

The complaint

Mr M complains about a fee he is being asked to pay by Harbour Rock Capital Limited trading as Pension Access ("HRCL") for some advice he received from the firm about his pension savings.

What happened

I issued a provisional decision on this complaint earlier this month. In that decision I explained why I thought the complaint should be upheld and what HRCL needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr M held a small amount of pension savings within a personal pension scheme. Those pension savings comprised a small transfer in that Mr M made in 2022 together with contributions made each month by Mr M's employer.

Mr M says that he saw an advert from HRCL regarding accessing a pension commencement lump sum ("PCLS" – otherwise known as tax-free cash). He says the advert explained that HRCL could provide him with advice about taking a PCLS for a fee of 1% of his pension savings. Mr M says he contacted the firm as he wanted to use the PCLS he was entitled to receive (approximately £5,000) to help his daughter purchase a house.

HRCL appears to have provided some initial advice to Mr M that he shouldn't take a PCLS at that time. But it later appears to have agreed to treat Mr M as an insistent client and provided some further advice to facilitate the transfer of Mr M's pension savings to another scheme, and the subsequent payment of a PCLS. HRCL set out in that report that Mr M would need to pay a fee of 7% of his pension savings (amounting to around £1,425) if he decided to proceed.

Mr M says that he understood the transfer was required in order for the PCLS payment to be made so he gave his agreement to HRCL's recommendation. But he says that later, when he was asked by HRCL to contact his current pension provider to cease his membership of the scheme, he discovered he could receive a PCLS direct from the scheme without the need to transfer his pension savings. So he told HRCL that he no longer wished to proceed with its advice.

HRCL told Mr M that its terms clearly set out that its fee would become due once any advice had been accepted. And it later told Mr M that he had cancelled the instruction after any cooling off period he was entitled to receive. So it asked Mr M to pay the full advice fee of £1,425.79. But it told Mr M that it would be able to deduct that fee from his pension savings if he decided to resume the transfer of his remaining pension savings. Unhappy with that response Mr M brought his complaint to us.

As HRCL will be aware, unlike the Courts, I am not limited to looking only at the issues a consumer has focused on in their complaint. Our approach is "inquisitorial" - rather than the "adversarial" procedures of the courts, where the lawyers for the two

sides "fight it out". By law, I am required to resolve complaints fairly. This means I decide what questions to ask to get to the bottom of things. And it means I can concentrate on the relevant facts of the case, rather than the complaint as presented.

So as my starting point for considering this complaint I think I should look at the suitability of the advice that HRCL provided to Mr M. As I will now go on to explain I don't think the recommendation that HRCL provided to Mr M was appropriate. And so that will naturally lead me onto my further consideration about whether it is reasonable for any fees to be charged for that advice.

Mr M tells us that he wanted to release a PCLS from his modest pension savings. Although I have not been provided with any evidence of those initial enquiries I have no reason to doubt what Mr M has told us. Mr M accepts that his financial literacy is relatively modest. And I think that is supported by the way he engaged with HRCL on the two phone calls for which I have been provided recordings.

As I said earlier, HRCL initially advised Mr M that he should reconsider his intention to take his PCLS at that time. It thought that he had alternative sources of funds to support his objectives, and that he would be better to leave his pension savings intact to enjoy the taxation benefits they receive. Although I have not seen that recommendation, or the data to support it, I would generally think it correct in circumstances such as Mr M's appear to be.

But HRCL agreed to treat Mr M as an insistent client, and facilitate the payment of the PCLS. In a further advice report it issued, HRCL said the following;

"We have already recommended that you do not transfer your [existing scheme] plan to release a tax-free cash lump sum as it is not in your interests to do so. However, you have decided to disregard this recommendation and asked us to facilitate the transfer of your [existing scheme] plan so that you can proceed with releasing a tax-free lump sum of £5,092.12, against our advice.

On this basis, we have agreed to provide you with advice on where the funds will be invested only. This is completely separate from our advice not to transfer your [existing scheme] plan which remains the case.

I think that the starting point of that recommendation was flawed. It doesn't seem that HRCL had undertaken sufficient research into the options available to Mr M if he remained a member of his existing scheme. But I can see that HRCL did receive some documentation from that scheme in August 2023 that set out members could access their pension savings whilst remaining in the scheme through a flexi access drawdown arrangement. Members would receive their PCLS and with the remaining funds providing taxable withdrawals when required in the future. That sort of arrangement was exactly what HRCL told Mr M would be achieved by accepting its advice to transfer his pension savings.

HRCL also told Mr M that the new scheme had lower running costs than his existing plan, but failed to provide him with any comparisons to support that statement. HRCL told Mr M that the new scheme would attract total charges (excluding HRCL's ongoing management service) of 0.32%. But I can see that Mr M's existing scheme levied charges of 0.3% per annum plus an annual charge of £2.50. So based on the size of Mr M's pension savings (after the PCLS had been taken) the existing scheme charges would be approximately 0.316%. And given the fixed nature of the annual

£2.50 fee, that overall percentage charge would only reduce as Mr M's pension savings grew.

But what is of course of even more importance here, is that in moving his pension savings to the new provider, Mr M would need to pay a fee of 7% of their value to HRCL. That fee would take many years to recover (if at all) assuming that the move to the new provider would increase any investment returns. I think it very unlikely, taking account of Mr M's age, that the transfer could be considered to be in his best interests.

So I am not satisfied that the advice HRCL gave to Mr M was suitable. I think it could have explained to Mr M that he could achieve his objectives by simply getting in touch with the administrator of his pension scheme. And in fact that was exactly what Mr M later did.

For completeness I have also thought about what Mr M told HRCL on a later phone call – that he also wanted to transfer another smaller pension to provide a combined pot. I would first say that requirement didn't form part of the advice HRCL gave to Mr M – and doesn't appear to have been used as an additional reason for the recommendation. But even so, I can see that transfers into Mr M's existing scheme could be made free of charge. So his objective to combine his pension savings could have been achieved by remaining a member of the exiting scheme.

So that then leads me onto the substance of Mr M's complaint – whether the fee he has been asked to pay by HRCL for its advice is fair. I am not making any findings here about whether HRCL gave Mr M sufficient clarity about its charges – I don't need to. Since in cases such as these, where I have found advice to be unsuitable, I would direct that any fees paid for that advice should be refunded. So I am persuaded that it would be unfair for Mr M to be required to pay the advice fee HRCL says is due.

In many cases such as these, where inappropriate advice has been given, and fees already deducted from transferred pension savings, a consumer can be compensated by the return of those fees together with some investment returns. But here it seems HRCL has made a number of attempts to press Mr M for payment of its fees, even whilst his complaint is being considered by this Service.

Mr M has told us that he has feared bailiffs visiting his home, and that he has received medical treatment for depression brought on by the stress of this situation. So I think it appropriate that he should be paid some compensation for the distress and inconvenience he has been caused as a result of HRCL requiring payment for the inappropriate advice it provided. So I intend to direct HRCL to pay £400 compensation to Mr M in that regard.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr M has said he agrees with my provisional findings but he has provided some additional narrative about his recollections of his relationship with HRCL. I will discuss what he has said later in this decision.

But HRCL has said that it doesn't agree with my provisional decision, and has provided some further information and documentation about the advice it gave to Mr M. In summary it says that it extensively researched the options available to Mr M and that its report made it clear that he could take his PCLS from his existing pension scheme. It says that its 7% fee would have been payable even if its advice to Mr M had been to take that approach – the fee

was a charge for its advice, not for administering the transfer. So HRCL considers that the advice it gave to Mr M was suitable.

HRCL says it is sorry to hear of the medical problems Mr M has recently faced. But it says it has only sent one payment chaser to Mr M since he referred his complaint to us. And it says that it has not made any mention of bailiffs in the payment requests it has sent in the past.

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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr M and by HRCL. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I am grateful to HRCL for sending me the additional information about the advice it provided to Mr M. I accept that, given the initial nature of Mr M's complaint, it is reasonable that HRCL might have initially thought it was unnecessary to send some of that information to us. I am not drawing any adverse conclusions from these submissions being made later in our process.

I've thought carefully about the additional information that has been sent to me by HRCL. But I haven't been persuaded that, even if it had been received earlier, it would cause me to change the conclusions that I set out in my provisional decision. I would however like to make some additional comments on the representations that have been made by both parties.

Mr M has set out in more detail his recollections of the relationship he had with HRCL. As I said in my provisional decision, Mr M accepts his financial literacy is modest. So Mr M might have been more reliant than other consumers on the information he was given verbally by HRCL than that provided in the lengthy reports that were issued to him.

Mr M has been consistent in his testimony that he expected to pay HRCL a fee of 1% of the PCLS that he took. That is clearly at odds with the fee that was set out in the advice reports that he was given – that fee being 7% of his entire pension savings. That would mean the fee Mr M needed to pay to HRCL would increase from his expectation of around £50 to the requested £1,500. Mr M has said, and I would tend to agree, that a fee of that size would be extremely unattractive given what he was attempting to achieve.

So I have some concerns over how the advice, and earlier engagement information, might have been presented to Mr M. In his testimony to us Mr M said that each time he asked for more verbal information about the charges the question was not answered and he was

simply told the details would be sent out to him. I have no reason to doubt Mr M's testimony here, and so would find that HRCL's actions fell short of the standards I would expect.

The pension plan that Mr M already held was able to facilitate the withdrawal of a PCLS whilst he remained a member of scheme and continued to receive his employer's contributions. That was only something that Mr M discovered when, following HRCL's instructions, he spoke to the scheme administrator about leaving the scheme so that the transfer could be completed. As I am entirely satisfied that Mr M's only interest here was in accessing his PCLS, and he had no interest or need to move the remainder of his pension savings, any discussions or advice about a transfer were inappropriate given the fees that he would need to pay.

I don't accept that, had Mr M simply been told to approach the scheme administrator, any advice fee would have been reasonably due. I have noted that HRCL actually advised Mr M to not transfer his pension savings, and not take a PCLS. But it agreed to treat him as an insistent client so that the transfer could proceed. Some might consider that to be simply a device to ensure that it received a fee for any work that had already been done. But I note that there was no request for a fee to be paid in the initial advice report. And later Mr M was told that he became liable for the fee when he accepted the transfer advice, and sought to cancel the transfer after the statutory cooling off period had expired. I don't think that point should ever have been reached.

So I remain of the opinion that the advice provided to Mr M was inappropriate. I am satisfied that he sought HRCL's assistance for the sole reason that he wanted to access his PCLS when he reached 55 years of age. HRCL acted correctly in explaining that it wouldn't support that as an appropriate way forwards. But it then provided further advice that I don't think can be considered in Mr M's best interests, even if I was persuaded it was appropriate to treat him as an insistent client.

So I repeat my earlier conclusions that it would not be reasonable for Mr M to be expected to pay a fee for advice that was unnecessary. And I think the attempts HRCL have made to recover those fees have caused Mr M distress and inconvenience. So I uphold Mr M's complaint and direct HRCL to put things right as detailed in my provisional decision and repeated below for clarity.

Putting things right

I don't think the recommendation provided to Mr M was appropriate, so I don't think he should be expected to pay any fee for that advice. HRCL should write to Mr M to confirm that he has no outstanding fees that are due.

HRCL should pay Mr M £400 for the distress and inconvenience he has been caused.

My final decision

My final decision is that I uphold Mr M's complaint and direct Harbour Rock Capital Limited trading as Pension Access to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 May 2025.

Paul Reilly
Ombudsman