DRN-5222710

The complaint

Mr G complains that HARBOUR ROCK CAPITAL LIMITED trading as Portafina ('Harbour Rock') gave him unsuitable advice about the transfer of his deferred defined benefits ('DB') pension scheme to a self-invested personal pension ('SIPP'). He complains that he is worse off as a result of Harbour Rock's failings.

What happened

Around November 2019 Mr G explains that he contacted Portafina Investment Management Limited in response to an advertisement about the potential to release cash from his pension. In 2023 Portafina changed its name to Harbour Rock Capital Limited and it is Harbour Rock that is the correct respondent for Mr G's complaint now. For simplicity, I will simply refer to Harbour Rock throughout this decision for the activities complained about.

When Mr G approached Harbour Rock, he had deferred benefits in a DB pension. He was aged 56 and, whilst not yet at the DB scheme's normal retirement age, he was of an age where he could already access benefits from his pension.

Harbour Rock obtained details of Mr G's DB pension from the scheme administrator. It was provided with a cash equivalent transfer value ('CETV') around £116,000.

Mr G's pension transfer analysis indicated that the DB scheme would provide a pension at age 62 around £6,833 a year. It calculated that the critical yield – the annual investment return (after charges) that must be achieved on the transferred funds to provide benefits at least equal to those given up under the DB scheme – to be 20%. Harbour Rock also calculated the Transfer Value Comparator ('TVC'), which was a regulatory requirement intended to show the cost of replicating the DB scheme benefits in a defined contribution scheme. This showed that the cost of the benefits was around £147,000 more than the CETV that was offered.

In March 2020 Harbour Rock carried out a fact-find with Mr G over the phone with one of its paraplanners. It established the following:

- Mr G was separated from his wife.
- He had a 15 year old daughter who lived with him and was financially dependent on him.
- He co-owned his home with his estranged wife and had around £11,000 remaining on his mortgage.
- Mr G had no savings but no debts other than his mortgage.
- He was working and had a net monthly income of £1,516 which met his expenditure.
- Mr G had a current defined contribution workplace pension receiving employer and employee contributions.

In this call Mr G explained that he wanted to transfer his pension and access tax free cash in order to pay off his remaining mortgage (around £11,000), to pay for an extension to his property (around £10,000) and for additional (uncosted) work on his home. He acknowledged that these were not necessary expenditures.

On 11 March 2020 Harbour Rock wrote to Mr G with its recommendation. On the first page it told Mr G, "*we strongly recommend that you do not proceed.*" This message was highlighted in red. It set out the following reasons for this recommendation:

- The loss of valuable guaranteed benefits.
- The immediate need for capital doesn't justify the loss of guarantees.
- The growth rate needed to replicate the DB scheme benefits is high.

The report explained that a drawback of remaining in the scheme was receiving a tax-free cash entitlement likely to be less at retirement. It then set out what Mr G could do if he still wanted to go ahead. It explained that it could treat him as an 'insistent client' and provided him with an option form where he could sign to accept or disregard the recommendation. On 13 March 2020 Mr G signed to disregard the recommendation so he could transfer in order to release £29,162 in tax-free cash.

On 26 March 2020 Harbour Rock provided a second suitability report based upon the premise that Mr G was insistent on transferring against the initial recommendation. The second report re-iterated the initial advice, but then provided a recommendation that Mr G transfer his DB scheme CETV to a SIPP.

Mr G went ahead with the transfer and received his full tax free cash entitlement as requested with the residual fund being invested in line with Harbour Rock's second recommendation.

In July 2024 Mr G complained, via a professional representative, that Harbour Rock provided him with negligent advice causing him to suffer a financial loss. Mr G's representative argued that he had not been fully informed of the benefits that he would be losing by transferring his DB scheme and that he would not have transferred had that been discussed. It argued that Mr G did not fully understand the insistent client process.

Our investigator looked into what happened and thought that Mr G's complaint should be upheld. Because he was unable to informally resolve Mr G's complaint it has been referred for 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 taken into account relevant law and regulations, regulator's rules, guidance and codes of practice, and what I consider to have been good industry practice. This includes, but is not limited to:

- PRIN 2.1 – principle 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

- PRIN 2.1 – principle 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.

- The provisions in COBS 19 which specifically relate to a DB pension transfer.

Of specific relevance in this case is that, since 2018, COBS 9.5A included additional guidance on insistent clients. It defines who is an insistent client and 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 – required:

(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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

Harbour Rock's advice

I think that it is clear that Harbour Rock did not actually recommend that Mr G transfer his DB scheme. Which means that both Harbour Rock and Mr G agree that the transfer was not likely to have been in Mr G's best interests. Harbour Rock has shown us that it carried out pension transfer analysis, and that its headline conclusion for Mr G was that he should retain the benefits that were already offered by his DB scheme. On the face of it, this followed one of the key requirements in COBS 19. Which was that Harbour Rock should start from the point that a transfer from the DB scheme was unsuitable.

It set that out in its initial recommendation and provided clear information about the benefits that he would be giving up at the DB scheme retirement age of 62. I have listened to the calls that Mr G had with Harbour Rock's paraplanner and I am persuaded that he understood that he was choosing between giving up guaranteed benefits in the future for an immediate benefit now. And that he was likely to be worse off in the future.

I am less persuaded however, that Harbour Rock did enough to clearly explain to Mr G why the transfer wasn't in his best interests. I say that because it understood that Mr G's starting assumption was that he wanted to access tax-free cash immediately. Good advice would have meant explaining to Mr G **why** the option that he was set on was unsuitable, not simply telling him that it wasn't. The reasons Harbour Rock provided to Mr G were simplistic bullet points as I set out previously. These reasons were all correct, but were generic and would have applied equally to most DB pension transfers. What Harbour Rock's recommendation letter lacked was the specific context that was applicable to Mr G's circumstances.

For instance, Harbour Rock understood that Mr G intended to pay off his mortgage early in order to be debt free. This was understandably a powerful motivator for Mr G. In the first call with the paraplanner Mr G appeared to consider that the savings in interest payments were valuable. In fairness to Mr G, that would appear to make sense. Harbour Rock's adviser has made no comparison of the net advantage of repaying the mortgage early against the net long term cost of giving up the retirement benefits of the DB scheme. When considering the requirement of Principle 7 (set out above) I think this is evidence of Harbour Rock's failure to consider Mr G's communication needs and provide him with clear information. It meant that Mr G had no clear idea why the benefit of repaying his mortgage and reducing the interest did not outweigh what he was giving up to achieve that.

I have said that I think that Harbour Rock gave Mr G a general understanding that taking tax free cash now would leave him with less income in the future. Which, given the analysis that Harbour Rock did was likely to be correct. What would have made this insight more valuable and impactive for Mr G would have been if Harbour Rock had provided him with projections of how much lower that income might end up being in retirement.

Harbour Rock had carried out a risk profile for Mr G and considered that he had a moderately cautious attitude to investment risk. So it ought to have provided an illustration of what his income in retirement may have been should he follow the course of action that he appeared to have settled on prior to requesting financial advice. Mr G would then have understood 'how much' worse off he was likely to be. This was a significant gap in Harbour Rock's recommendation.

I make this last point because COBS 19.1.1C(4) at the time dictated that Harbour Rock, "*must take reasonable steps to ensure that the retail client understands how the key outcomes from the appropriate pension transfer value comparator contribute towards the personal recommendation*." Which I don't think Harbour Rock's recommendation did.

COBS 19.1.2B required Harbour Rock to compare the benefits and options under the DB scheme with those available under the proposed arrangement. I think this was done in a very superficial way. It presented a table that set out the benefits at age 62 for the DB scheme (£4,731 a year at age 62 and £31,539 tax-free cash) against no guaranteed income with the proposed scheme. With a simple statement that it may be considerably less. As I said above, the failure to provide some form of illustration here was not a fair or reasonable way to help Mr G understand the full implications of a transfer. And I think was a failing under this part of COBS 19.

I'm also concerned at the fact that Mr G had no contact with a financial adviser to discuss the advice. The only conversations that Mr G appear to have had with Harbour Rock were with a paraplanner. This was fine for the purposes of a fact-find. And I note that the paraplanner was clear to point out in the first call that she would not be providing any advice or recommendations. But the follow up to the advice letter was done in another call with the paraplanner. It lasted a little over three minutes and provided no commentary on the recommendation or supporting comment to explain why that was likely to be the most suitable thing for Mr G to do with that pension. Instead, the sole purpose of this call appears to have been as a way for Harbour Rock to document in some way that Mr G understood that he was giving up guaranteed benefits. In the absence of clearer information about the most likely consequences, I'm not satisfied that this call added any further clarification for Mr G.

Overall, I do not think that the way that Harbour Rock communicated the recommendation to Mr G was fair or reasonable. For the reasons I've given, I think its explanation was superficial and lacked key information that would have made it persuasive.

Insistent client

My above observations are relevant to the way that Harbour Rock set out to treat Mr G as an insistent client. And, as I will explain, I am not satisfied that Harbour Rock treated Mr G fairly in the way it went about treating him as an insistent client.

It was apparent to Harbour Rock that Mr G was a customer who was coming to it for specific advice on the suitability of transferring his existing pension to access immediate cash. This is a key consideration as it was clear that he did not simply want retirement planning advice. Harbour Rock therefore understood that Mr G was asking it to advise him on something where the starting point ought to have been that it was unsuitable (according to COBS 19).

I have concerns about the way that Harbour Rock corresponded with Mr G during the advice process. Prior to carrying out any analysis of his DB scheme its welcome letter of 30 November 2019 told him, "*Thank you for returning your pension review information form. We have now contacted your current pension provider requesting information we need. Once this information is received we will contact you to confirm how much tax-free cash you can take from your pension…*" I think that this reiterated to Mr G that he was starting a process that would lead to him accessing his tax free cash. Nothing in this welcome letter even hints at the fact that, in most cases, such a transfer would be unsuitable.

The fact-find call that Mr G had with the paraplanner did nothing to prepare Mr G for the fact that it may recommend that he didn't transfer. I do accept that phone call was fact finding and not part of the advice process. But the pension transfer analysis had already been completed and the TVC was available. This tended to show that the transfer offered very poor value. Yet the conversation tended to acknowledge Mr G's reasons for maximising his tax free cash in a positive way. For example, when he spoke about clearing his mortgage, the paraplanner commented that it would be nice to have the mortgage payment back in his pocket each month. With no comment about what he would be losing in income each month throughout his entire retirement.

When Mr G received Harbour Rock's recommendation letter it explained that its recommendation was that he should not transfer. Which I think, given the prior correspondence, was likely to be a fairly surprising message. He was, by that stage, expecting to be receiving around £29,000 tax-free cash and had worked out how that would be spent. But immediately after giving its headline recommendation in its report Harbour Rock went on to point out again to Mr G what the drawbacks of its recommendation were. It reminded Mr G, "*the drawback of remaining in your scheme consists of receiving a tax-free cash entitlement that is likely to be less than 25% at retirement and having set death benefits which usually only cater for your spouse.*" My concern with this is that Harbour Rock was undermining its own finding by drawing Mr G's attention again to, what it described as, drawbacks of doing what was in his best interest.

Given my findings above about the lack of detail in this recommendation, Harbour Rock's comments about the tax-free cash taken on more significance for me. It contributes to make this recommendation far clearer overall.

I am also concerned at the way that Harbour Rock followed its recommendation by telling Mr G what to do if he still wanted to go ahead. I find this surprising because I would expect the starting point for any financial adviser would be an expectation that its advice would be followed. It should not start by assuming that its professional, considered, and evidenced recommendation, would not be persuasive for its customer. Yet that is exactly the approach that Harbour Rock appear to have taken here.

I set out above what the provisions are in COBS for insistent clients. So I certainly recognise that firms are entitled to facilitate a transaction for a client against a recommendation if the client clearly wishes it to. And there will, of course, be times where a consumer is not persuaded by their advisers' recommendation. But I would still expect these cases to be rare occasions. I would not expect to see that an adviser caveats the recommendation it makes with how its client can disregard it. The recommendation should be provided in a clear and not misleading way without the accompanying explanation and proforma for an insistent client process. I think this demonstrates that Harbour Rock set out an insistent client option for Mr G when it need not have, and it made it far too easy and attractive for Mr G to act in a way that Harbour Rock had identified was not in his best interests. Which was contrary to COBS 2.1.1R and PRIN.

The fact that Harbour Rock then went on to get Mr G to sign declarations that he was being treated as an insistent client did not undo the mistakes that it had made that got Mr G to that point.

If Harbour Rock treated Mr G fairly, would he have acted differently?

I've explained above why I don't think Harbour Rock's recommendation provided the necessary supporting evidence that would have enabled Mr G to more reasonably understand why and how much he would be better off by retaining his DB scheme benefits. It meant that he made a decision to go ahead based on insufficient information. The ease with which Harbour Rock sought to take Mr G through an 'insistent client' process was flawed. And pointed to an expectation that its 'recommendation' was an irrelevant process that simply needed to be gotten out of the way so that Mr G could do what he thought was best at the outset.

Financial advice for this type of transfer was mandatory because consumers do not always appreciate the value of the benefits already available in a DB scheme. Quality financial advice is expected to add value and prevent consumers from acting in a way that may not be in their best interests. If Harbour Rock's advice had been more balanced and set out to help Mr G understand why it wasn't in his best interest to transfer then I think that he would, on balance, have better understood the value of his DB benefits and therefore decided not to transfer.

I have listened to the phone calls and I understand that Mr G had a genuine desire to access the maximum amount of cash available to him. Which, at that point in time, meant transferring. So I do accept that he certainly came to the process wanting to do that. But I think that better advice would have meant exploring his specific circumstances in more detail. It would have helped him understand why clearing his mortgage by using his pension was likely to cost him more overall than by simply continuing to make his mortgage payments (which were affordable to him). He would have understood that the tax free cash available to him from his DB scheme, at that time and onwards, may well already be enough for his needs. Harbour Rock could have explored other options to fund the things that he wished to do. Instead of just asking Mr G if he'd considered other options to finance those things himself. Suitable advice would have helped Mr G understand these things and why it wasn't a good idea to permanently sacrifice the quality of his retirement to achieve objectives that were not absolutely necessary.

For these reasons I think, on balance, that Mr G would not have transferred his DB scheme but for Harbour Rock's failings.

Putting things right

A fair and reasonable outcome would be for HARBOUR ROCK CAPITAL LIMITED trading as Portafina to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the DB scheme.

HARBOUR ROCK CAPITAL LIMITED trading as Portafina should 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.

For clarity, compensation should be based on the scheme's normal retirement age of 62**,** 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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, HARBOUR ROCK CAPITAL LIMITED trading as Portafina should:

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

Redress paid directly to Mr G 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 CAPITAL LIMITED trading as Portafina may make a notional deduction to allow for income tax that would otherwise have been paid. Mr G'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.

My final decision

For the above reasons I uphold Mr G’s complaint and direct HARBOUR ROCK CAPITAL LIMITED trading as Portafina to put things right in the manner that I set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 8 December 2025.

Gary Lane
Ombudsman