

## The complaint

Mr W 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 known as a SIPP<sup>1</sup>.

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 W *shouldn't* transfer his pension. But it then processed the transfer to the SIPP 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 W 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 W first became interested in assessing whether he might access some of his pension savings in 2020. He says this followed an on-line advertisement by HRCL offering its services as a pension adviser. Mr W 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. We know that HRCL had an initial telephone call with Mr W where his basic objectives were briefly discussed. HRCL then wrote to Mr W in late October 2020 saying, "*we have now contacted your current pension providers requesting the information we need. As you are currently under 55, we need to let you know that you will only be able to take tax-free cash from your pension once you have reached the age of 55*".

HRCL wrote to him again on 18 February 2021. The letter stressed it didn't contain financial advice but that there was "*great news*" about his pension "*pot*" in that he had a cash value of £118,008.27<sup>2</sup> and that the tax-free cash element he could draw straightaway upon reaching 55 would be £29,502.07.

A detailed telephone call between Mr W and an HRCL paraplanner then took place where all his financial affairs and pension objectives were discussed. Mr W was then provided with 'abridged advice' on 24 March 2021. Abridged advice was explained as being "*a short form of advice that provides a recommendation to either not transfer safeguarded [pension] benefits, or that [at that stage] it is unclear whether to transfer*". The abridged advice was free and said he shouldn't transfer, and HRCL told Mr W that if he wanted to investigate further the possibility of a transfer then he'd have to get full pension transfer advice from one of its regulated financial advisers and there would be a charge of £7,400.

Information gathered during the call about Mr W's circumstances was broadly as follows:

- He was 55 years old and single. He was self-employed and said he had an annual

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<sup>1</sup> Self-Invested Personal Pension

<sup>2</sup> This was later revised down upon the expiry of a 'first' valuation. A second valuation said the CETV had reduced to £111,673.

income of around £10,293.

- Mr W said he had around £15,000 in savings, although I've seen no evidence of this. He evidently owned a home valued at around £160,000 which had an outstanding mortgage of around £69,000. There was around 10 years left to pay.
- The DB pension we're concerned with here related to a previous employment Mr W had between 1998 – 2019 and so was in deferment. The cash equivalent transfer value (CETV) was £118,008.27.
- The normal retirement age (NRA) of this DB scheme was the state pension age, which in Mr W's case was 67 years (although it seems benefits accrued before 1 April 2013 accrued slightly differently). The pension also contained options for early retirement from the scheme which would be subject to actuarial reductions depending on age.
- Mr W mentioned to HRCL that he had another pension. However conflicting information was disclosed about this because Mr W made references to him accessing this when, in fact it looks as if he'd have been too young to permit such access (below the age of 55). I think it's reasonable to assume that Mr W's understanding of this other pension and how it operated was limited. I think it's also fair to assume this other pension was of relatively modest value (and it isn't the subject of any complaint).

Mr W confirmed to HRCL that his purpose in contacting it was that he wanted to free up some money from his existing DB pension to help pay down part of his mortgage, buy a car and make some home improvements.

On 19 April 2021 (copied on 9 June) , HRCL sent Mr W a recommendation letter entitled *"Important recommendation for your pension"*. 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 £118,000 but that the cost to replicate the benefits of his DB scheme if Mr W transferred to a type of personal pension, was £458,000. 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 £340,000 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 W not to transfer his DB pension.

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 W 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 W. These were described in an 'Options Form' which was included with the letter. It said Mr W should read the form, select the option that was right for him and return it. HRCL went on to say that if Mr W intended to proceed against its recommendation, then he should also complete the Insistent Client Declaration and return that too.

On 15 June 2021 Mr W 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 £29,502."* The documents also included an Insistent Client Declaration section where Mr W 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 W also wrote down, in his own words, why he

wanted to proceed with the transfer. A further 'phone call took place with HRCL where Mr W was asked if he understood what he was giving up by transferring away from his existing scheme.

On 29 June 2021, HRCL sent Mr W another letter enclosing its full Pension Review Report (PRR). This set out confirmation that Mr W wanted to disregard HRCL's recommendation. Thus, as an insistent client, HRCL further recommended that he transfer his DB scheme to a type of 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 told Mr W to read the PRR and if he agreed with its recommendation – and also agreed to sign up to HRCL's DFM service – then he should sign the enclosed forms and return them. The PRR also stated that Mr W had a moderately cautious attitude to risk. His apparent objectives for making the transfer were cited as being to release tax-free money totalling £29,502.07 which happened to be the exact maximum amount which could be generated tax-free by this transfer process. Mr W gave his reasons for requiring this money as outlined above. Mr W went ahead and transferred from his DB scheme to a personal pension arrangement, later in 2021.

Mr W first raised a complaint about HRCL's advice in February 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 W not to transfer away and that the transfer only happened when Mr W became an insistent client. HRCL says that only when Mr W 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 W's risk attitude.

Dissatisfied with HRCL's response, in April 2024, Mr W 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 W 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 agree with this, and it made a number of points in response to what our investigator said.

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 W's best interests.

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

Having considered everything in this complaint with great care. I think there were major failings in the insistent client process used by HRCL.

I'm therefore upholding Mr W's complaint.

### Introduction and Mr W's circumstances

The firm representing Mr W in bringing his complaint portrays him as having had no investment experience to call upon. And I think the evidence at the time pointed to Mr W, if eventually transferring to a personal pension, was likely to need ongoing help and advice to manage those funds in the years ahead, thus incurring costs which weren't present in his existing DB scheme. His future business as a new DFM client was chargeable by HRCL at an annual fee of 1% of his existing balance. In my view, HRCL 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.

### The 'insistent client' process used by HRCL

Overall, I think there were significant shortcomings in HRCL's use of the insistent client process. In my view Mr W wasn't genuinely an insistent client and this label was applied to him by HRCL to progress the transfer.

It's important to note that it was HRCL which was the regulated party here and not Mr W. I've noted that Mr W told HRCL that he was on medication relating to a previous mental health diagnosis and I think it was obvious from his actions and telephone manner that he had very little knowledge about pensions or investments. HRCL was also charging a very substantial sum for providing its advice, and so Mr W had every right to assume it was acting in his best interests. Nonetheless, against this backdrop there were major weaknesses and failings present in HRCL's advice processes which meant it didn't properly act in Mr W's best interests or give him crucial information that he needed. I think the evidence shows that HRCL was always pre-disposed to seeing that Mr W transferred his DB pension to a personal plan arrangement and its processes at the time were designed to encourage such an outcome if at all possible.

I start by noting that as early as February 2021, and before the advice process was fully underway, HRCL was already promoting the idea of Mr W transferring away from his existing DB scheme. Before any regulated advice was even provided, HRCL expressed to Mr W the "great news" about his pension and told him he could receive a more or less immediate tax-free lump sum of £29,502.07. I think that in Mr W'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 transfer amount of £118,008.27 Mr W could obtain *only* by transferring away from his existing DB scheme and into a type of personal pension. It follows that the tax-free £29,502.07 also set out in the letter could also *only* be obtained by him transferring away.

In providing information in this way HRCL was already substantially 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 W had other options which included obtaining a tax-free lump sum from his current DB scheme, but this was not promoted or mentioned at this point. NRCL already knew that these types of DB scheme usually allow for earlier access to funds, and it was in possession of information from his DB scheme which confirmed this by saying the member "*can retire early at any age from 55 onwards subject to you giving reasonable notice to the company*". This option certainly wasn't promoted or offered to Mr W by HRCL in the processes it used.

After this, in late March 2021, there was a detailed 'fact-find' telephone call between the parties. However, I bear in mind that Mr W'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 the later documentation summarising this telephone call 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 W accessing his pension early, most likely by transferring away from the DB scheme. I think this observation is strengthened by listening to the conversation during the call itself. It started out by again mentioning the 25% tax-free lump sum that could be obtainable *only* by transferring away and into a type of personal pension plan.

There then followed the letter of 19 April 2021 from an HRCL pension adviser which essentially served as a recommendation letter. I acknowledge that if viewed through a certain and very narrow 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 W. It highlighted the pension guarantees he would be giving up in the DB scheme at his NRA 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 W 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 W had. But the most egregious failure was that it was this letter which specifically introduced the whole concept of Mr W becoming an insistent client rather than Mr W himself. In fact, I doubt whether being an insistent client was a concept he himself had yet considered, and I'm sure he'd never heard of the term before. So, whilst this letter of 19 April began with a 'do not transfer' recommendation, on page 2 it then directly provided an immediate and easy route for Mr W to just transfer away anyway. This is because the letter stated that if he still wanted to transfer, HRCL would treat Mr W as an insistent client, and it told him what he needed to do. It said there were two options open to Mr W which were either not to transfer or disregard the recommendation not to transfer and go ahead with it.

However, portraying his options in this limited way provided no indication that Mr W could access his existing DB pension early without any need to transfer, and was therefore simply an open invitation for him to completely disregard HRCL's narrow and limited advice. An Options Form was enclosed together with an Insistent Client Declaration and all Mr W therefore had to do was return these with the enclosed, 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 W 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 limited. The latter had also come on the back of previous correspondence showing he could access £29,502.07 which was only achieved by transferring.

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.

Of course, there were other options available to Mr W and which HRCL did not add any weight to. These consisted of him remaining in the DB scheme; he could still have accessed his pension early and he could also have accessed a modest tax-free lump sum if this was something he really needed to do. For example, one option he should have been told about was accessing his existing DB scheme somewhere between the ages of 55 – 67. Alternatively, if he'd remained in the DB scheme until the NRA, the estimated tax-free amount Mr W could access would be £58,787 together with an annual pension of £8,818. These options were not set out at all on the Options Form in the way the above two other limited 'options' were.

Nor had the HRCL adviser evidently comprehensively considered Mr W's other pension. As I've said, I've assumed this to have not been worth much, but only an elementary attempt ever seems to have been made to identify this pension which could have been meaningful to the overall advice. As Mr W was paying £7,400 for this advice, I think the above

observations show that it was both limited and poor. And I think this further strengthens the laissez-faire and pre-determined approach HRCL was taking to Mr W's pension affairs.

#### What happened after 19 April 2021?

As I've said, the letter of 19 April appeared to constitute a recommendation report of sorts. However, the lengthier Pension Review Report (PRR) I've mentioned earlier was received after Mr W had already 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 W). 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 W would have found useful before being asked to irreversibly leave his DB scheme.

As can be seen by the sequence of events I've set out above, HRCL's full PRR was dated 29 June 2021 and thus came substantially *after* Mr W 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 19 April with a further and more detailed PRR the next month, but in my view HRCL's overall approach in this particular matter was consistent with the examples of failures I've mentioned, and which Mr W would have again found confusing.

I have carefully noted all of HRCL's comments made when responding to our investigator's view that this complaint ought to be upheld. Specifically, I have considered its point that its original advice *not* to transfer was indeed suitable, a recommendation I'd agree with. I've also considered that Mr W was invited to explain in his own hand why he wanted to go ahead against the advice. When writing his reasons for supposedly wanting to transfer in his own words, Mr W said he wanted to reduce his mortgage, buy a car and carry out some home improvements. I think these brief comments serve to show Mr W's lack of understanding of what his other options were, what he was going to be left with after transferring, and how it might affect his future. In reality, his overall retirement provision looked very modest and there were no effective challenges from HRCL to these obvious misunderstandings on Mr W's part and it seems that Mr W had no direct personal dealings with an adviser, as opposed to less qualified HRCL staff, anywhere throughout this entire process.

#### Would better practice have changed anything?

I have considered whether, if HRCL had acted in Mr W's best interests and not consistently promoted the options of transferring and also 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 W always had a preference for transferring to a personal pension arrangement.

But I think the evidence is persuasive the other way. I do accept that Mr W had a genuine hope that he'd be able to release some cash to pay down his mortgage, buy a car and make some home improvements. But HRCL simply 'shoehorned' these objectives to neatly fit the £29,502 provided by the transfer (the resultant tax-free sum). HRCL didn't fully look into the other options he had, and it merely apportioned £15,000 for the mortgage, £7,002.07 for the car, and £7,500 for the home improvements.

There's no evidence whatsoever these were genuine and / or 'real' costed amounts - they were clearly designed to just add up to exactly the 25% tax-free sum which transferring would generate. And there's certainly no evidence Mr W was so desperate to achieve these exact amounts, at all costs.



I therefore believe that if he'd been treated in the way the rules were genuinely intended, with all his alternative early DB pension options carefully and professionally explained to him, I don't think he'd have insisted on transferring in his own right. I think Mr W would have decided not to transfer away, and would have instead used his existing DB scheme to generate some cash.

### 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 W's best interests. Given the failings I've set out above, I don't think it would be reasonable for me to conclude that Mr W can truly be regarded as an insistent client. This transfer process did not begin because Mr W was an insistent client – it began because HRCL's processes were clearly designed to push clients like Mr W 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 W into a process which he neither asked for, nor really understood. This narrative simply gathered pace and although Mr W 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 W's lack of knowledge of pensions and investment matters. And Mr W was presented with only a narrow range of options, which was misleading.

I am therefore upholding Mr W's complaint.

### **Putting things right**

A fair and reasonable outcome would be for HRCL to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would have most likely remained in the occupational pension scheme if suitable advice had been given and retired at the scheme's normal retirement age of 67<sup>3</sup>.

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 as per the usual assumptions in the FCA's guidance. In establishing whether there is a loss and establishing redress, HRCL should follow the normal retirement age rules as shown in the "Scheme

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<sup>3</sup> Mr W stated at around the time of this advice that he intended to retire at 67.

*Details -Toyota Motor Manufacturing UK Ltd Pension Plan, DB Section*<sup>4</sup> booklet HRCL sent to the Financial Ombudsman Service as part of its submissions regarding this complaint.

My understanding is that Mr W is still working, and the evidence I've seen shows he had, at the time of the advice, stated his intention to fully retire at the age of 67.

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 W'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 W redress as a cash lump sum payment,
- explain to Mr W 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 the DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts HRCL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr W 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 W's end of year tax position.

Redress paid to Mr W as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. In line with DISP App 4, HRCL can 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 W'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.

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.

Our investigator recommended that HRCL should pay Mr W for the distress and inconvenience caused by its actions. I have considered the impact this would likely have had on Mr W in his particular circumstances. This pension at the time represented a relevant and sizeable part of his retirement provision. In his situation I think the thought of losing material benefits would have negatively impacted upon Mr W and caused him anxiety about his

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<sup>4</sup> Published by Deloitte.

future. So, I agree the recommended payment of £150 for distress and inconvenience. HRCL should additionally pay Mr W this money.

### **My final decision**

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

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

If Mr W 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 W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 20 April 2025.

Michael Campbell  
**Ombudsman**