

The complaint

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

Harbour Rock Capital Limited is now responsible for answering this complaint. Therefore, to keep things consistent, I'll refer mainly to "HRCL".

HRCL initially recommended that Mr B *shouldn't* transfer his DB 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 B 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 B says he responded to an on-line advertisement by HRCL in 2021 offering its services as a pension adviser. Mr B was then 54 years old and approaching 55, the age at which he'd be able to access his pension under the rules in place at that time.

Information gathered about Mr B's circumstances was broadly as follows:

- He was 54 years old and married. He was employed and said he had a joint monthly net income of around £3,461 per month. Mr B said his outgoings mainly matched his income.
- Mr and Mrs B lived in rented accommodation and had around £1,000 in savings. They had some debts which were related to credit cards (around £10,000) and car loans / leases. The overall cost to service Mr and Mrs B's total debt was £654 per month.
- The DB pension scheme this complaint relates to, is connected to a previous term of employment Mr B had between 2011 and 2020 and so he was a deferred member of this scheme. The cash equivalent transfer value (CETV) was initially given as £67,643 although this increased to £72,810 during the extended time period in which Mr B was seeking the advice from HRCL¹. The normal retirement age (NRA) of this DB scheme was 65. The pension also contained options for early retirement from the scheme which would be subject to actuarial reductions depending on age.
- Mr B also had two defined contribution (DC)² pensions. It seems one was with his new employer with around £8,800 invested – I'll refer to this as "Pension A". And the

¹ CETVs are usually only valid for a few months. Another one has to be obtained if the transfer process hasn't completed.

² With a DC pension (sometimes called money purchase) you build up a pot of money that you can use to provide an income in retirement. Unlike DB schemes, which promise a specific income, the income you might get from a defined contribution scheme depends on factors including the amount you pay in, the fund's investment performance and choices you make at retirement.

other was related to past self-employment Mr B had – the 2021 value of this was around £29,000. I'll refer to this as "Pension Z". Neither "Pension A" nor "Pension Z" are subject to any complaints (although they are relevant to Mr B's wider financial circumstances at the time).

Mr B had an initial 'fact-find' call with HRCL during which he confirmed that his purpose in contacting it was that he wanted to free up some money from his existing DB pension to help pay down some debts and have what he called more flexibility. He also envisaged he would need some money soon to put down a deposit on a new home.

On 10 September 2021, HRCL sent Mr B a first recommendation letter and report entitled "*Your pension review report*". 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 approximately £67,600 (although this was already an expired figure). But it said that the cost to replicate the benefits of this DB scheme if Mr B transferred to a type of personal pension, was £149,000. This basically meant that to buy a pension in a type of plan which had similar benefits to his existing DB scheme, this would cost around £81,400 *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 B not to transfer away from his DB pension. As I'll explain more about later, the recommendation specifically said, "***We strongly recommend that you do not transfer your [DB] scheme, and instead release the entire proceeds of your [Pension Z] pension***".

However, the letter also included a section further down entitled, "*What happens if you still want to go ahead and transfer against our advice?*" In this section HRCL stated that if he still wanted to transfer, it would need to treat Mr B as an "*insistent client*". It said that a member of HRCL's team would get in touch with him at a later date to discuss matters, if this was the case.

On 28 September 2021, Mr B signed an 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 £18,926.*" He also confirmed he didn't want to use the entire proceeds of "Pension Z" to release cash (and which had formed a key part of the advice not to transfer away from his DB scheme).

The documents also included an Insistent Client Declaration section where Mr B 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 B also wrote down, in his own words, why he wanted to proceed with the transfer. A further two 'phone calls took place with HRCL where Mr B was asked if he understood what he was giving up by transferring away from his existing scheme.

In November 2021, HRCL sent Mr B a second recommendation report. However, this set out much the same information as contained in the previous recommendation document of 10 September. For example, it contained confirmation that Mr B wanted to disregard HRCL's recommendation, and thus, as an insistent client, HRCL further recommended that he transfer his DB scheme to a new personal pension plan 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 asked Mr B to read this second recommendation report and if he agreed with it then he should sign the enclosed forms and return them.

The letter also stated that Mr B had a balanced attitude to risk. His apparent objectives for making the transfer were cited as being to release tax-free money to pay down his debts and provide flexibility to get a mortgage on a shared-equity home.

Mr B first raised a complaint about HRCL's advice in early 2024. He said he wasn't correctly advised, and he now thought that he may have lost money as a result of transferring away from his DB scheme.

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

Dissatisfied with HRCL's response, in April 2024, Mr B 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 Mr B had been told several times that he shouldn't transfer. The investigator also implied that Mr B appeared so determined to transfer that he would have gone ahead to do so, no matter what HRCL said or did.

I issued a provisional decision (PD) about this complaint in April 2025 in which I too said the complaint shouldn't be upheld in Mr B's favour. A relevant theme of that PD was that, whilst I acknowledged some failures by HRCL, the evidence showed Mr B had been advised clearly and in simple language not to transfer. He was also told and shown how he didn't have to use or access his DB pension at all to obtain the cash he wanted at that time – this could be achieved by using another and more flexible pension that he had in the form of "Pension Z". With these issues in mind, and with the other evidence I had considered, my PD said everything pointed to Mr B being so determined to transfer, that this would have always been the likely outcome.

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 B's best interests.

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

Finally, I've considered the comprehensive response to our investigator's 'view' that was sent in by Mr B's representatives and also, it's responses to my PD. I've noted all the points made with care.

But having considered everything in this complaint, I'm not upholding it.

Introduction and Mr B's circumstances

I've seen a number of very similar cases to this where the insistent client process hasn't been followed fairly. I've also seen some failings in this case which included HRCL raising the concept of becoming an insistent client and some use of templated documents / paragraphs when managing the insistent client process. However, in this particular complaint, I think it's reasonable to first point out a number of important and additional observations specific to this case.

Firstly, I think it's fair to point out that from the outset Mr B appeared to understand how DB schemes worked, but he nevertheless seemed to view them very negatively and as lacking flexibility. From listening to the initial call with HRCL, I've noted that Mr B had previously sought to transfer this DB pension before, using different independent financial advisers (IFAs). However, it seems these attempts never proceeded to the formal advice stage. This was evidently because those IFAs concerned didn't want to cede to Mr B's request to transfer away from this DB pension due to the value it held, and possibly because he hadn't yet reached the age of 55. In my view, it's reasonable to point out that Mr B therefore had the benefit of several previous months in which to reflect on this by the time he approached HRCL. But it seems he was still determined to transfer away.

So, I think the initial call with HRCL clearly revealed that Mr B fully understood how these types of pensions worked. Whilst in my view his repeated determination to transfer away from his DB scheme appeared flawed, he explained to the HRCL call-handler how he found

DB schemes to be inflexible and restrictive, and he spoke of work colleagues who had done well by transferring to more flexible personal schemes.

He also explained that his wife was already in receipt of a DB pension which was paying out an annual amount, and she'd also previously received a tax-free lump sum at the point of crystallisation. However, Mr B explained why he thought this was much too restrictive a concept for them and that they now regretted not transferring her DB scheme to a personal pension plan. Overall, he summarised his thoughts about DB schemes in general, which were that he didn't like the thought of being paid a lump sum and then what he said was a small monthly pension for the rest of his life. I've noted that Mr B didn't want any tie to his previous employer (or its linked pension) and used the words "*frozen*" and "*dormant*" to describe his DB scheme even after the details - and indeed the many advantages of it - were explained to him.

Mr B also explained that as well as fully understanding the benefits and guarantees that he would be giving up by leaving the DB scheme, he thought the CETV he was being offered from the trustees was very good value when compared with the amount of money he thought he'd paid in.

Of course, I've considered in detail that Mr B wasn't a pensions or investments expert. And I've also borne in mind that he was paying HRCL for this advice. However, in my view, Mr B had both a determined and also a somewhat unconventional opinion about his DB scheme: on one hand he appeared to fully understand how it worked and what he'd be giving up by leaving it; whilst on the other he repeatedly said he simply didn't want to be constrained to being paid a monthly amount for the rest of his life, even if the fact he'd be considerably worse off financially seemed wholly evident to him.

The 'insistent client' process used by HRCL

The first main interaction between a qualified HRCL financial adviser and Mr B was on or around 10 September 2021. On this date Mr B was sent the first recommendation report and as I've mentioned above, the recommendation was that he shouldn't transfer away. I think any reasonable reading of this would have shown why transferring from his DB scheme wasn't being recommended to Mr B. The rationale for the recommendation not to transfer was given as broadly being along these lines:

- The loss of the valuable guaranteed benefits found in his DB scheme.
- Mr B could already meet his financial objectives for releasing immediate cash, through alternative methods such as using "Pension Z" (a DC scheme) instead of his DB scheme.
- His debts appeared manageable, thus not justifying using his DB pension to address them.
- By transferring away from his DB scheme, he would probably come up short in his basic living costs for his future retirement.

In my view, these were easy reasons to understand for not transferring and I don't think they required any real degree of knowledge about pensions or investments to absorb. However, I think it's important to focus for a moment on one particular feature with this recommendation. This was that the HRCL adviser was specifically recommending to Mr B that his financial objectives to release some cash, could *already* be obtained in full by simply encashing his DC scheme ("Pension Z"). This meant that Mr B had no need to involve his DB scheme at all to meet his objectives of releasing some cash more or less straightaway.

Mr B was told in writing how much his DB pension was guaranteed to pay at the NRA and how much tax-free cash he could receive. He was also told his scheme was likely protected by the Pension Protection Fund (PPF) up to certain limitations.

I've seen some similar cases where clients in Mr B's position were then invited to immediately disregard the advice not to transfer by filling out some insistent client forms which were directly attached to the recommendation letter. This can have the effect of devaluing the whole point of receiving regulated advice. However, in this particular case HRCL stated that if he still wanted to transfer away, a member of its team would get in touch with him at a later date to discuss these matters. As such, Mr B was given some more time to think about what he wanted to do.

I can't say for sure when HRCL got back in touch with Mr B, or vice-versa, but I've noted that it was not until 28 September 2021, over two weeks later, that Mr B signed an Options Form which effectively served to disagree and override the recommendation HRCL had provided which was *not* to transfer. On this, Mr B ticked a 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 £18,926."* He also confirmed he didn't want to use the entire proceeds of "Pension Z" to release cash (and which had formed a key part of the advice not to transfer away from his DB scheme). And Mr B further confirmed he understood he was giving up a guaranteed income for life from the age of 65 within his DB scheme by transferring. The forms reiterated that his DB scheme was projected to pay a guaranteed income of £4,175 per year at the NRA which would broadly rise with inflation. Or he could receive a reduced guaranteed income of £2,846 per year, and a tax-free lump sum of £18,976. Mr B was further reminded that a feature of his existing DB scheme was that a 50% spouse's pension was payable in retirement if Mr B died before Mrs B.

I have therefore considered the knowledge and understanding that Mr B had at this time, and also the processes used by HRCL. I've thought about whether Mr B was given enough time to first digest and then consider the recommendation not to transfer. And I've thought about whether what he was told was clear, fair and not misleading. I've also thought very carefully about whether he had enough information at this point to make a fully informed decision about whether he accepted or rejected the recommendation.

I start from the position that we know Mr B had already shown a considerable drive and enthusiasm, over many months, to transfer away from his DB pension scheme. This had involved – by his own admission – other IFAs who had each apparently tried to steer him away from such a view, by declining to provide him with regulated advice which involved transferring away from his DB scheme. So, even with this in mind, Mr B had then still gone to HRCL and told it of his desire to have this pension transferred to a personal pension plan as soon as possible.

I can also be fairly sure that Mr B fully understood what he was doing, even if I find his generalised and fixed view of DB schemes to be flawed. Mr B had been told he would be worse off; an easy concept to understand. He was shown just how much more he'd have to pay to buy a pension on the 'open market' with similar benefits. He was also shown in writing the true value of what he was giving up in his DB scheme, having been provided with the detailed annual pension figures available if retiring at the NRA of 65. I've also listened to the call where these figures were set out and I think the pace and simplicity of his DB entitlements were appropriately communicated to him by the HRCL call-handler.

But the most important observation I have as regards Mr B's understanding at this point in time, is that he was being advised not only to *not transfer* by HRCL – he was told and shown that his existing DC pension, "Pension Z", would provide all the cash he said he needed. He

was told that accessing this DC pension in full would meet all his stated financial requirements without the need to access his DB scheme at all.

Given that Mr B still seemed intent on transferring, HRCL asked him to write down, in his own words, why he was going against the advice to not transfer, or to use “Pension Z” instead to generate the cash he needed. Mr B wrote down quite a bit, but the main themes were that he understood what he was giving up and that he wanted to be in *“full control of [his pension] rather than having a lump sum out of it, then the risk of being locked in ...”*.

On 7 October 2021, Mr B undertook another telephone call with HRCL. This was essentially because he’d ticked the Options Form box which had signalled that he wanted to proceed against the advice offered. He was asked why this was and was also reminded that he could encash “Pension Z” instead of transferring from his DB scheme. I’ve noted that Mr B said he fully understood the recommendation, but that he still wanted to go ahead because he viewed the DB scheme as being too inflexible for his requirements. He said again that he wanted to release this money.

There then followed written communications of a similar nature. On 22 November 2021, he was sent another recommendation report which once again explained that he shouldn’t transfer his DB scheme, and that if he wanted to pay down his debts he could use “Pension Z” to do this. This said, ***“We have already recommended that you do not proceed with transferring your [DB scheme]. However, you have decided to disregard this recommendation and are aware that as a result we must now treat you as an insistent client. As an insistent client you want to proceed with transferring your pension even though it is against our advice”***.

There were further communications which don’t materially impact on what eventually happened and Mr B eventually transferred the DB scheme in early 2022.

Would better practice have changed anything?

I accept that HRCL probably didn’t do everything it could have done and some of its processes were quite poor. It could have done a better job, for example, of really challenging Mr B’s obvious preconceptions about his DB pension being as inflexible and unsuitable as he believed it was. It could have challenged Mr B’s comments that he wanted to ‘cut ties’ with his old pension provider / employer. It could have set out his DB scheme’s early retirement features. And it shouldn’t have raised the prospect in the first recommendation report of him becoming an insistent client, even if it did then give him some further time to think about what to do.

But I don’t think these things would have made any difference. I say this because Mr B already knew a lot about the DB scheme when he came to HRCL. He already knew other IFAs didn’t want to facilitate a transfer for him. He also knew of his wife’s DB scheme which was already in payment – Mrs B is older than Mr B – and he spoke regretfully about allowing this to have happened, rather than transferring it to a type of personal pension plan. He knew what he was giving up – and he knew he might be worse off overall.

As well as having a very good understanding of his DB scheme, Mr B was also told over the phone and in writing about the PPF and how his DB fund might be more secure in the event of something bad happening to it, in a financial sense.

The reality here is that Mr B had all the information he needed, including that he didn’t need to transfer his DB scheme at all. He knew he could pay down his modest debts and also have money for a deposit for his shared-equity home by using “Pension Z”. He knew this DC scheme was the much less valuable pension and that retaining his DB pension would

provide a much better and guaranteed income in his retirement years. And it was against this backdrop that Mr B still insisted on transferring, despite being told many times not to do this.

Responses to my PD

We've only received a response from Mr B's representatives. I'm grateful for the time taken to list the matters Mr B doesn't agree with – and as I've said, I've considered these points with care.

However, I'd already said that HRCL hadn't done everything right. But I don't agree this represented *"a failure to deliver genuine, dissuasive advice and to meaningfully test whether [Mr B] truly understood the risks and implications of transferring."* As I explained in the PD, a meaningful difference in HRCL's approach to this particular case was that Mr B was told how he could still obtain the money he thought he wanted / needed without involving his DB scheme. He also didn't need a debt management plan, as put forward by his representative, as an alternative to transferring. This is because his debts were relatively modest, and he'd already been shown how using "Pension Z" would likely eliminate his debts completely. This was a fundamental part of the 'do not transfer' advice.

Summary

Ultimately, I agree that the original recommendation not to transfer away from his DB scheme was the right one for Mr B. That this recommendation included how he could use his DC - rather than DB - pension was both simply explained and clear. In my view, Mr B had all the knowledge and understanding he needed to make an informed decision.

This complaint is about Mr B's treatment as an insistent client. In addressing this complaint, I've been very mindful of the possibility of Mr B being coerced or unduly influenced by HRCL's actions or inactions, to regard its recommendation not to transfer as somehow lacking authenticity or substance. Its recommendation needed to be interpreted by him as a genuine one and tailored directly to his personal circumstances.

However, in this particular case, I think Mr B had a continuing determination, evidenced over a period of many months, to do what he wanted to do – which was to transfer away. He was told of the value he would be giving up, the fact he'd lose out financially, and that he might face a financial shortfall in his retirement years. In my view, these were very easy concepts for Mr B to understand.

Also, whilst Mr B had a preconceived – some might say ill-informed – view of DB pension schemes as being restrictive and inflexible, I think he had been very clear that his sole objective was to raise enough money to pay down some modest debts and have enough left for a mortgage deposit on a shared-equity home. Accordingly, HRCL's recommendation was not only to *not transfer*, it also provided advice that showed he could raise all the money he needed by using his DC pension scheme – "Pension Z". HRCL then allowed for a period of reflection, but Mr B persisted in his view that he wanted to transfer.

I accept that HRCL didn't do everything right. But with all these events in mind, I think that even if HRCL had explained things in a different way, Mr B would have probably just repeated his views about needing flexibility and wanting to transfer – the circumstances of this case provide a strong indication of this. What the evidence above shows is that between September 2021 and the end of that calendar year, Mr B was repeatedly told both in writing and verbally that transferring from his DB pension was not recommended and he was provided, several times, with easy-to-understand reasons for this.

Of course, this was Mr B's own money, and he was entitled to take these views. However, I think it would be unfair to hold HRCL responsible and ask it to pay him compensation when this was clearly what Mr B wanted at the time.

My final decision

I do not uphold Mr B's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 June 2025.

Michael Campbell
Ombudsman