

The complaint

Mrs B complains about advice from Harbour Rock Capital Limited trading as Pension Access (Harbour Rock) relating to the transfer of benefits from her defined benefit (DB) occupational pension scheme to a self invested personal pension (SIPP). She says the advice was unsuitable for her and has caused financial loss.

Mrs B is represented in bringing her complaint.

At the time of the events complained about Harbour Rock was operating under a different name. But for convenience I've just referred to Harbour Rock, references to which should be taken as including the predecessor business as appropriate.

What happened

Mrs B was a member of her employer's DB pension scheme. In January 2020 she returned a form to Harbour Rock confirming she wanted her pension arrangements reviewed. On the form she wrote that she'd really wanted a lump sum at 55 but was told she couldn't have it.

Harbour Rock sent Mrs B a welcome letter on 21 January 2020.

On 23 April 2020 a Harbour Rock paraplanner carried out a fact finding call with Mrs B and her husband. The paraplanner said that, by transferring, Mrs B would lose the guaranteed income from DB scheme payable when she reached retirement age – that was £7,642 at age 67, based on current values – the pension would be more by the time she came to retire.

Mrs B initially said she wanted money for home improvements but during the call it transpired that she and her husband had mortgage arrears of about £12,000. They weren't currently making the monthly payments of £829. They also had other debts of around £4,000. Mrs B's husband explained that he'd been out of work for two years because of medical issues and Mrs B had been unwell too which had put them behind with things. But they were talking to their creditors and they weren't being forced out of their home. Mr B went on to say that they wanted to clear their debts and, when he went back to work at the end of the year, he'd have ten years left to work and save for their retirement.

The paraplanner made a follow up call to Mrs B on 24 April 2020 about state benefits. Although Mrs B didn't receive any benefits her husband did and the paraplanner said Mrs B should check if the benefits would be affected if she took tax-free cash.

Harbour Rock sent Mrs B a suitability letter on 30 April 2020. It said, having reviewed her pension arrangements, Harbour Rock advised her to stay in her employer's DB scheme. But the letter included a section headed, '*What happens if you still want to go ahead?*'. It said that if she didn't want to follow Harbour Rock's recommendation it would need to treat her as an insistent client for the remainder of her pension review. If she instructed Harbour Rock to continue, a paraplanner would call her to ensure she understood the reasons for the recommendation and what proceeding against the advice might mean for her future.

Mrs B signed Harbour Rock's options form on 21 May 2020. It said it wasn't a final decision. And, even if she chose to continue to release money early from her pension, no transfer would take place until she signed the declaration form that would be part of her full pension review pack. And no fees would be payable to Harbour Rock until then.

Mrs B ticked option 2 which said she wanted to disregard the recommendation and continue as an insistent client. In doing so she confirmed she understood the recommendation was not to proceed. But she still wanted to continue against Harbour Rock's advice so that she could release a total tax-free cash lump sum of £27,058.

If Mrs B chose to disregard the recommendation she was also asked to read, sign and date and return the insistent client form also enclosed. Mrs B had to sign every section to confirm she understood each statement. The first section repeated that she understood Harbour Rock's recommendation was not to proceed and that by disregarding that and instructing Harbour Rock to continue with the transfer, she understood she'd be going against the advice and was therefore an insistent client. She also confirmed she'd read and understood the benefits she'd be giving up by proceeding. And she understood the risks set out.

Lastly, she was asked to say, in her own words, why she wanted to go ahead and transfer to access her pension savings early, even though that was against Harbour Rock's recommendation. Mrs B wrote that, due to her and her husband's recent health problems, they'd decided to proceed against the advice. They understood the implications going forwards but they wanted to improve their quality of life now, not in the future.

On 29 May 2020 Mrs B had a further call with Harbour Rock. She was asked what her understanding was as to why the adviser had recommended that she didn't transfer. Mrs B said it was because she'd get a better pension when she reached retirement age – but that was at age 67. She and her husband had discussed things and felt they'd have a better quality of life now, particularly given their health issues. She couldn't recall how much the DB pension was but she understood she'd probably be worse off in retirement in so far as this pension was concerned. But her husband had some pensions. She was looking to release funds from her pension for home improvements and a holiday which she and her husband needed. Their savings had been exhausted as he hadn't worked for two years.

Harbour Rock's representative said the purpose of the call was to make sure Mrs B understood the implications of transferring. The next set of paperwork she'd get was to enable her current provider to release the funds and Mrs B should get those papers back as soon as possible.

Harbour Rock then produced a Pension Review Report dated 2 June 2020. It said, in bold, that Harbour Rock had already recommended Mrs B didn't proceed with transferring her benefits but she'd decided to disregard that advice and, as a result, Harbour Rock was now treating her as an insistent client. Later on, under the heading, '*Our recommendation*', the report reiterated that before going on to recommend that Mrs B transfer to a SIPP with a named provider so she could '*proceed with releasing a tax-free cash lump sum of £27,059 even though it is **against our advice***.' The report went on to repeat why Harbour Rock had recommended that Mrs B didn't proceed. It also said that Harbour Rock had advised her to opt back into her employer's scheme to continue to benefit from employer contributions.

Under the heading, '*Understanding the potential risks*', there was a comparison of the benefits the employer's scheme provided, compared to the new SIPP. Harbour Rock said it could cost Mrs B £239,805 to obtain a comparable level of income from an insurer. She'd been offered a cash equivalent transfer value of £108,236, so the same retirement income could cost her £131,568 more by transferring.

Mrs B signed Harbour Rock's Declaration on 13 June 2020. In doing so she confirmed she was aware that Harbour Rock had recommended that she didn't proceed and she wanted to disregard that recommendation. She understood she'd be treated as an insistent client and she wanted to proceed against the advice to release a tax-free cash lump sum of £27,059 to meet her objectives of making home improvements and tackling debt. She further confirmed she understood the benefits she'd be giving up which included: a guaranteed income for life from age 67 of £7,642 pa and a tax free lump sum of £9,256 or a reduced income and higher tax-free cash. She also said she understood the risks set out.

The transfer went ahead but not until December 2020. Mrs B needed first to opt out of her employer's scheme and the transfer value was also recalculated. On 16 November 2020 Harbour Rock had written to Mrs B saying her transfer value had been recalculated at £113,034.49. Mrs B signed a client transfer declaration on 25 November 2020 confirming she wanted to proceed. Again she acknowledged that Harbour Rock had recommended that she didn't proceed, that she wanted to disregard that, be treated as an insistent client and proceed against Harbour Rock's advice.

More recently, Mrs B became concerned that she'd been misadvised and in July 2024 she complained, through her representative, to Harbour Rock. Amongst other things Mrs B's representative said Mrs B had suffered a stroke and was a vulnerable client. She had memory loss and she couldn't remember the advice process. And the insistent client process hadn't been followed correctly.

Harbour Rock reviewed the complaint. But it didn't uphold it. In its final response dated 4 September 2024 it said Mrs B had made an informed decision and the transfer hadn't been mis-sold.

The complaint was referred to us. It was considered by one of our investigators. She said Mrs B and her husband wanted to pay off mortgage arrears. It seemed Mrs B was aware she'd be giving up guaranteed benefits. Harbour Rock had recommended she didn't transfer. Her reasons for wanting to go ahead had been discussed. She'd been told she'd get a better pension if she left it where it was. But she and her partner had health concerns and, taking into account their financial circumstances and the need to pay off mortgage arrears, their preference was to have access to the funds. Although the investigator identified some flaws in how Harbour Rock had handled things, she was unable to conclude that Mrs B wouldn't have proceeded anyway, when she had no other means of paying the increasing mortgage arrears.

Mrs B's representative said Mrs B didn't accept the investigator's view and made a number of points. In summary:

- Harbour Rock's insistent client process wasn't robust enough – the prospect of getting tax-free cash appealed to Mrs B and Harbour Rock made it easy for her to be classified as an insistent client with the focus on accessing tax-free cash.
- Limited telephone calls had been provided – the only recordings involved call handlers who were either explaining the advice process or following up on it, rather than calls where the adviser spoke direct to Mrs B.
- The insistent client call revealed significant flaws in the process. It was framed as a straightforward check. Mrs B was unsure of the benefits she'd receive and if she'd be worse off by transferring. The call was rushed and seemed a 'tick box' exercise. Mrs B's comments about there being a delay in returning forms earlier as she'd needed time to think were dismissed on the basis she'd now made her decision. There was no mention of the 'better' DB pension being guaranteed for life whereas the personal pension could potentially run out.

- Alternatives hadn't been fully explored. Despite her husband's health problems, he was able to return to work about a year later. They may have been able to have negotiated further support with the mortgage and benefits. Mrs B could've accessed her DB pension but as she was 56 there'd have been an early retirement penalty of 17.4%. But she may have been able to take early retirement on ill health grounds but this option wasn't discussed.
- Mrs B had made Harbour Rock aware she'd had a stroke just two months earlier. Harbour Rock should've recognised she was vulnerable and taken additional steps to ensure she fully understood the advice and was able to make informed decisions.
- We'd dealt with other complaints involving Harbour Rock's insistent client process. Harbour Rock didn't have to treat Mrs B as an insistent client. Harbour Rock could've declined to execute the transfer, which would've been in Mrs B's best interests.

The investigator asked Harbour Rock if there were any further call recordings and one was located which was shared with Mrs B's representative. The investigator also queried how the tax-free cash had been spent, whether Mrs B's husband had transferred his two existing workplace pensions – he'd mentioned he was seeking advice about them – and what had prompted Mrs B's complaint or made her aware she might've been misadvised.

Mrs B's representative told us that some but not all of the tax-free cash had been used to pay off debt. And Mr B hadn't transferred his pensions. Mrs B had seen an advert on social media placed by her representative and had got in contact asking for her pension transfer to be investigated. Her complaint to Harbour Rock was then made.

The investigator considered the further information but it didn't change her view. Although there were issues with the advice process, there was a need to transfer, as demonstrated by the fact that Mrs B did use some of the tax-free cash to pay off debt.

As agreement couldn't be reached, the complaint has been referred to me to decide.

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.

Although I've read and considered carefully all the information that's been provided, I'm not going to deal with each and every point that's been raised. Instead I've concentrated on what I see as central to Mrs B's complaint and key to my findings.

Having done so, I've decided not to uphold the complaint. As I've explained below, I think there were some flaws in how Harbour Rock handled things. But I think Mrs B would've still likely gone ahead with the transfer even if Harbour Rock's process and procedure had been better.

In reaching my conclusions I've 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 the advice, but provides useful context for my assessment of Harbour Rock'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. And which include COBS 19.1.6G (2) which says, when a firm is making a personal recommendation for a retail client who is a member of a pension scheme with safeguarded benefits (which a defined benefit pension scheme is) and who is considering whether to transfer, a firm should start by assuming that a transfer will not be suitable.

Since 2018, the COBS rules have included additional guidance on insistent clients. COBS 9.5A defines who is an insistent client and 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.

COBS 9.5A.4 adds:

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.

Was Harbour Rock's advice suitable?

COBS 19.1.6G says that the starting assumption for a transfer from a DB scheme is that it is unsuitable. Harbour Rock didn't recommend that Mrs B transfer. The suitability letter dated 30 April 2020 set out (in a highlighted box) that Harbour Rock strongly recommended that Mrs B didn't proceed with a transfer. That wasn't in her best interests because she'd lose valuable guaranteed benefits; she may lose or reduce her husband's entitlement to state benefits or access to these in the future; she could meet her objectives through alternative methods; and the growth rate required to replicate the benefits she'd be giving up was high.

Harbour Rock recommended that Mrs B should instead explore using her husband's non guaranteed pension benefits instead. The letter went on to set out in more detail what Mrs B might be giving up: her employer's DB scheme came with some extremely valuable benefits, including a promise to pay a guaranteed income for life.

I don't think there's any doubt that Harbour Rock's recommendation was that Mrs B shouldn't transfer. That was repeated multiple times throughout the process.

Harbour Rock's insistent client process

Mrs B was aware that Harbour Rock's recommendation was that she didn't transfer. I think she was made aware of the reasons for that – essentially she'd be giving up valuable guaranteed benefits and she'd likely be worse off when she came to retire. Harbour Rock also explained to Mrs B that, if she still wanted to go ahead and not follow Harbour Rock's recommendation to leave her employer's scheme benefits where they were, she'd be treated as an insistent client. Again, that message was repeated throughout the process. For example, on the options form and the enclosed insistent client form, the Pension Review Report dated 2 June 2020 and the Declaration Mrs B signed on 13 June 2020.

It was open to Harbour Rock to accept insistent clients, although not all firms are prepared to do so. As I've noted above, COBS 9.5A includes specific provisions regarding insistent clients. A firm needs to communicate the information in COBS 9.5A (2). I think Harbour Rock did that. As I've said, it made it clear to Mrs B that it hadn't recommended the transaction. And gave reasons why the transaction wouldn't be in accordance with the firm's personal recommendation, the risks of the proposed transaction and why Harbour Rock didn't recommend it.

Further, with reference to COBS 9.5A.4, Harbour Rock did get Mrs B to acknowledge that the transaction wasn't in accordance with Harbour Rock's personal recommendation and that the transaction was being carried out at Mrs B's request. And she was also asked to say, in her own words, why she wanted to proceed – as I've noted above, the insistent client form included a section for Mrs B to complete saying why she wanted to proceed against the adviser's recommendation.

Harbour Rock also had a telephone call with Mrs B on 29 May 2020, after she'd returned the options form saying she wanted to transfer, to test her understanding as to why the adviser had recommended that she leave her employer's scheme pension where it was. To some extent I agree with what Mrs B's representative has said about that call. Harbour Rock's representative said it should only be a quick call. In my view, it was somewhat perfunctory and felt casual, which underplayed the importance and significance of what Mrs B was doing. There was no real attempt to probe more deeply and/or challenge what she'd said about said about why she wanted to proceed. I acknowledge that, during the call, Mrs B couldn't recall the amount of the pension she'd be giving up (although the representative reminded her of the figure). But Mrs B was able to confirm that she understood she'd get a better pension if she remained in the DB scheme. And she knew that wouldn't be until she reached age 67. She said she and her husband had discussed things and felt they'd rather have a better quality of life now.

There was some discussion about Mrs B returning the forms that would be sent as soon as she could – on the basis that would mean the money could be released to her. Mrs B said she'd taken some time to return the forms that had previously been sent as she'd been thinking about things. And the representative did say that Mrs B had now made her decision, inferring that things should move on swiftly. But I don't think the phone call really evidences Mrs B was pressurised. Harbour Rock's representative said, more than once, that Mrs B should be back in touch if she any queries.

On the subject of telephone calls generally, Mrs B's representative seems to suggest that only some calls have been produced and there are none with the adviser. But we've asked Harbour Rock for all the calls it holds. It seems that Harbour Rock's process is for a paraplanner to complete most stages of the procedure, aside from the recommendations which are given by the adviser in writing. So Mrs B may not have spoken to the adviser.

Mrs B had suffered a stroke and Harbour Rock was aware of that. But, very fortunately, it seems Mrs B made a good recovery and she'd been able to return to work and in the same role as previously. Mrs B now says she doesn't recall the advice process. But I haven't seen anything to suggest, at the time, that she didn't understand or couldn't follow the advice process such that Harbour Rock should've identified and treated her as a vulnerable client and taken further or additional steps.

And, as Mrs B had resumed work and in the same role, I'm not sure that early retirement from her employer's scheme on ill health grounds would've been an option. Taking her benefits early was an option but, as she was only 56 against the scheme's normal retirement age of 67, the reduction for early payment (17.4%) was unpalatable.

But I think there were some issues. It seems to me that Harbour Rock's process from the outset was geared towards Mrs B transferring so she could access her tax-free cash. For example, Harbour Rock's Welcome Letter dated 21 January 2020 said, that once information from her current provider was to hand, Harbour Rock would contact her to '*confirm how much tax-free cash*' she could take from her pension. In my view, that somewhat presupposes that's what she'll be doing. I don't think referencing accessing tax-free cash from the very outset is consistent with COBS 19.1.6G and the FCA's starting assumption that transferring from a DB scheme won't be suitable.

Further, when the fact finding call took place, once Mrs B had passed the security questions, the paraplanner immediately referred to what Mrs B had said about taking some money out of her pension for home improvements and asked if she had any idea how much she'd be looking to take. When Mrs B said she didn't know how much her pension was worth the paraplanner gave her the figures and said she'd be able to take 25% as tax-free cash which was £27,059.21. So, the focus from the outset of the call was on the availability of tax-free cash. And, in the follow up call made on 24 April 2024, the paraplanner said work had started on Mrs B's report to release her pension – so again the inference is that's what she'd be doing and the report wasn't a review of her pension as such, more a necessary step towards her accessing her pension.

Harbour Rock said in its recommendation letter dated 30 April 2020 that it strongly recommended that Mrs B didn't proceed. But the reasons given weren't particularly detailed. The later Pension Review Report dated 2 June 2020 was more detailed. It did say there was no fee and Harbour Rock wanted to provide Mrs B with sufficient information to assess Harbour Rock's approach and proposals, with no obligation. And that she could now decide if its recommendation was right for her. But, by then, Mrs B had already decided, based on the more limited information in the letter dated 30 April 2020, to transfer. She wasn't bound by what she'd decided but, as she'd already made her decision in principle at least, I think it would've been more difficult for her to be persuaded to reconsider. A more detailed analysis at an earlier stage would've been more appropriate. It would've been a more balanced approach and better allowed Mrs B to make a fully informed decision. As far as I'm aware, Harbour Rock would've had all the information it needed at the earlier stage to produce a more comprehensive report.

I note that the Pension Review Report advised Mrs B to opt back into her employer's scheme to benefit from employer contributions. To explain, Mrs B was only able to transfer if

she left her employer's scheme, that is opted out. Once the transfer had gone through, she could rejoin, which is what she did. So she'd start accruing benefits in the employer's scheme again. But she wouldn't be in the same position as if she'd not transferred out her accrued benefits. She'd be paid a transfer value for those. But there'd be a gap in her pensionable service until she rejoined, during which time she'd have lost out on employer contributions. And the value of the accrued benefits she transferred wouldn't be linked to her salary/career earnings at retirement date as provided for by her employer's scheme rules (assuming she'd remained in that scheme). In which case the value of those transferred benefits would've likely been even higher at retirement. I don't see that Harbour Rock explained the opt out properly to Mrs B.

Further, although the letter dated 30 April 2020 said Harbour Rock strongly recommended that Mrs B didn't transfer, Harbour Rock went on to set out, in the same letter, what would happen if she still wanted to go ahead. I don't think giving that option at the same time was appropriate. It undermined the advice not to transfer and made it seem that disregarding the advice was commonplace. If Mrs B had still wanted to transfer despite Harbour Rock's advice against, she could've reverted to Harbour Rock to see what her options were. Or the possibility of transferring as an insistent client could've been introduced separately and after Mrs B had had a chance to properly consider why Harbour Rock wasn't recommending that she transfer. Instead, as things stood, Harbour Rock's process was aimed at facilitating a decision to transfer against advice. I think Harbour Rock made it too easy for Mrs B to proceed against the recommendation and she'd have understood that disregarding the advice and proceeding as an insistent client was fairly routine.

So, I think there were some fairly significant issues and failings in the insistent client process that Harbour Rock followed. But that doesn't mean that Mrs B would've been in a different position if there hadn't been flaws in the way in which Harbour Rock dealt with things.

Would it have made a difference if Harbour Rock's insistent client procedure been more robust and not so focused, from the outset, on Mrs B wanting to transfer?

Some of the reasons Mrs B gave for wanting to access her tax-free cash weren't things that were strictly essential, such as home improvements and a holiday – although about the latter I can understand, given the very difficult period Mrs B and her husband had been going through, a holiday may have been high on their priorities. But it came out, during the fact finding call, that she and her husband also had mortgage arrears and other debts they wanted to clear. They owed a significant sum – some £12,000 – in mortgage arrears and they had credit card debts of another £4,000 or so. It seems they were in contact with their creditors, including agreeing a repayment holiday on their mortgage. But, ultimately, the mortgage arrears could've led to their home being repossessed.

Mrs B and her husband didn't have savings or other assets they could've accessed to meet their debts. Unfortunately, Mrs B's husband hadn't been able to work for some two years due to his health problems and their savings had been exhausted. It seems, from the initial fact finding call with the paraplanner, that they'd got a plan to address their debts so that going forwards they'd have a better quality of life. Living with debt, particularly if the security of their home was at risk, would've been stressful and I can understand it would've been something that Mrs B and her husband would've wanted to address if they could. I don't see that they were in a position to take on additional borrowing to address the arrears, even if that was something they'd have been prepared to consider.

The possibility of Mrs B's husband accessing non guaranteed pension benefits was mentioned and indeed Harbour Rock gave it as a reason why it wasn't recommending a transfer – as Mrs B and her husband might be able to raise cash from that source. But it seems that, for whatever reason, Mrs B and her husband decided against proceeding with

that route. Given that Harbour Rock did raise the possibility I think it was up to Mrs B and her husband if they wanted to pursue that possibility which, it seems, they didn't.

In the circumstances and taking everything into account I think Mrs B would've always likely wanted to transfer to access her tax-free cash even if Harbour Rock's procedure had been different. She and her husband had formed a plan to tackle their current difficult situation – that is, 'get them out of a hole' as Mrs B's husband put it during the fact finding call with the paraplanner – and going forwards to improve their retirement provision taking into account the loss of Mrs B's guaranteed benefits. They could only achieve their objectives if Mrs B transferred and took her tax-free cash. I can't say that any financial detriment Mrs B has suffered in consequence of the transfer flows from what Harbour Rock did or didn't do. In the circumstances I'm not going to say that Harbour Rock needs to compensate Mrs B.

My final decision

I'm not upholding the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 29 December 2025.

Lesley Stead
Ombudsman