

The complaint

Mr M complained about advice he was given in 2018 regarding the transfer of his defined-benefit (DB) pension scheme, to a type of personal pension plan.

I can see that Mr M 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 M *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 M 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 M first became interested in assessing whether he might access some of his pension savings early, in 2018. We know that HRCL had initial dealings with Mr M 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 M was broadly as follows:

- Mr M was 58 years old and co-habiting at the time. His intention was to get married in the coming months.
- Mr M didn't own a property and didn't have any savings or other investments. He had recently changed jobs and earned £20,000 per year. His partner was employed and had her own salary and pension. Mr M expected to get the state pension at the age of 66 and had very recently joined his new employer's pension scheme. However, there's no evidence he had any other pension(s).
- Mr M approached HRCL for advice about his DB pension, which was from a previous employment, and so was in deferral. The normal retirement age (NRA) was 66 years and if he transferred this pension away and into a personal type of pension scheme, the cash equivalent transfer value (CETV) was £63,465.
- If keeping the pension where it was and *not* transferring, Mr M's deferred scheme was projected to pay around £5,063 per year at the NRA. Alternatively, if taking a reduced annual pension of £3,265 he could also access a tax-free lump sum of £21,765 at the NRA. There were also options for Mr M to access this pension earlier than the NRA. However, this would involve an actuarial reduction which would reduce the annual pension and tax-free lump sum considerably (depending on what age taken).

- Mr M wanted to access just under £25,000 from his pension to pay for four areas of discretionary spending which he deemed important to him.

After contacting HRCL for pension advice Mr M first discussed his financial affairs with one of its paraplanners, who was not a regulated financial adviser. Mr M explained that he wanted to access money from his DB pension scheme straightaway because he wanted money to fund four areas of spending. He was hoping to get married soon and pay for the wedding. He also wanted to pay for some items in a new home he and his partner were imminently moving to. Mr M also had some modest debts that he wanted to pay down, not least because he felt he was paying unnecessary interest, and his intention was to free up these monthly payments. Finally, Mr M said he wanted to financially help his student daughter because she was experiencing hardship and was contemplating leaving university because of this.

The transfer and regulatory processes started around July 2018 but then took several more months to complete; Mr M eventually transferred to a personal pension in early 2019.

Mr M first raised a complaint about HRCL's advice in May 2024. 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 M not to transfer away and that the transfer only happened when Mr M became an insistent client. HRCL says that only when Mr M 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.

In July 2024, Mr M referred his case to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it shouldn't be upheld. The investigator said that whilst HRCL's processes around its categorisation of Mr M being an insistent client were poor, they thought that Mr M was so determined to go ahead with the transfer that he would have transferred whatever the advice. They therefore recommended that this shouldn't be a complaint we should uphold.

Mr M didn't agree with this and as the matter hasn't been resolved informally it now falls to me to make an ombudsman's 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 M's best interests.

I have considered also, the regulatory landscape with regard to insistent clients. At the time when Mr M 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. However, I think that the evidence in this case is persuasive that from the outset, Mr M wanted to transfer his pension – and would have done so whatever HRCL did.

I'm therefore not upholding Mr M's complaint.

Introductory issues

I've noted what HRCL says about what first brought this pension transfer about. HRCL says, for example, that it was Mr M who "*drove the transaction*" throughout. It also says that he approached it, rather than the other way around. HRCL says Mr M consistently maintained throughout the entire process, that he was determined to transfer from his DB scheme and that he needed to draw an immediate lump sum for the four financial objectives I've identified above. HRCL said that to achieve these objectives, Mr M had provided it with an overall figure of just under £25,000 comprising of his 25% tax-free lump sum allowance (£15,866), and another part (£8,750) which would be met from the remaining funds in his transferred pension, and which would be subject to income tax.

Whilst I do fully understand the point being made about Mr M's apparent desire to transfer, it's also very important to note that it was HRCL which was the regulated party here, and not Mr M. I've factored this into my decision-making, and I think it's quite clear that Mr M had very little knowledge about pensions or investments. With this in mind, it was important that he was told about all the options he might have had available to him to raise cash for his four objectives. He also needed to be made aware of what the implications might be for his

longer-term future in retirement if he used up too much of his pension at the comparatively young age of 58. I think it's also very important to note that HRCL was charging Mr M for providing the regulated advice. So, Mr M had every right to assume that HRCL would be acting in his best interests and that the service he would get would be comprehensive.

Nevertheless, it was Mr M who responded to an on-line advertisement from HRCL about potentially releasing pension cash. And I think the evidence shows he probably went to HRCL with a pre-conceived idea about what he wanted to do, which was to raise, what for him, was a reasonably large amount of cash. Again, I should stress that HRCL's job was still to provide advice that was in Mr M's best interests, rather than to just transact what he might have thought was a good idea. However, I've noted that as early as the 'fact-find' telephone call - which preceded any financial advice - Mr M said to the HRCL paraplanner that, "*I'm definitely going to take the money, it doesn't matter what advice I get*". So, like our investigator, I too think that this demonstrates that Mr M had a very strong pre-disposition to transferring from his DB pension scheme and that his need to release immediate cash was very important to him.

Our investigator mentioned similar themes in their 'view', which was issued in 2024, about Mr M's apparent keenness to transfer away from his DB scheme. And I myself have listened to a number of telephone calls between HRCL and Mr M where I agree that he showed a strong (and sometimes impatient / frustrated) desire to forge ahead with transferring at several points during the latter half of 2018. It's clear to me that Mr M became exasperated several times during numerous telephone calls when HRCL appeared to be taking what he considered far too long to get his transfer completed and his monies released.

Financial viability

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 M's existing DB scheme - and the personal pension scheme he ultimately transferred to.

However, in this case, HRCL's position in defending this case is that transferring wasn't suitable and that it was Mr M 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 suitable*. The financial viability of the transfer therefore isn't the crux of this 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 M would need to pay around £169,194. This was substantially more than the original CETV of £63,465 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.

HRCL also mentioned the critical yield rate. The critical yield is essentially the amount of annual growth a transferred pension would need to achieve to make the transfer worthwhile. In Mr M's case HRCL described the critical yield figures as being high, and so this too showed that he'd probably see much reduced pension benefits in the longer-term, as a result of leaving his DB scheme.

The 'insistent client' process used by HRCL

I think there were significant shortcomings in HRCL's use of the insistent client process.

HRCL provided Mr M with a letter dated 22 October 2018 entitled, *“Important news about taking money early from your pension”*. This letter mentioned that he wanted to transfer the CETV to a type of personal pension and access the 25% tax-free lump sum which would be £15,866. And because his financial objectives added up to more than this, his intention was to also withdraw a further sum of £8,750 which would be taxed at his usual rate. The letter, which was from a named financial adviser said, *“since our conversation, we have completed the initial phase of research and analysis and **we strongly recommend that you do not transfer** [your DB scheme] because of the guarantees / benefits you will be giving up”*.

However, the letter then explained that if he still wanted to go ahead and transfer, Mr M could become an insistent client. Under a heading, still on page 1 of the same letter, entitled, *“what happens if you still want to go ahead and access your pension early?”* HRCL said that if he wanted to do this there was an Options Form attached which he’d need to read and sign. This Options Form basically set out that he could disregard the advice and press ahead with transferring to a type of personal pension scheme, or he could accept the advice and not transfer.

Mr M duly signed the Options Form, ticking the box for option number one which stated directly next to where he ticked, *“I understand your recommendation not to access my [DB scheme]. However, I want you to continue reviewing my pension, setting up a flexi-access drawdown so that I can release a tax-free cash lump sum of £15,866 and a gross taxable lump sum of £8,750 from my pension”. I am aware of the associated risks in doing so (outlined in the declaration attached) and the additional £1,750 due in tax in the tax year 2018/19.”* The attached declaration explained that Mr M had received a recommendation not to transfer, but he wanted to go ahead, nonetheless.

I acknowledge that if viewed through a certain lens, the wording contained in parts of this letter did set out relatively clear reasons as to why transferring wasn’t suitable for Mr M. 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 noted that the first of the two options was to disregard the advice. I’ve also noted that all Mr M had to do at this stage was to tick a box and return the Form in an included pre-paid and pre-addressed envelope. 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 M in a way that both met his information needs and in a way that was clear, fair and not misleading.

Overall, I think there were material failures in the process adopted by HRCL. The most egregious failure here was that it was this letter which specifically introduced the concept of Mr M becoming an insistent client rather than Mr M 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 22 October began with a ‘do not transfer’ recommendation on page 1, on the very same page it then directly provided an immediate and easy route for Mr M to just transfer away anyway. This is because the letter stated that if he still wanted to transfer, HRCL would treat Mr M as an insistent client and it told him what he needed to do.

I therefore think that portraying his options in this way was simply an open invitation for him to completely disregard the advice. An Options Form was enclosed together with an Insistent Client Declaration and all Mr M 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.

What happened after 22 October 2018?

As I've said, the letter of 22 October appeared to constitute a recommendation report of sorts. However, there then followed a lengthier Pension Review Report (PRR) of 9 November 2018. This means this was received after Mr M had already returned his Options Form, rather than *before*. The PRR was a much more in-depth document with more detailed analysis and information about the challenges of maintaining an income in retirement which I think Mr M would have found useful.

As can be seen by the sequence of events, HRCL's full PRR was dated 9 November 2018 and thus came *after* Mr M 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 first adviser's letter of 22 October with a further and more detailed PRR the next month. But I think HRCL's overall approach in this particular matter was consistent with other failures I've seen. I think Mr M would have found this insistent client approach to be confusing.

But Mr M completed a further insistent client declaration form in December 2018 and as I'll set out below, there were further 'phone calls between the parties where it was explained to Mr M that he was going against advice and that he was giving up valued and important pension guarantees.

Were there any other options?

Until this point HRCL had simply provided Mr M with a binary choice of either keeping his pension where it was (within the DB scheme) or transferring its entirety to a different type of scheme. However, we know that Mr M's DB pension did allow for situations in which he could 'retire' early from the scheme. This would have involved selecting an earlier age at which he could start to crystallise his funds.

HRCL didn't present these options to Mr M. In my view, this was a material failure although from what I've seen, he'd only have been able to release an immediate cash sum of around half of what he needed by remaining in his DB scheme and taking the benefits straightaway. Mr M also seemed to have no other way of raising the funds he wanted.

Would better practice have changed anything?

I have considered whether - if HRCL had not immediately and consistently promoted the option of Mr M disregarding proper advice - he would have taken a different course of action. However, even though I can see that HRCL did quite a few things wrong in its dealings with him, I'm afraid I agree with our investigator that Mr M would have still wanted to go ahead and transfer. Essentially, I think Mr M's desire to transfer was so powerful that he made a definitive choice from the outset about what he was going to do, and he was not going to have his view changed.

I therefore don't think better practice by HRCL would have changed anything in this particular case.

I say this because the evidence here is that Mr M responded to an on-line advertisement from HRCL about potentially releasing pension cash. Of course, he was entitled to do that

but as I've explained above, his pre-disposition from the start was strongly to transfer away from the DB scheme.

In the 'fact-find' call with an HRCL handler, Mr M unilaterally said his intention was to transfer whatever the subsequent regulated advice was. And after filling out HRCL's insistent client documentation, Mr M received another call, the purpose of which was to check his understanding that he was 'going against advice' and that he was aware of all the benefits and guarantees he'd be giving up by leaving his deferred DB scheme. During this call, I think it's fair to say that Mr M showed considerable frustration at what he perceived to be unreasonable delays in transferring and releasing his money. He said, *"I'm getting a bit fed up with the way this is dragging on.... I'm going over the same thing. You told me the other week what I'd be giving up, I've read on the letter that I sent back to you what I'd be giving up, now you're asking me again over the phone what I'm giving up. If I wasn't sure, I wouldn't be going ahead with what I'm doing"*.

Mr M then reaffirmed that he'd read the letter he'd received from HRCL about transferring away from his DB scheme and the benefits he'd lose. He said he had *"read it through and I'm quite satisfied with what I'm giving up"*. The HRCL call-handler then went through the DB scheme pension estimates payable at the NRA of 66 and asked Mr M if he fully understood (and the call-handler then asked him to repeat the suite of annual figures previously set out to him, verbally and in writing). When asked if he understood this he said *"yes, that's correct and that's why I've sent the forms back"*. Mr M then re-confirmed the four areas of spending he required the funds for which comprised of his marriage, his new home, his daughter who required financial assistance, and the repayment of his own modest debts. In closing the call, Mr M expressed more frustration and reaffirmed his desire to transfer by saying, *"I'm waiting to get married. I can't do nothing [sic] until I get this money. My daughter's having financial hardship at university – she's really struggling, she's talking about giving up her course because she can't afford it.... And all this is dragging on"*.

I've listened to three other calls between HRCL and Mr M. I think it's fair to say that collectively these demonstrate a similar approach from Mr M, which was that he was absolutely certain that he wanted to transfer away from his DB scheme and that he wanted to progress these matters as quickly as possible. On several occasions Mr M cited his forthcoming marriage as an area where he felt his life was 'on hold' and that the delays in accessing his pension funds were causing him considerable anxiety and potentially additional costs related to a venue booking. Another priority area was the distressing financial situation his daughter was in and that her continuing financial predicament was also causing Mr M a substantial amount of worry.

Summary

This has been a difficult case to come to a decision on, and I do understand that it requires a careful explanation.

On one hand, I think the evidence does show that HRCL didn't always act with due care and skill or in Mr M's best overall interests. HRCL's suitability and insistent client documentation was leading and heavily templated. The wider processes it adopted capitalised on Mr M's lack of knowledge of pensions and investment matters, and he wasn't given a comprehensive description of his early retirement options within his existing DB scheme.

However, even though significant failures were present in HRCL's approach, I still need to bear in mind that this was Mr M's own money, and he had the right to use it in the way he felt best suited him. There is no evidence he lacked the capacity to make decisions and in this context it's clear to me that from the very outset of his dealings with HRCL, Mr M showed a strong determination to transfer away from his DB scheme and into a personal pension plan

for the purposes of releasing cash. Even before any regulated advice or insistent client issues became a feature of his case, Mr M had stated that he was going to transfer whatever happened. I think this mindset was highly relevant and it persisted over the course of his dealings with HRCL.

In my view, Mr M's determination came from a genuine and understandable desire which he had to advance his lifestyle, improve his finances, and to help others. His intention was to pay for a wedding, contribute towards a new home with his partner, reduce his debts and help his daughter who was suffering financial hardship. I think these were laudable objectives and ones which held powerful emotional and practical principles for Mr M.

The amounts each of these four areas of financial objectives had been individually costed and to me they seemed reasonably thought through and precise. There was also no other way of him raising the money as he had no savings, no collateral and he had spoken of past credit problems; his income was also low. So, whilst accepting that Mr M should really have been told more about the possibility of remaining in his DB scheme and crystallising that scheme early, I think it's obvious that this would have been an option quickly dismissed by Mr M as it failed to generate even close to what he thought he needed at the time.

That Mr M later became extremely frustrated about the lack of progress with his transfer isn't on its own a defining aspect in my decision. But in expressing that frustration, Mr M confirmed several times that his financial objectives were important to him, that transferring his pension suited his needs, and that he knew he was giving up specific guarantees and pension benefits in the future.

I do not agree with Mr M's allegations that the pace and nature of his 'phone calls and general dealings with HRCL made the whole process difficult to follow. Nor do I agree that he didn't understand the documentation he was sent. Everything I've seen and heard shows it was much more likely that Mr M fully understood both what he was told and what he was asked to read, even to the extent that he became irritated at being consistently asked if he understood things.

For all these reasons, whilst I recognise there were failures by HRCL, in this specific and individual case, I don't think these failures ultimately affected or changed anything. I think that Mr M understood what he was doing and had no other way of meeting his financial objectives. He used the 'pension freedoms' legislation Parliament enacted in 2015 which was designed to give people much more say over their retirement funds.

I'm sorry to disappoint Mr M, but I'm not upholding his complaint.

My final decision

I do not uphold this complaint.

I do not require Harbour Rock Capital Limited to do anything more.

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

Michael Campbell
Ombudsman