasons for recommending he did not transfer, including the fact that he would lose his benefits. Of significance at this point in the process however, is that fact that Harbour Rock didn't interrogate Mr C about how he intended to live without his benefits. Nor did it warn him his objectives would be under threat as a result of losing his income. So, for these reasons, I think that Mr C proceeded to transfer his DB scheme in return for TFC and a taxable lump sum that he demonstrably didn't need and which would have a catastrophic effect on his income.

I think it ought to have been clear to Harbour Rock that Mr C had little to no knowledge or experience of financial and investment matters based on the information available at the time of the advice. I'm mindful too that Harbour Rock assessed Mr C's attitude to risk as being 'moderately cautious'. So Harbour Rock should have been on notice that it had to be very careful if it was to take Mr C through the insistent client route.



In order to fulfil the regulator's requirements under COBS 9.2, Harbour Rock needed to give Mr C advice on the overall suitability of the transaction envisaged, that is the transfer and the choice of pension and investment. Instead, it first gave Mr C advice on the advice to transfer, and only considered the suitability of the proposed alternative in the full suitability report *after* securing his confirmation to proceed on an insistent client basis. And while the report repeated the recommendation not to transfer out of his DB scheme, it was followed by a positive recommendation, advising Mr C to transfer his benefits to a flexi-access income drawdown pension with A to facilitate access to his tax-free cash and take a taxable lump sum. And this was all set out under a heading titled '*Our recommendation*'.

By recommending that Mr C transfer his benefits to a particular scheme, not only did this undermine the recommendation not to transfer, but I also think Harbour Rock has effectively given him a recommendation to transfer out of his DB scheme. If Harbour Rock didn't think that transferring out of the DB scheme to a flexi-access drawdown pension was in Mr C's best interests, it needed to ensure that it gave clear advice that the *whole* of the transaction was unsuitable for him. In my view it shouldn't have separated out the elements. For this reason, I think on receipt of the full suitability report Mr C could have believed that Harbour Rock approved of his decided course of action.

And whilst the suitability report mentioned that Mr C ran the risk of financial hardship by proceeding as he would no longer be entitled to his state benefits the fact is that Mr C was already some way into the transfer advice process by the point he received the full report.

I'm sure that going on holiday, paying for a funeral plan and having funds for home furnishings seemed like attractive objectives to Mr C. But, as Harbour Rock is aware, a request by a client for a particular course of action is not an objective. It was required to ascertain Mr C's actual investment objectives before advising on a suitable course of action.

To this end, and if Harbour Rock was adhering to its obligation to know its client, then it should have ascertained whether Mr C had a real need to take a significant portion of his pension provision as early as he did. It should have ascertained why he needed to spend £4,000 on a holiday and why he needed to fund his funeral plan at this particular point in time instead of waiting until he returned to employment and possibly addressing this objective when he was in a better financial position to do so. And whilst Mr C expressed a need for a lump sum for home furnishings and decorations there is no information about what Mr C truly needed such sums for. Furthermore, the total of Mr C's objectives at the time of the advice exactly equated to the amount of the CETV. And when a revised CETV was obtained, the total of his objectives decreased to match the reduced figure he was given.

So, I don't think that taking a holiday and paying for a funeral plan when he was out of work were real objectives for Mr C. And, with regards to his need for cash to furnish and decorate the new home he was moving to in the near future, I've seen no meaningful discussion between Harbour Rock and Mr C about alternative means of him funding this objective. An alternative option to me appears to have been for Mr C to have taken early retirement from his DB scheme. By doing so he would have obtained TFC of several thousand pounds which would have assisted him when he moved home whilst retaining his index linked guaranteed income benefits. But I can't see that this option was discussed with Mr C. And, as Mr C himself told Harbour Rock during one of their telephone calls, if the money wasn't available then he would do his home renovations 'bit by bit'.

So, I can't reasonably accept that Mr C had no option but to transfer his pension and encash it in full so that he could take a holiday, pay for a funeral plan and pay for home furnishings and decoration. It appears to me the first of these objectives was a 'nice to have' rather than

a financial need, the second could have been deferred until Mr C was re-employed and back on a sounder financial footing and the third, if it was truly an objective could have been largely addressed by retaining his DB scheme, taking early retirement and taking the TFC.

And a further failing on the part of Harbour Rock was that it failed to get a revised early retirement quote from the DB scheme. But bearing in mind the original DB scheme early retirement quote stated Mr C could receive TFC of £3,700, it was unlikely a revised quote would show Mr C was entitled to TFC of much more than this. So, it is safe to assume that the amount of TFC from the DB scheme if early retirement was taken was less than the £6,000 savings limit for universal credit and the pension payment, whilst it may have reduced his benefits by an equal amount received, would not have led to any reduction in his overall monthly income and would have come in useful when he did return to employment. It was Harbour Rock's duty to show Mr C that it was financially better for him to leave his guaranteed pension benefits where they were. It should not have merely accepted Mr C's viewpoint without challenge

On balance, I think that Harbour Rock's process here was geared towards facilitating the transfer rather than determining whether a client proceeding against its advice was fully informed of all the risks of doing so. I don't think that Harbour Rock, for the reasons I've given here, took enough care to ensure that Mr C understood the financial repercussions to transferring, nor do I think it acted with due skill and care and in Mr C's best interests. Harbour Rock was not, as its suitability report stated, '*obliged*' to treat Mr C as an insistent client just because he disagreed with its recommendation. If it was acting in Mr C best interests it could, and should, have declined to execute the transfer. By not explaining the risks to Mr C of his supposed preferred course of action, and by not seeking to properly understand Mr C's objectives, financial circumstances and what he was really trying to achieve before carrying things out, I'm not persuaded Harbour Rock can be said to have been acting in his best interests.

Overall, and on balance, given these failings, I don't think it would be reasonable for me to conclude the process Harbour Rock followed meant that Mr C can truly be regarded as an insistent client - I think Harbour Rock made it altogether too easy for him to agree that he was an insistent client. Harbour Rock's overall communication with Mr C wasn't clear or fair. It didn't act in Mr C's best interests. And it failed to act with due care and skill.

Furthermore, I can see from the information provided by the DB scheme was that one of the options available to Mr C was for him to take the full cash equivalent transfer value ('CETV') of his benefits – £23,048.29 – as a one-off cash sum of which 25% would be tax free and the remainder subject to his appropriate income tax rate. Thus there already existed a route for Mr C to achieve what he thought he wanted. A route that would cost him nothing and would likely have been much quicker. But I can't see any reference to this option from Harbour Rock.

I now need to consider if Harbour Rock had followed the insistent client process correctly, whether Mr C would've still gone ahead.

If Harbour Rock had acted in Mr C's best interests, providing a recommendation on the suitability of the whole of the transaction envisaged at the outset, addressing Mr C's true objectives at the time and presenting alternative courses of action (including doing nothing, or waiting), assessing his income needs and explaining that he was putting at risk his ability to be able to meet them if he transferred out, then I don't think he would've insisted on going ahead with the transfer. As I've outlined above, I don't consider Mr C to be an experienced investor who possessed the requisite knowledge, skill or had the confidence to go against

the advice and recommendation he was given. I think he relied solely on the advice and process Harbour Rock employed.

### *Summary*

I accept that Harbour Rock did provide some information about the risks and suitability of the transfer to Mr C but, for the reasons I have given here, I am of the view that there were flaws to Harbour Rock's insistent client process. Harbour Rock's role was to understand what Mr C's wants and needs were, and to make sure he understood the risks associated with his preferred course of action. Its role wasn't simply to facilitate what Mr C wanted, rather it had to act in his best interests. Having listened to the two insistent client phone calls undertaken by Harbour Rock, I don't think Mr C demonstrated that he understood the risks associated with what he wanted to do. Whilst he was focussed on achieving his objectives, it was Harbour Rock's duty to ensure he was able to make a fully informed decision. Ultimately, I don't think it did so and Mr C proceeded to make his decision from an ill-informed position.

In the absence of any real objective, and in the knowledge that Mr C was poised to lose all his income, had no investment experience, a cautious attitude to risk and no capacity for loss I can't agree that Harbour Rock was acting in his best interests by carrying out an insistent client process with Mr C. If things had happened as they should have, taking everything into account, I don't think it likely Mr C would have insisted on going ahead with the transfer.

In light of the above, I think Harbour Rock should compensate Mr C for its failings using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

My aim in awarding redress is to put Mr C as far as possible in the position he would be in now if Harbour Rock had given him suitable advice. I think Mr C would have remained in the DB scheme. I also think he would have retained his DC scheme.

#### *What should Harbour Rock do?*

To compensate Mr C fairly, Harbour Rock must determine the **combined fair value** of his transferred pension benefits as outlined in Step One and Step Two below. If the **actual value** is greater than the **combined fair value**, no compensation is payable.

#### **actual value**

This means the actual amount payable from the SIPP at the date of the calculation.

#### **fair value – step one**

If Mr C had been given suitable advice, I think he would have remained in the DB scheme. Harbour Rock must therefore calculate the value of the benefits Mr C lost as a result of transferring out of his DB scheme 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>.

For clarity, Mr C has not yet retired, and he has no plans to do so at present. So, the calculation should be based on his 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 C's acceptance of the decision.

### ***fair value – step two***

Harbour Rock must use the benchmark shown below to determine the fair value of Mr C's DC scheme if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Notional value of original defined contribution pension plan to be obtained	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	13/11/2021	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

To arrive at the fair value when using the fixed rate bonds as the benchmark, Harbour Rock should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Harbour Rock totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

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

- always calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
  - his 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 his redress prudently is to use it to augment his 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 Harbour Rock's offer to calculate how much of his 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 their 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 directly to Mr C as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Harbour Rock may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

### **Why is this remedy suitable?**

I've decided on this method of compensation because:

- Mr C wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr C's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr C into that position. It does not mean that Mr C would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr C could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

Determination and money award: I uphold this complaint and require Harbour Rock Capital Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £430,000.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 July 2025.

Claire Woollerson  
**Ombudsman**