The complaint

Mr C complained about advice he was given to transfer the benefits of two defined-benefit (DB) pension schemes, to a type of personal pension plan.

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

Mr C says the advice to transfer both DB pensions was unsuitable for him and believes this has caused him a financial loss.

What happened

I'll be referring to the two DB pensions concerned as **"Pension J"** and **"Pension L"** respectively. Mr C was a deferred member in relation to both schemes. Pension J related to employment Mr C had been engaged in from 1989 until 1994. Pension L related to employment Mr C had between 1996 until 2001.

Information gathered about Mr C's circumstances at around these times was broadly as follows:

- Mr C was 56 years old and cohabiting with Ms X who was 54. It seems they owned a property together which was valued at approximately £175,000. The property had an interest-only mortgage outstanding of around £52,000 the expiry date of which had just passed, although Mr C's lender was accepting of his circumstances and happy to continue to receive the interest-only repayments.

- Mr C earned around £30,000 per year (gross) and Ms X earned £15,000. Their combined net salaries amounted to around £2,850 per month and their essential outgoings were around £2,150. Part of their outgoings related to child maintenance payments and their mortgage repayments which I've taken note could be subject to possible future increases.

- The two DB schemes in question had cash equivalent transfer values (CETV)s of around £103,932 (Pension J) and £122,260 (Pension L).[1] The normal retirement ages (NRA) for these two schemes were 65 years old and 62 years old respectively.

- Mr C also had a defined contribution[2] (DC) pension which had a current value invested that time of £32,000. This pension isn't the subject of any complaint here.

- Mr C and Ms X didn't have any material savings or investments other than pensions. My understanding is that Ms X had her own independent pension provisions. I've assumed both were entitled to a state pension at the ages of 66.

[1] These values altered slightly during the periods the advice was being constructed for Mr C due the expiry of the two respective CETVs. As CETVs tend to be valid for only 3 moth such changes aren't unusual. The minor changes don't affect the outcome of this complaint.
[2] A DC pension builds up a pot of money that can be used to provide retirement income. Unlike DB schemes, the income one might get depends on factors including the amount paid in and the investment performance.

Mr C first requested (and received) only a recommendation about transferring his Pension J to a personal pension scheme. The plan was to use these transferred funds, together with some money from his DC pension to pay down the mortgage. But Mr C went back to the HRCL adviser after this initial advice and asked for his situation to be reviewed again. This time he asked for his other pension to be considered too. So, the adviser reassessed Mr C's situation and also provided a recommendation about his other pension – Pension L.

Therefore, Mr C ultimately received advice from HRCL to transfer Pension J to a personal pension scheme in late 2018 and the transfer eventually went through in February 2019. The advice to transfer Pension L came a few months later, in early 2019, with this transfer completing around May 2019.

In late April 2024 and now aged 61, Mr C complained to HRCL about its advice. He said it shouldn't have recommended a transfer out of either DB scheme to a personal pension. In response, HRCL said it hadn't done anything wrong and was acting on the financial objectives Mr C had at the time.

Disagreeing with this, Mr C referred his complaint to the Financial Ombudsman Service. One of our investigators looked into it and issued a 'view' saying they thought that Mr C's complaint shouldn't be upheld. The investigator agreed with HRCL that paying down his mortgage was of such importance to Mr C that meant the transfer advice he received was suitable.

Mr C still disagreed and because this matter couldn't be resolved informally, it fell to me to make an ombudsman's decision. I issued a provisional decision (PD) about this case in March 2025 in which I said I was minded to uphold Mr C's complaint. I gave the parties two weeks to send in any further information or evidence they wanted me to consider. HRCL sent in further observations about the complaint and explained it didn't agree with my PD.

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 Businesses ('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 this 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. 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 C's best interests.

I've used all the information and responses from the parties, including responses to my PD, to consider whether transferring away from the two DB schemes to a personal pension was in Mr C's best interests.

Having done this, I am upholding Mr C's complaint. I don't think transferring either of the DB pension schemes was in his best interests.

Financial viability

To assess whether transferring from a DB scheme was suitable from a direct like-for-like financial comparison perspective, I have considered the amount the transferred funds would need to annually grow by, to match the existing DB benefits already in place. This is explained by referring to a 'critical yield' rate. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

Our investigator didn't include this aspect in their 'view' letter mainly because their focus was placed on the pressing need they thought Mr C had to pay down his mortgage. However, I think it's important to include these yield figures because they provide an interesting insight into just how much Mr C would be giving up by leaving his existing deferred DB schemes. Another data set used is the transfer value comparator (TVC). The TVC is a comparison which basically shows the difference between the CETV offered by the scheme and the amount it would cost to buy an equivalent pension on the 'open market'.

As regards Pension J, for example, I've used the transfer value assessment schedule (TVAS) exercise commissioned by HRCL and provided to our Service. The critical yield figures showed that to match the Pension J benefits at the NRA of 65, annual growth of between 7.4% and 11.8% would be required just to match the benefits of the DB scheme. The differences in the percentages depend on whether a full pension was taken (as opposed to a reduce pension and a tax-free lump sum) and / or whether a joint life or single life annuity was selected. In its final response letter about this complaint, HRCL says the critical yield for Pension J was 8.9%.

It's my view that these critical yields would be very difficult to maintain every year over a sustained period when looked through the contemporary evidence of 2018. Mr C was only around 8½ years from retirement in this scheme and so had less time left to 'even out' the ups and downs of the stock market investment performance one might expect; he also had no apparent capacity for loss. The regulator's upper growth projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate 2%. In my view, Mr C should have been categorised as having the lowest of these growth projections because he had no apparent investment experience to call upon and the evidence is persuasive that he didn't want too much risk in any future investment funds with his pension. We were also in a sustained period of ultra-low interest rates and bond yields, and the Bank of England base rate, as of December 2018, was just 0.75%.

Against this backdrop, I think the chances of Mr C achieving future growth rates anywhere close to the critical yield rates shown above were extremely low, and I don't think HRCL did enough to comprehensively explain this risk to Mr C.

The TVC from the same document I've mentioned above also showed that to buy an equivalent pension on the open market, the amount required at that time would be around £200,863 or to put it another way, almost double the CETV Mr C was being offered to leave his DB scheme. Therefore, in my view, both these important areas were clearly and powerfully showing that by leaving his DB scheme and transferring to a personal one, Mr C was highly likely to receive much lower retirement benefits in the medium-to-longer term, as regards Pension J.

The analysis in respect of Pension L came a few months later because Mr C had belatedly said he wanted to incorporate this scheme in the overall advice he was seeking. But this too showed that transferring wasn't financially viable.

HRCL said in its suitability report relating to Pension L, "we *have calculated how much a new scheme would need to grow by each year to achieve this amount and therefore provide you with the same level of income through an annuity. Our analysis shows that a new scheme would need to grow by 9.6% each year up until age 62 to provide the same level of income through an annuity in retirement (known as the critical yield)".* For the TVC comparison, HRCL said that buying a similar pension to Pension L on the open market would cost an additional £68,084 on top of the CETV he'd been offered.

The same economic conditions as I've described above applied at the time of this Pension L analysis and Mr C had the same cautious attitude to risk. But in this second case, Mr C was only just over 5 years from retirement because the NRA of Pension L was only 62. So, like Pension J above, the analysis of pension L was clearly showing he had little time left to invest for growth if he transferred. There was clearly very little chance indeed of Mr C transferring and then being able to grow his funds at over 9.6% every year, or in a way that made transferring financially worthwhile.

So, to be clear, transferring both Pensions J and L were very likely to result in Mr C eventually receiving considerably lower pension benefits in his retirement, as a result of transferring from the two DB schemes to a personal pension.

Of course, these types of direct financial comparisons aren't the only assessments that are relevant in Mr C's situation, and I don't think the advice to transfer his pensions was based on this aspect alone. HRCL said there were other reasons to justify transferring and so I've therefore considered the more relevant aspects below.

<u>*Other reasons to transfer*</u>

The first transfer advice (Pension J):

By the time of the updated advice in relation to Pension J Mr C had discounted the idea of touching or involving his DC pension. So, when he received the suitability report of 7 November 2018 about (only) Pension J, the advice was to transfer the CETV of around £103,932 to a personal pension arrangement and to then immediately remove the maximum 25% tax-free allowance. This would generate the immediate release of £25,983 to be used to reduce Mr C's outstanding *c*£52,000 mortgage.

Whilst the mortgage reduction was the only objective listed, HRCL said the following had also been taken into account in its transfer recommendation:

- *You have said your objective is important.*
- *You have said your debt is not manageable.*
- *You do not wish to take out a loan to finance your objectives.*
- *You do not wish to remortgage to finance your objectives.*
- *You are unable to meet your objectives by using your disposable income.*
- *You wish to invest the remainder of your pot with the intention of taking an income at age 67.*
- *You have stated that leaving your entire fund as a lump sum death benefit to your partner is very important.*
- *You wish to have flexibility around how you access your fund in the future.*
- *The growth rate required to replicate the benefits you would be giving up at retirement from your* [Pension J] *scheme through a drawdown pension could be achievable based on the past performance of the portfolio we would recommend (although not guaranteed).*

I think it's important to state at this point that Mr C wasn't experienced at all in these matters. He says he had no pensions or investment experience, and the 'fact-find' documentation tends to confirm this, showing as it does, that he had no current investments or experience to call upon. Mr C was seeking the advice of a professional and he was paying HRCL a significant sum for regulated advice.

In this context, the adviser's job wasn't simply to transact what Mr C thought was a good idea; their job was to really understand his situation and provide advice that was clear, fair and not misleading. The advice had to be in his best interests, and it should have been cognisant of the regulator's starting point - that transferring from a DB scheme should be assumed as being unsuitable until the evidence showed otherwise.

I don't think HRCL did this.

I'm sure that Mr C found managing his day-to-day finances a reasonable challenge given his family circumstances. The evidence I've seen is suggestive of a previous relationship which I think meant Mr C was liable to pay child maintenance. We don't seem to have many details of this captured by HRCL at the time, but as I say, I accept that Mr C and Ms X certainly weren't wealthy and an impending responsibility they imminently faced was the need to address their mortgage situation.

The mortgage had been on an interest-only basis and the term was evidently due; this meant action was required and I accept that this probably needed a new mortgage term which would be on a repayment basis, thus meaning the costs would increase for Mr C and Ms X. However, whilst I accept their finances weren't in an entirely satisfactory position, I reject the idea that they were in serious financial difficulties and at risk of losing their home if they didn't use Mr C's pension to pay down the mortgage. The HRCL adviser may well have recorded on the suitability report that their debts weren't manageable and that taking on a new mortgage wasn't preferred, but I'm afraid the evidence supporting impending homelessness or eviction isn't apparent at all.

In my view, no realistic case was made out for the paying down of the mortgage being of such critical importance, or as HRCL said, that it could imminently result in the loss of their home. Being faced with eviction and homelessness would probably justify transferring a pension of this nature to release cash. But I don't think the evidence shows that Mr C and Ms X were in such a critical position. Their income was more than their outgoings – even if I allow for possible future increases to the mortgage and maintenance payments. The loan-to-value ratio on their mortgage also appeared only to be around 30%. Further to this, everything I've seen points to their mortgage lender showing understanding and as both were at least employed, I think obtaining a re-mortgage would have been completely possible in these circumstances, thus making prematurely using up Mr C's pension savings unnecessary. I was also shown a bank statement from Mr C which gave no apparent indication of serious financial distress.

With these facts in mind, I think it was wrong for the HRCL adviser to say on the suitability report that, *"you are unable to meet your objectives by using your disposable income".* It was also completely wrong to imply that Mr C could achieve enough growth by transferring away to a personal pension and investing the remainder in a market-based fund. This growth assumption was supposedly based on past performance of the recommended fund which the adviser should have known should not be the basis for this type of recommendation on its own, and so in my view this statement was misleading.

These types of personal financial matters can be sensitive issues to address and I'm not saying that Mr C and Ms X were affluent, or indeed, that their outstanding mortgage wouldn't have been a source of anxiety for them. However, the immediate paying down of the mortgage in full or part, by using Mr C's pension funds, didn't appear to be the necessity it is now being portrayed as. And whilst Mr C may not have liked the idea of a remortgage situation at his age, the HRCL adviser's job was to provide regulated advice which was in the best interests of Mr C overall, not just to simply agree with their client.

By recommending that Mr C transfer Pension J, HRCL was endorsing an irreversible transfer from a DB scheme that was specifically designed for Mr C's future retirement. It was forecast to pay a guaranteed and index-linked £5,560 at the NRA. Alternatively, the pension could have been reduced to £3,799 per year if taking a tax-free lump sum of £25,326.

I think this type of guaranteed pension was important because we know Mr C already found his living expenses as being relatively tight with the income he had (if as I've said, just about manageable). However, I think insufficient regard was given by the adviser to what Mr C's financial provisions would ultimately look like at the time when his retirement became due, and whether he would have enough to enjoy a reasonable retirement given he was being advised by HRCL to use up part of his pension to pay his mortgage. I've taken into consideration that at this particular point, he would still have expected to have the full benefits of Pension L still available as a DB scheme when he retired (although we know this was subsequently transferred too). However, Pension L was a pension projected to pay around £5,117 per year at the NRA, and although a helpful and meaningful sum, this still meant Mr C faced a challenging retirement in financial terms if he transferred away from Pension J.

What I'm basically saying here is that the HRCL adviser took insufficient notice of Mr C's financial needs for his retirement by recommending a transfer of Pension J based on a so-called *necessity* to repay a mortgage - a necessity which in my view just didn't exist. There was no *need* for Mr C to use his pension to pay all or part of his mortgage down at that point and this is because a remortgage seemed entirely manageable and one which his lender would most probably grant. As I've said before, borrowing rates were at almost historic lows and Mr C's (and Ms X's) finances appeared to support the negotiation of a new remortgage, which would then negate the need for immediate cash to be withdrawn early from Mr C's retirement savings.

The second transfer advice (Pension L):

As we now know, a few months later Mr C then asked for very similar advice in relation to his second DB scheme. As I understand it, his circumstances were similar, but he said his monthly child maintenance payments had increased. But it's clear to me that the second suitability report (this time in relation to Pension L) was no more than a 'straight lift' from the first (in relation to Pension J).

The rationale for the recommendation to transfer this scheme was the same; HRCL said that he should use the 25% tax-free lump sum of around £30,280 to pay down his mortgage. The only difference I can see is that a small portion of around £4,000 would be left over after having paid off the mortgage completely, and this would be used for home improvements.

Nevertheless, the situation and rationale used for leaving his DB scheme was broadly the same as before. HRCL said that the money was immediately required to pay down the mortgage. And for the reasons I've already explained, I don't think this was completely necessary or in Mr C's best interests.

The financial viability of transferring simply to pay the mortgage was poor because it meant that by transferring from the DB scheme to a personal pension scheme, Mr C would likely see lower pension benefits overall. There was also no pressing or immediate need to pay down the mortgage – and one could say *even less* of a need on this second occasion with Pension L, because Mr C had already previously committed to transferring his first pension which had effectively halved the outstanding mortgage debt. So, by the time of this second suitability report, Mr C and Ms X were facing a mortgage of only £26,000 on a home worth £175,000 and with a joint income which appeared to comfortably support the remaining repayments.

So, when HRCL once again set out on the suitability report for Pension L that Mr C's debt was *"unmanageable"* and that his salary did not support paying a monthly mortgage, this was in no way established by the contemporary evidence. Also, once again I don't think the adviser gave enough consideration to how Mr C was going to fund his retirement; the giving up of this pension would leave him worse off in the longer term and specifically, he would lose the scheme's guaranteed annual pension income of £5,117 (or a reduced pension of £3,584 + £23,895 in tax free cash).

Other considerations

- *Were there other options available to raise cash?*

In my view, the HRCL adviser gave insufficient consideration to whether Mr C might release pension cash without transferring from his DB schemes at all. He already had an existing DC scheme which could have been utilised. I accept that at around £32,000 in value this was a fairly modest affair. But this could have generated around £8,000 in tax-free cash which I still think in Mr C's situation would have been a meaningful sum with which to start addressing his mortgage debt.

I think this would have been useful because I note the NRA for Pension L in particular was relatively close in his case. As I've said, a projected tax-free lump sum of around £23,895 was due from this at the age of 62 and Mr C might also have considered using the remainder in his DC scheme to complement these possibilities.

It's not my role to tell HRCL what it should have done. However, it seems to me that the adviser excluded a number of viable and obvious routes to raising cash without the need to irrevocably leave both Mr C's DB schemes.

- *Flexibility and control*

HRCL said that Mr C required flexibility in accessing his pension in the future, the implication being that transferring from a DB scheme to a personal pension would much better facilitate this. However, I've seen absolutely no evidence that Mr C would need flexible access to his future pension funds in the way suggested. In fact, I think the opposite was true. Here was someone with no savings or investments and who by HRCL's own definition was certainly not enjoying excess wealth.

Against this backdrop I can't see why Mr C would want or need to access his two DB schemes, other than in exactly the way in which they were originally intended. In my view, the facts quite obviously portray him as someone who would need a steady and guaranteed retirement income with inflation protection. In reality, his overall personal pension savings were moderate, and would probably even be largely insufficient to maintain a reasonable retirement until eventually 'topped up' by the state pension. Mr C also already had some limited flexibility in existence within his existing DC scheme which I don't think HRCL ever properly considered.

I've also seen no evidence that Mr C had either the capacity or desire to manage his pension affairs if they were moved to a type of personal 'pot'; he would have always needed 'help' with these transferred funds which would have simply cost him more money in fees and charges. With his DB schemes he had no such fees or charges. I also think it's reasonable to say that the thought of managing up to £200,000 in personal pension funds over the long-term would have been an onerous task for Mr C and one which he himself would acknowledge he was ill-equipped for.

I therefore think the mention of flexibility in both suitability reports in this regard was no more than a 'stock' objective with no real parallels to Mr C's situation.

- *Death benefits*

From the evidence I've seen in this case, a personal pension arrangement was portrayed as being better owing to the retention of the full value of Mr C's funds if he died.

However, Mr C was only 56 years old and so statistically the chances of him passing away anytime soon were not high. So, whilst the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature, as his partner might have inherited the value of his transferred funds tax-free, other factors should have been considered. An obvious drawback with a personal pension's death benefits is that the amount left to pass on – to anyone – would probably be substantially reduced as the pensioner starts to withdraw his or her retirement income. In this case, the adviser was clearly intending Mr C to use his remaining 75% of his transferred funds wholly for his retirement income. Mr C wasn't wealthy and so he needed to spend his retirement income to live on, and therefore, to drawdown most or all of the funds. If he lived a long life, which was entirely possible, there was every chance that the amount left to pass on would be completely depleted.

Also, at just 56 years old, a 'term' life insurance policy may have still been an affordable product if Mr C really did want to leave a reasonable cash lump sum legacy for Ms X, or anyone else for that matter, in the event of his sudden death. I can't see this was ever properly discussed.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr C. I think this objective, listed as it was in the two suitability reports, was no more than a generic comment and not meaningful to Mr C's situation.

- *HRCL says Mr C knew of the risks and losses of guarantees*

HRCL says Mr C was made aware of the losses of guarantees and benefits found in his DB schemes. But the adviser still recommended on both occasions that he should transfer away and I think Mr C relied on that recommendation. It was HRCL which was the regulated party here, and not Mr C. So, I'm afraid it was HRCL's responsibility to make the correct recommendation, its job wasn't just limited to telling Mr C there were some risks and then let him – someone with limited financial knowledge and no investment experience – to decide on what he thought was best. He was being charged a substantial amount for the advice and so was entitled to assume the advice was in his best interests.

<u>HRCL's response to my PD</u>

Whilst I'm grateful to HRCL for its response to my PD, nothing new was brought to my attention and I had already covered the issues mentioned. So, it doesn't change anything.

The response mainly focusses on Mr C's apparent concerns at the time around his mortgage situation and which I had already comprehensively addressed in the PD. What HRCL is continuing to say about this is that Mr C feared the consequences of having to re-apply for his mortgage and that at his stage in life, he didn't really want to do this.

However, whilst I understand the point being made, in my view this merely serves to perpetuate HRCL's misunderstanding of what it was required to do. As I've said, Mr C was certainly no financial or investment expert and I'm sure he wouldn't mind me saying this complete lack of knowledge and experience as regards his pension options was something he hoped HRCL would be helping him with. He was also being charged around £14,000 by HRCL for the advice and so had every right to believe that the regulated adviser would be using their experience, skills and knowledge to look at Mr C's entire financial situation and recommend what was right for him. The adviser's job wasn't to just accept what Mr C – an uninformed amateur in this situation – thought might be a good idea.

In my view, HRCL also continues to misunderstand the other options that were clearly open to Mr C to substantially reduce his mortgage debt whilst still remaining in his two DB schemes (and retaining the funds therein for his retirement).

<u>Summary</u>

I don't think the transfer advice given to Mr C was suitable on either occasion.

He was giving up a guaranteed and risk-free income within his two existing DB schemes and by transferring to a personal pension arrangement, the evidence clearly shows that Mr C was likely to obtain lower retirement benefits in the medium-to-long term.

I also don't think there were any other reasons justifying the transfer(s). The idea that Mr C's home was at risk unless he transferred his DB pensions to pay down his mortgage is an exaggeration. Mr C could have afforded a new mortgage, and in any event, HRCL failed to address other methods of tackling his mortgage debt, which could have included using his existing DC scheme and / or the early retirement provisions in his two DB schemes.

Therefore, on the basis of what I've comprehensively explained above, the advice wasn't consistent with the regulator's guidance.

I do accept that HRCL disclosed some of the risks of transferring to Mr C and provided him with a certain amount of information. But ultimately it still advised Mr C to transfer out on both occasions, and I think he relied on that advice. In my view, if HRCL had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, if there is a loss, I think Mr C should be compensated for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Suitability of investments

HRCL recommended that Mr C invest his funds in a personal pension after releasing the 25% I've mentioned above. As I'm now upholding the complaint on the grounds that the transfers out of the DB schemes weren't suitable for him and I don't think he would have insisted on transferring out of the schemes if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB schemes and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Putting things right

A fair and reasonable outcome would be to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would have most likely remained in the two deferred DB pension schemes, Pension J and Pension L, if suitable advice had been given.

HRCL must therefore now 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 schemes' normal retirement age of 66 (Pension J) and 62 (Pension L), 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 C'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 C redress as a cash lump sum payment,
- explain to Mr C 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 C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts HRCL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr C 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 C’s end of year tax position.

Redress paid directly to Mr C as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), HRCL may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

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 the business pays the balance.

My final decision

Determination and money award:

I am upholding this complaint and now require Harbour Rock Capital Limited to calculate and if appropriate pay Mr C the compensation amount as set out in the steps above, up to *a maximum* of £430,000.

If Mr C 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 C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 30 April 2025.

Michael Campbell
Ombudsman