

## The complaint

Mr W has 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.

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 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 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

It seems Mr W first became interested in assessing whether he might access some of his pension savings in early 2018 after responding to an HRCL on-line advert about pension release and offering its services as a pension adviser. Mr W was then 54 years old and still several months away from 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 dialogue with Mr W where his basic objectives were briefly discussed. HRCL then wrote to Mr W on 15 May 2018 saying his pension check was underway and that *"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"*. The letter also said HRCL would review his pension information and send a recommendation; it said this included *"the best way of taking tax-free cash as close as possible to your 55th birthday."*

A detailed telephone call between Mr W and an HRCL paraplanner then took place where all his financial affairs and pension objectives were discussed. Information gathered during the call about Mr W's circumstances was broadly as follows:

- He was 54 years old and married. He was employed and said he had an annual income of around £32,000 (gross) per year, or around £2,100 (net) per month. He didn't envisage giving up working for some years yet. Mr W said he and Mrs W were left with around £644 per month disposable income after outgoings.
- Mr and Mrs W lived in rented accommodation and had minimal savings. They paid £671 in monthly rent. They had a child with certain needs related to disability.
- 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.

- The cash equivalent transfer value (CETV) of the DB scheme was originally £143,673 but this expired in mid-2018 and was later reduced to £142,255<sup>1</sup>.

On 16 August 2018, HRCL sent Mr W a brief one-and-a-half-page letter entitled *“Important news about taking money early from your pension”*. There was a recommendation sentence 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 and transfer against our advice?”* In this section HRCL stated that if he wanted to transfer, it would need to treat Mr W as an *“insistent client”*. And it told him he could take £35,918 by disregarding the ‘advice’. At the end of the letter, under a section headed, *“What you need to do now”* HRCL said there were two options that were 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 then return it. HRCL went on to say that if Mr W intended to proceed with transferring, then he should also complete the Insistent Client Declaration and return that too. The options Mr W was presented with were to transfer his DB scheme to a personal pension plan and obtain tax-free cash of £35,918 (the remaining £107,755 would be placed into a fund managed by HRCL) – or he could just accept not transferring and effectively ‘walk away’.

On 20 August 2018, Mr W signed the Options Form, ticking the box for option number one which stated, *“I understand your recommendation to leave my [DB] pension scheme where it is. However, I want you to continue reviewing my pension, setting up a flexi-access drawdown plan so that I can release £35,918 tax-free cash and re-invest the remaining £107,775.”* 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. Mr W was at this point aged around 54 years and 4 months, still 8 months short of being legally able to access any pension savings.

A subsequent 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 6 September 2018, HRCL sent Mr W another letter enclosing its suitability report. For reasons I’m not clear about, HRCL decided to prepare and send this to Mr W even though it had already invited him to become an insistent client and have him sign forms to disregard its ‘advice’ in the letter of 16 August. And in this new report of 6 September 2018, 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 asked Mr W to read this report 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 report also stated that Mr W had a moderately adventurous attitude to risk. His apparent objectives for making the transfer were cited as being to release tax-free money to *“help your son out financially”* and *“to go on holiday”*. Mr W went ahead and transferred from his DB scheme to a personal pension arrangement, later in 2018. The cost of the advice charged by HRCL was £8,638.

Mr W first raised a complaint about HRCL’s advice in July 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.

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<sup>1</sup> CETVs are usually valid for 3 months. So, if a transfer doesn’t occur, another valuation has to take place.

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 September 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 evidence I've seen and listened to in this case tends to show Mr W didn't fully understand his pension and the investment options available if he transferred. In my view, 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 client was chargeable by HRCL at an annual fee of 1% of his existing balance. I think 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.

I've also seen that HRCL says Mr W "*drove the transaction*". In my view, that's simply not a fair representation of what happened, and it's important to note that it was HRCL which was the regulated party here and not Mr W. HRCL was also charging a substantial sum for providing its advice, and so Mr W had every right to assume it was acting in his best interests and that the advice would be comprehensive and genuine. 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.

For example, I note that as early as May 2018, and before the advice process was fully underway, HRCL was already promoting the idea of Mr W transferring away from his existing DB scheme. It's important to highlight that this point in time was still over 11 months before Mr W could even lawfully access his pension. And so, before any regulated advice was even provided, HRCL expressed to Mr W the "*best way of taking tax free cash as close as possible to your 55th birthday.*"

There then followed the letter of 16 August 2018 from an HRCL pension adviser which essentially served as an initial 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, if limited, reasons as to why transferring wasn't suitable for Mr W. In a general sense, it highlighted the pension guarantees he would be giving up in the DB scheme at his NRA if he transferred. 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, if only in the most basic of ways. But 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 HRCL's 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 16 August 2018 began with a 'do not transfer' recommendation, within the same letter 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 coached him on what he needed to do. It said there were two options open to Mr W which were either to disregard the contents of the letter and transfer, or not to transfer at all.

However, this limited choice he was given wasn't strictly correct. 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. It 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. 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 very limited.

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.

One option Mr W should have been told about was accessing his existing DB scheme somewhere between the ages of 55 – 65. This basically consisted of him remaining in the DB scheme and drawing the benefits earlier than the NRA. He could also have accessed a reasonable tax-free lump sum of almost £22,000 straightaway if this was something he really needed to do. Alternatively, if he'd remained in the DB scheme until the NRA, the estimated tax-free amount Mr W could access would be over £33,000 together with a modest guaranteed pension of over £3,200 per year, for life.

These options were not set out at all on the Options Form in the way the above two other limited options were. So, there were other choices available to Mr W and which HRCL did not add any weight to. In my view, this was substantially misleading.

Nor had the HRCL adviser comprehensively considered Mr W's other pension which I discovered from listening to his so-called insistent client call with HRCL. This call was made to supposedly check Mr W's understanding of what he was actually doing by agreeing to be an insistent client. But in listening to that call, I think it portrays Mr W as someone who needed very deliberate and careful explanations about pension affairs because I gained no confidence from the call that he really understood the vulnerability of his situation. This call was not, in my view, a genuine attempt to check Mr W's understanding and to act in his best interests. The HRCL call-handler, who was not a qualified financial adviser, began the call by saying he just needed a "*quick five-minute chat*". In this call Mr W also disclosed he actually had another pension, based on 17 years' service. This was a significant revelation, since it meant there was a real possibility that Mr W had another pension which might better fit with his desire for immediate cash; it meant his DB pension might not even be required to transfer. However, the call-handler clearly only viewed this as a further opportunity to contract business with Mr W and said he'd send him some forms. I do understand that clients sometimes do either intentionally or unintentionally withhold key information from financial advisers – for all sorts of reasons. But at this point, I think the whole process should have been stopped and re-evaluated to see whether this other pension was significant.

Further to all this, it seems to me that Mr W's requirement for immediate cash mainly related to aspirations which were somewhat uncertain. HRCL's documentation said Mr W had a 'requirement' for tax-free cash of £35,918. But this happened to be exactly the maximum tax-free lump sum he could derive from the CETV; in my view it wasn't a genuine need for that particular amount of cash. I understand Mr and Mrs W had a child with certain needs. And like any loving parents, I'm sure they would put virtually anything below dealing with such a situation. But it seems to me that HRCL wasn't disposed to look into these needs to determine the *actual* funding required. HRCL just accepted that Mr W wanted some money to help his child and go on a holiday. It's entirely reasonable that these might have been modest costs and fundable from other sources, rather than requiring him to irreversibly leave a DB pension scheme with valuable guarantees and future index-linked benefits.

It's not my job to tell HRCL what other alternatives it could or should have provided to Mr W. But as he was being charged the substantial sum of £8,638 for this advice, I think the above observations show that the service and advice Mr W received from HRCL was both limited and poor. And I think this further strengthens the pre-determined and laissez-faire approach HRCL was taking to Mr W's pension affairs.

#### What happened after 16 August 2018

As I've said, the short letter of 16 August appeared to constitute a recommendation report of sorts. However, a lengthier suitability report 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 suitability report 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 invited to irreversibly leave his DB scheme.

I accept the suitability report then asked Mr W to sign some further declarations confirming he knew what he was giving up by transferring away. But in my view, the transfer journey was already well underway having been initiated wholly by HRCL. As can be seen by the sequence of events I've set out above, HRCL's full suitability report was dated 6 September 2018 and thus came *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 16 August with a further and more detailed suitability report the next month, but HRCL's overall approach in this particular

matter was consistent with the failures I've mentioned, and which Mr W would have again found confusing.

I have considered HRCL's 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. But I think his written comments serve to show Mr W's lack of understanding of what his other options were and how transferring away from a guaranteed DB scheme might affect his future years in retirement. He only mentioned when writing 'in his own hand' that he wanted to help his child and go on a holiday, both of which I doubt would have amounted to £35,918 – but of course, HRCL didn't ask him. There were no effective challenges from HRCL to the obvious inconsistencies on why he'd want such a large cash lump-sum when he hadn't even yet reached pensionable age. So, I think this shows a lack of knowledge and understanding on Mr W's part and it seems that he 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.

But I think the evidence is persuasive that Mr W would have probably stayed in his DB scheme. I think he'd have probably either arranged his spending differently, used his other pension or come up with a combination of using both these methods. He may well have decided to use his DB scheme to generate some cash, which could have been up to almost £22,000. However, I've seen no evidence that Mr and Mrs W were in some way desperate for cash; I've seen some bank statements which give no such indication. I do accept Mr W had a genuine desire to release some cash, but HRCL simply shoehorned this objective to neatly fit the 25% tax-free allowance provided by the transfer (the original resultant tax-free sum).

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.

#### Fund selection

For good order, I think HRCL's categorisation of Mr W being a moderately adventurous investor serves only to demonstrate its wider failings in this case. This was a man with all but no savings and no evident history of investing. However, as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr W 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

Despite paying a substantial amount to HRCL, the firm failed to provide Mr W with comprehensive information and advice. In my view, HRCL did not act with due care and skill, and it did not act in Mr W's best interests.



Given the serious failings I've set out above, I don't think it would be reasonable for me to conclude that Mr W can even be properly 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 away from his existing DB scheme, I believe HRCL then 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 very 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 by HRCL, 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 65.

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.

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 £195,000 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 £195,000, I may recommend that HRCL pays the balance.

### **My final decision**

Determination and money award: I am upholding this complaint, and I direct Harbour Rock Capital Limited to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £195,000.

Recommendation: If the compensation amount exceeds £195,000, 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 5 June 2025.

Michael Campbell  
**Ombudsman**