

The complaint

Mr D has complained about advice he was given in 2020 regarding the transfer of his defined-benefit (DB) pension scheme, to a personal pension plan.

I can see that Mr D was originally dealing with a business which is now known as Harbour Rock Capital Limited. As Harbour Rock Capital Limited is now responsible for answering this complaint, I'll keep things consistent by referring mainly to "HRCL".

HRCL initially recommended that Mr D *shouldn't* transfer his pension. But it then processed the transfer to the personal pension 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 D 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 D first became interested in assessing whether he might access some of his pension savings early, in 2020. We know that HRCL had initial dealings with Mr D during which he authorised it to collect information about his financial circumstances and his DB scheme. A 'fact-find' exercise then took place, and information gathered about Mr D was broadly as follows:

- He was 59 years old, married to Mrs D and as their children were all adults, they had no financial dependents. Mrs D also worked and had her own modest pension provision. They owned a home valued at approximately £188,000.
- Mr D had a DB local government pension and earned £21,000 per year. The normal retirement age (NRA) was the same as his state pension age, which in his case was 66 years and 6 months.
- There was no option to take the benefits of the DB scheme early whilst remaining employed and a member of the scheme. However, he was interested in accessing his pension savings early to pay down some debts and spend some money. But Mr D intended to remain with his employer and continue to work in the same job for several more years.
- Mr D's existing scheme was projected to pay around £12,300 per year at the NRA and an initial tax-free lump sum of £12,500. However, at the NRA he could also reduce the annual pension to around £8,359 and take a tax-free lump sum of around £55,728.
- Mr and Mrs D total household income was around £2,400 per month (net). They had various life insurance cover but no demonstrable savings. They had an outstanding mortgage which evidently had six years left to run and was being paid down at £368

per month on a repayment basis. They also had some debts which comprised of around £16,000 which appeared manageable and were being paid down in a similar way. Overall, after all spending commitments, they had £900 per month disposable income left.

HRCL wrote to Mr D on 6 August 2020. The letter stressed it didn't contain regulated financial advice at that stage. But it said that there was "*great news*" about his pension "*pot*" in that he had a cash equivalent transfer value (CETV) of £184,258¹ and that the tax-free cash element he could draw would be £46,064.

On 20 August 2020, HRCL sent Mr D 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 £184,258 but that the cost to replicate the benefits of his DB scheme if Mr D transferred to a type of personal pension, was £439,575. This basically meant that to buy a pension, in a type of personal pension plan, which had similar benefits to his existing DB scheme, this would cost around £255,000 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 D 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 HRCL stated that if he still wanted to transfer, it would need to treat Mr D 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 open to Mr D. These were described in an 'Options Form' which was included with the letter. It said Mr D should read the form, select the option that was right for him and return it. HRCL went on to say that if Mr D intended to proceed against its recommendation, then he should also complete the Insistent Client Declaration and return that too.

A few days later Mr D 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 £46,064.*" The documents included an Insistent Client Declaration section where Mr D 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 D also wrote down, in his own words, why he wanted to proceed with the transfer. A few days later, a further 'phone call took place with HRCL where Mr D was asked if he understood what he was giving up by transferring away from his existing scheme.

On 9 September 2020, HRCL sent Mr D another letter enclosing its full Pension Review Report (PRR). This set out confirmation that Mr D wanted to disregard HRCL's recommendation. Thus, as an insistent client, HRCL further recommended that he transfer his DB scheme to a personal pension 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 told Mr D to read the PRR and if he agreed with its recommendation, to sign the enclosed application form and transfer authorities and return them. The PRR stated that Mr D had a moderately cautious attitude to risk. His apparent sole objective for making the transfer was cited as being to release tax-free money to repay his mortgage, to pay down his other debts, make some home improvements and buy a car.

¹ This was later revised up to £191,818.

There then followed some further administrative procedures which included Mr D completing a pension transfer closure document for his existing scheme, confirmation he was formally leaving the scheme, a slight upward revaluation of the CETV and confirmation by HRCL that he wanted to continue. Mr D went ahead and transferred from his DB scheme to a personal pension, in January 2021.

Mr D 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 out 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 D not to transfer away and that the transfer only happened when Mr D became an insistent client. HRCL says that only when Mr D 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 D's risk attitude.

In April 2024, Mr D 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 D 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 reply.

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 D's best interests.

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

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 HRCL.

I'm therefore upholding Mr D's complaint.

Introduction and the financial viability of transferring

I think it's fair to say that Mr D started out on this journey with very little knowledge about the operation of, and rules concerning, his DB pension. Mr D also had no investing experience as he'd neither invested personally himself during his lifetime nor had he ever managed his own pension affairs. Mr D didn't have any current savings or investments.

It's also fair to say that at the time of advising Mr D, HRCL knew of this very limited understanding he had. That's because when it asked him about what level of experience he had with investments, he said "none". I think that the 'phone calls with Mr D should have also revealed that he wasn't experienced in these matters. So, with this in mind, if eventually leaving his DB scheme and transferring to a personal pension, I think it was always obvious that Mr D would require ongoing support and financial advice to manage those funds in the years ahead. This would bring additional costs not found in Mr D's existing DB scheme and charges he'd never personally needed to consider. His future business as a new client was chargeable by HRCL at an annual fee of 1% of his existing balance². I've noted HRCL documentation referring to him as a "DFM³ Client" which I think demonstrates that it 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.

It's also very important to note that it was HRCL which was the regulated party here, and not Mr D. As I say, he had very little knowledge about pensions or investments. But HRCL was also charging a substantial sum of over £10,000 for providing the regulated advice, so Mr D had every right to assume it would be acting in his best interests.

² There was also additional fund charges

³ Discretionary Fund Management

However, against this backdrop, in my view there were significant weaknesses and failings present in HRCL's advice processes which meant it didn't properly act in Mr D's best interests or give him the information he needed in a way which was clear, fair and not misleading. I think, for example, that the evidence shows that HRCL was always pre-disposed to seeing that Mr D transferred his pension to a personal plan and its processes at the time were specifically designed to encourage such an outcome if at all possible. So, whilst I accept that Mr D probably went to HRCL with some already formed ideas about transferring away, his knowledge about these areas was extremely limited. HRCL's job wasn't to simply transact what Mr D might have originally thought sounded like a good idea, its role was to ensure that the advice was right for Mr D and fully met his overall needs.

In this context, I would normally begin my analysis of HRCL's advice by explaining the financial viability of transferring. What I mean by this is, what the financial comparisons were between Mr D's existing DB scheme - and the personal pension scheme he ultimately transferred to. But in this case, HRCL's position in defending this case is that transferring wasn't suitable and that it was Mr D himself that wanted to transfer. So, having said at the time of the advice – and again when defending the complaint – that transferring *wasn't suitable*, then it would clearly be very hard for HRCL to claim now that it *was*. The financial viability of the transfer therefore isn't the crux of the complaint. It isn't disputed and therefore I don't need to explain much more about this area.

For the record, I agree with HRCL that transferring from a financial comparison perspective wasn't suitable. The analysis carried out at the time showed that to buy a pension with broadly the same benefits on the 'open market', Mr D would need to pay around £439,000. This was substantially more than the original CETV of £184,258 he had then been offered. This therefore provides a very revealing window into the value he'd been giving up by transferring away from his DB scheme. I also considered the 'critical yield'. A critical yield is the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same benefits as the DB scheme. In Mr D's case the critical yield rate was high and not realistically achievable.

So, I think there were very clear indicators showing that transferring away was probably going to leave Mr D with much reduced pension benefits in the longer-term.

The 'insistent client' process used by HRCL

I've seen a large number of very similar cases to this one, where HRCL has used the insistent client process to transact transfers. I've also seen that many of these cases have revealed the process designed and used by HRCL to be substantially flawed. For this case, there were similar flaws, and I don't think Mr D was treated fairly.

Overall, I can see that HRCL included details about financial viability in its documentary submissions to Mr D and it explained similar issues to him over the 'phone. But I think there were significant shortcomings in HRCL's use of the insistent client process. In my view, Mr D wasn't genuinely an insistent client at all and this label was applied to him by HRCL to progress the transfer. I'll explain why.

I start by noting that as early as August 2020, and before the advice process was fully underway, HRCL was already promoting the idea of Mr D transferring from his existing DB scheme. Before any regulated advice was even provided, HRCL expressed to Mr D within this letter, the "*great news*" about his pension being worth £184,258 and told him he could receive a more or less immediate tax-free lump sum. But this was already assuming a transfer-out would occur and the figures quoted were not related to his existing scheme but rather, the amounts he'd get straightaway if he transferred. I think that in Mr D'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 tax-free element Mr D could immediately obtain *only* by transferring away from his existing DB scheme and into a type of personal pension.

In providing information in this way HRCL 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 D had several other options in relation to eventually taking his (existing) pension. There were also ways of achieving the aspirations he had to reduce debt and / or spend some money on himself and his family, again without transferring.

After this, on 11 August 2020, there was a 'fact-find' exercise designed to clarify Mr D's financial circumstances. However, I bear in mind that Mr D'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 this documentation 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 D accessing his pension early, most likely by transferring away from the DB scheme.

There then followed the letter of 20 August 2020 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 D. 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, HRCL 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 HRCL *genuinely* acted within the spirit of the regulations and whether it communicated with Mr D 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 D had. But the most egregious failure was that it was this letter which specifically introduced the whole concept of Mr D becoming an insistent client rather than Mr D himself. In fact, I doubt whether being an insistent client was a concept he himself had considered, and I'm sure he'd never heard of the term before. So, whilst this letter of 20 August began with a 'do not transfer' recommendation on page one, on page two it then directly provided an immediate and easy route for Mr D to just transfer away anyway. This is because the letter stated that if he still wanted to transfer, HRCL would treat Mr D as an insistent client and it told him what he needed to do. It said there were two options open to Mr D which were either not to transfer; or he could disregard the recommendation not to transfer and go ahead with it.

However, I think that 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 D therefore had to do was return these with the enclosed, pre-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 D 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 lacking. 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.

What happened after 20 August 2020?

As I've said, the letter of 20 August appeared to constitute a recommendation report of sorts. However, the lengthier PRR of 9 September I've mentioned earlier was received after Mr D had 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 D). 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 D would have found useful.

As can be seen by the sequence of events I've set out above, HRCL's full PRR was dated 9 September 2020 and thus came substantially *after* Mr D 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 20 August 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 D would have again found confusing.

I have carefully considered that by this time the so-called objectives Mr D had set out, explaining what he was trying to achieve, were well known to HRCL. Having looked at all the documents we still have available, and also having listened to a number of recorded telephone calls between the parties, Mr D had said he wanted to pay down his mortgage and other debts, buy a car, undertake some home improvements and go on holidays. None of these were unreasonable aspirations in their own right. And having heard Mr D speak about them, I formed the opinion of him being someone who dislikes having any debts and prefers to pay his own way through life where possible.

These qualities are laudable, but in my view, there were ample opportunities for HRCL to explain more comprehensively that action Mr D thought was required, simply wasn't necessary.

I begin with his mortgage. I've noted that at some point between these two letters, Mr D evidently changed his mind about how much he was intending to withdraw from his pension after he transferred. His original intentions in transferring, previously limited any withdrawals to relatively small amounts which the tax-free 25% lump sum would easily cover. But he later said he wanted to pay down his mortgage in full which would require a further £60,000. This larger withdrawal would therefore require over £90,000 more being withdrawn as this would be subject to tax and could even incur an effective tax charge of 60% in part, due to Mr D's annual 'income' in one year exceeding £100,000⁴. I think HRCL's handling of this was poor in that it failed to really demonstrate the obvious unsuitability of paying such a large amount in income tax to pay a mortgage which was already being paid in accordance with the normal payment plan.

Overall, I think there's evidence that HRCL didn't carefully look into his mortgage liabilities because the figures I've seen on the 'fact-find' simply don't add up. Nevertheless, the adviser accepted that Mr D was duly repaying his mortgage in the agreed way, that his loan-to-value was only around 32%, that his repayments were completely affordable, and that his mortgage was going to be paid off completely in six years - ahead of Mr D's NRA.

⁴ An income of over £100,00 result in a gradual clawback of the universal tax allowance, thus producing an effective tax rate of 60% over that amount.

His outstanding debts too appeared under control, with monthly payments of £592. As I've implied, all the evidence shows Mr and Mrs D appeared to live a modest lifestyle and still had around £900 left to spend each month on discretionary costs. In my view, the adviser made no effort to really explain these things and persuade Mr D that irreversibly transferring away from his DB scheme to achieve these goals just wasn't suitable for him. I do note that Mr D did have some other uses for the immediate money, but none of these appeared wholly out of reach given his financial situation, nor did they seem completely essential. I think that HRCL comprehensively failed to explain these things to Mr D and it allowed him to proceed on the basis that this was his money and he could do what he liked with it.

Loss of employer contributions, obligatory exit from the DB scheme (whilst still working for the employer), taxation on 'saved' personal pension contributions were all further important areas that Mr D seemed not to fully comprehend and which HRCL completely failed to explain to him in a way that he would have understood.

Many of these failures by HRCL to properly explain things to Mr D were set out in our investigator's view, which HRCL didn't respond to. However, I have considered the further point made by HRCL in its original response to the complaint, that its original advice processes also allowed for Mr D being invited to explain in his own hand why he wanted to go ahead against the advice. It also said that during a telephone call it sought to persuade Mr D to reconsider (and therefore follow the original advice *not* to transfer).

However, I think Mr D's own description merely shows the extent to which he was unable to fully contemplate the main and longer-term disadvantages of transferring away. It seems to me that Mr D hadn't been aware – or certainly hadn't considered – the issues of taxation, loss of employer contribution, becoming unable to easily rejoin the scheme, and loss of other scheme benefits. His focus was clearly on the more obvious and immediate issues of large amounts of cash being available. As for the telephone calls, I don't think that HRCL genuinely and comprehensively explained to Mr D all the reasons why transferring wasn't right for him. And I don't agree that it genuinely tried to change his mind or reinforce its original advice not to transfer, in a meaningful way.

Would better practice have changed anything?

I have considered whether, if HRCL had acted in Mr D'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 HRCL's view that Mr D would have carried on regardless i.e. that he always had a preference for transferring to a personal pension. But I think the evidence is persuasive the other way.

I do accept that Mr D had a genuine desire to successfully pay down his mortgage and other debts. And I think it's fair to say that after many decades in the workplace, Mr D probably wanted to 'treat' himself and his wider family by buying a car and going on holiday. But there's certainly no evidence that their living conditions or debts were so problematic as to make paying the mortgage and debt repayments to be absolutely necessary. All appeared part of a systematic and planned repayment schedule in each case; they were entirely affordable within Mr D's current financial means. There was also no apparent analysis that showed buying or enjoying some of the other things Mr D had mentioned was impossible, especially given that he and Mrs D appeared to have some reasonable levels of disposable income at hand each month.

I also don't think that HRCL clearly explained to Mr D that there were several onerous and detailed conditions about ever rejoining the pension scheme and that he'd be losing out in that he would not qualify for future employee contributions. The post-transfer options were, as a whole, very poorly addressed by HRCL to the extent I don't think Mr D properly realised

what he was actually giving up by transferring away. This included, but was not limited to, death in benefit cover which at the age of almost 60 I think would have been of interest to Mr D, particularly as Mrs D's pension provision was somewhat limited.

There was a further recommendation report issued which was effectively a copy of the 9 September one and several more weeks of administration whilst the transferring process continued. None of this changed anything and, ultimately, I think if Mr D had been given genuine and powerful arguments by HRCL about not transferring – and still being able to achieve his goals - then Mr D wouldn't have insisted. I think the arguments could have been much more persuasive and understandable and Mr D would have thought that paying over £10,000 for better advice, ought to mean he should follow it.

Fund selection

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

HRCL didn't act with due care and skill or in Mr D's best interests.

Given the failings I've set out above, I don't think it would be reasonable for me to even conclude that Mr D can truly be regarded as an insistent client. This transfer process did not begin because Mr D was an insistent client – it began because HRCL's processes were clearly designed to push people like Mr D 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, I believe HRCL then purposely led Mr D into a process which he neither asked for, nor fully understood the implication of. This narrative simply gathered pace and although Mr D 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. The wider process it adopted capitalised on Mr D's lack of knowledge of pensions and investment matters.

I am therefore upholding Mr D's complaint.

Putting things right

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

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 of 66½, 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 D'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 D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
 - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts HRCL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr D 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 D's end of year tax position.

Redress paid to Mr D as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, HRCL may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr D'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.

Our investigator recommended that HRCL should pay Mr D for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr D in his particular circumstances. This pension at the time represented a substantial proportion of his retirement provision and he was close to retirement age. In his situation I think the thought of losing material benefits would have impacted Mr D. So, I agree the recommended payment of £500 for distress and inconvenience. HRCL should pay Mr D this amount in addition to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation of up to £430,000 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 £430,000, 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 D the compensation amount as set out in the steps above, up to a maximum of £430,000.

Harbour Rock Capital Limited must also pay an additional £500.

Recommendation:

If the compensation amount exceeds £430,000, I also recommend that Harbour Rock Capital Limited pays Mr D the balance.

If Mr D 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 D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 12 March 2025.

Michael Campbell
Ombudsman