

The complaint

Mr F complains that he was given unsuitable advice in 2020 by Harbour Rock Capital Limited ('HRC'), previously trading under the name Portafina Investment Management Ltd, to transfer his defined benefit ('DB') pension benefits and a smaller group personal pension from his former employer to a self-invested personal pension ('SIPP') in order to release a cash lump sum at age 55.

What happened

Mr F contacted HRC for a pension review as he had seen their advert about the possibility to release cash from pensions. He was interested in releasing cash from his pensions to pay off his debts. HRC's paraplanner completed a fact find with Mr F about his personal and financial circumstances over the phone in early June 2020.

Mr F was 54 at the time and a self-employed driver. Due to the Covid pandemic he was currently not working and wasn't expected to be able to return to work until October or possibly even longer. He had received a government grant (due to Covid) of £2,400 in May 2020 and was expecting another payment of around £2,200 in August 2020. He wasn't expecting any further payments after that. His wife was receiving a salary of £1,600 per month.

The couple had £5,000 in mortgage arrears, £2,000 in gas and electricity arrears, Mr F had £3,000 in credit card debt which he couldn't service, £12,000 left on car finance and his wife had further £3,000-4,000 payments on hire purchase agreements and credit cards and a £1,000 loan she had taken from her employer when finances were tight. They had a joint repayment mortgage with a term of 10 years remaining on a home worth around £190,000 and an outstanding mortgage balance of around £69,000. The couple had no savings.

Mr F had payment holidays (due to Covid) from his mortgage provider which Mr F said was likely to run until October 2020 and from his car finance provider, although they already had told him he needed to start making payments from July. Outside any payment holidays the couple had payment plans in place with their mortgage, and electricity providers for the arrears.

His DB pension had a transfer value of around £75,800 providing a guaranteed income at age 65 of around £3,983 per year and his DC pension was worth around £3,300.

Mr F wanted to release cash from his pension when he turned 55 later that year to pay off all unsecured debts. He said he was "in a mess" and wanted to make a new, clean start for himself and his wife. He was looking to ideally take the whole transfer value of the pensions (around £79,000). After paying his own debts off, he was looking to repay around £5,000 of his daughter's debt, possibly pay off a lump sum off his mortgage and use the rest for potentially starting a new business (although he had no concrete plans about this yet.). Anything he didn't spend immediately he wanted to keep as savings.

Mr F's attitude to risk was recorded as cautious.

Mr F was sent a suitability report on 23 June 2020 recommending him to transfer both his pensions into a personal pension with a drawdown facility. The recommendation was to take his tax-free cash entitlement of £19,815.06 to pay off all his arrears, reduce his car finance debt and keep some of it as an emergency fund. They recommended against taking the whole fund value as a lump sum. The remainder of his funds would be invested in a drawdown plan in a balanced portfolio.

He was called on 29 June to confirm whether he had received the report and whether he had any questions. Mr F was concerned about the remainder of his pension being invested as he was worried he couldn't access his pension quickly if he needed it. He also says this was never discussed.

On 21 July he had another call with the paraplanner. Mr F was unhappy with the choice of SIPP provider as he had read bad reviews about them. He was told they were chosen due to their low fees and any interaction with the SIPP provider would be through HRC, so he didn't need to worry about having to deal with them. Mr F repeated that he just wanted to take the whole lump sum and put any remainder in a savings account. He was advised about the tax consequences which is why keeping it invested and being able to withdraw in a more tax-efficient manner was the advised option. Mr F was concerned about market downturns if he was invested and how quickly he could access his pension if he needed to. He was told that he could access his pension and the process of how disinvestment and withdrawals was explained. He also had questions about the charges involved which were explained to him.

On 29 July Mr F was called again by the paraplanner for a so called "trade off" call. This was intended to ensure that Mr F understood he was giving up guaranteed benefits and replace this with a pension which was subject to investment risk.

Mr F went ahead with the transfer receiving a higher combined transfer value for his two pensions of around £83,400 and took his tax-free cash of around £20,850 in November 2020.

He took further lump sums in the following tax year of around £38,000 (£32,000 in April 2021 and £6,000 in February 2022) and £12,500 in June 2022.

In 2024 Mr F complained, through professional representatives, about the advice he received to transfer his DB pension. They said Mr F received negligent advice and wasn't given sufficient information to understand the associated risks and disadvantages of the transfer. They say he shouldn't have been advised to transfer and wanting to access cash wasn't a sufficient objective to justify a transfer.

HRC rejected the complaint. Mr F referred the complaint to us and one of our investigators considered the advice given was suitable.

Mr F's representatives disagreed and so the complaint was referred to me for an ombudsman's decision.

Provisional decision

I previously issued a provisional decision in which I said the following:

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 HRC'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.

COBS 19.1.6G sets out that the starting assumption for an adviser when they advise a customer on a DB pension should be that it is unsuitable to transfer it. A transfer should only be considered if it can be clearly demonstrated that the transfer is in the client's best interests.

HRC's advice process

I agree with Mr F's representatives that the advice process here was flawed in some aspects. HRC's conversations with Mr F didn't really start from the presumption of unsuitability of a DB transfer and didn't elaborate in sufficient detail in my view how valuable DB benefits were.

Mr F said he wanted the tax-free cash option and was willing to give up the benefits from his DB scheme even though what he was giving up hadn't been discussed in any great detail. Throughout the whole process not much focus was given on Mr F's retirement plans and provisions in the long-term, but the focus was on how he could release the cash from his pension.

There is no doubt that Mr F's objective here was to release cash from his pension to pay off a significant part of his debts. I listened to the phone calls between him and HRC and it's clear that Mr F was struggling financially. He had significant debts including substantial arrears which were a real concern to him and he wanted a clean start financially.

Having said that, HRC's role here wasn't to simply enable him to achieve this objective. They needed to carefully assess what was in Mr F's best interest and if they thought transferring wasn't in his best interest, they needed to advise against it. During the fact find calls the possibility of Mr F staying in the DB scheme was never really discussed again.

I also note that Mr F had several conversations with the paraplanner which mainly focused on collecting details about his financial circumstances. But in the calls he was given the impression in my view that taking a lump sum like he wanted was "no problem" and could be facilitated. Mr F was able to raise any questions with her once he received the suitability report. However, the full contents of that report were never discussed with him in detail.

I acknowledge that the suitability report contained details of the benefits Mr F was giving up and the risks involved. However, it was clear that Mr F was keen on accessing cash early, so just relying on him reading everything was not enough in my view. Whilst he was assured several times that he could access his pension at any time and meet his objective of paying off debts, the value of his DB benefits and what he was giving up and the risks of his new arrangement were never discussed in full.

So overall I'm not persuaded that HRC did enough to ensure Mr F fully understood all the

benefits he was giving up and what options he had with his DB scheme and that they fully considered his long-term retirement needs.

Was HRC's recommendation to transfer his DB benefits suitable for Mr F?

It's evident from the documents provided that by transferring his DB benefits to a SIPP and taking a lump sum at age 55, he would very likely receive lower benefits overall than if he kept his DB benefits until age 65. HRC's suitability report says that the growth rate required to replicate his DB benefits in a drawdown plan could be achievable, however I can't see how they have come to this conclusion and whether in any analysis they have done they considered that Mr F was planning to take tax free cash and likely would access further lump sums in early years.

Mr F also had a cautious attitude to risk, had no investment experience and this was his only pension provision (other than his expected state pension). So there needed to be a good reason for giving up the valuable guarantees he had in the DB scheme.

The reason why a transfer was recommended was so that Mr F could access his pension at age 55 and pay off his debts. He couldn't access a tax-free cash lump sum through his DB scheme without taking income at the same time. Giving up secure long-term benefits for more imminent requirements needed to be carefully weighed up.

HRC did ask Mr F about other ways how he could pay off his debts. They asked about savings and disposable income, both of which Mr F didn't have. I recognise Mr F wasn't working due to the Covid pandemic (which when he spoke to HRC had only started two and half months earlier) and therefore he was not earning at the time. However, his significant debt arrears indicate his financial troubles were not suddenly caused by his inability to work. In fact he had been given some payment holidays for his mortgage and car loan and also had received a grant from the government. Mr F told HRC that even before Covid he had sometimes only worked two days a week due to struggling with a bad back.

HRC also asked Mr F about the possibility to remortgage or consolidate some of his debts which could possibly get him better interest rates. Mr F didn't consider these feasible options. I recognise his representatives say this should have been challenged and explored further. However, I think HRC could rely on what Mr F told them and so I think they did enough to look at alternative ways to make his alleviate his financial situation in different ways than accessing his pension. His representatives also say HRC should have prompted Mr F more to see if he could extend payment holidays or if he could secure further grants from the government post August 2020. However, from the conversations I listened to I think Mr F was already doing everything he could in this respect and even if he was able to secure further payment holidays or maybe access another grant to tie him over the Covid pandemic, this wouldn't have resolved his arrears and if he started working again he would have needed to make up any payments he didn't make during the payment holidays. So in my view this always would have only pushed the problem along rather than solve it.

I also considered the argument that Mr F wasn't 55 yet at the time of the advice and so if he could handle his debts he possibly could do so for longer. It's true that Mr F's debts were being managed in the form of increased monthly payments each month towards the arrears. However, this meant finances were really tight for Mr F and his wife with no savings or disposable income and Mr F said he didn't consider his debts were manageable. Mr F knew he could only access his pension at age 55 a few months later, but wanted to start arranging things early. Having listened to the calls with HRC it's clear to me that his debt situation was weighing heavily on Mr F. Mr F was looking for relief and being able to have more money to spend on him and his family now. I think giving up higher benefits later in retirement to make a significant change to his short to medium term situation was reasonable in his particular

circumstances and would likely make a real difference to Mr F's quality of life.

I have also taken into account that-albeit very shortly and not sufficiently in my view- Mr F's later retirement plans and income needs were discussed with HRC. They established that both Mr and Mrs F's state pensions would cover their essential outgoings (if the debts had been paid off as planned by then), but this wouldn't include holidays or other luxuries. Mr F was asked if he thought that was enough and he said yes. I note his wife also had another pension through work -although no details were provided for that which again underlines the point that long-term retirement was not properly discussed. I think HRC also needed to consider the very likely possibility here that Mr F would take lump sums from his pension rather than keep it for retirement income in later life. However, on balance and looking at Mr and Mrs F recorded expenditure I think relying on their state pensions and possibly some additional money from Mr F's pension would likely have been possible.

So I think overall I think HRC's recommendation to leave his DB scheme and take a tax-free cash lump sum of around £20,000 to pay off significant debts and keep some as an emergency fund was suitable in the circumstances. The fact that that HRC's advice had flaws does not change that.

Was the SIPP and investment recommendation suitable for Mr F?

I think it was clear from the conversations with Mr F that he really wanted to access all of his pension and put any unused money in savings. It was right to advise against this given the tax implications. So recommending a drawdown plan where Mr F could access his pension more flexibly and in a more tax efficient way and ideally receive investment returns for any money he wasn't withdrawing was generally a suitable way forward. However, I think it was reasonably foreseeable that Mr F would access his pension again in the short-term. Being able to access his pension quickly was important to him (he made that clear several times) and he wanted more than the 25% tax free cash from the start. Mr F was concerned about the money being invested at all and he had a cautious attitude to risk.

The investments recommended were balanced but included 54% of world equity which I consider too high with too much volatility risk for someone with Mr F's attitude to risk. If the pension was invested for the longer term, there might have been an argument that Mr F needed to take a little more risk with his investments to be able to make this money last for as long as possible in retirement. However, whether this was something Mr F was happy with wasn't discussed and I think he would have felt uncomfortable with this volatility. In any event, for the reasons already explained I think it was reasonably foreseeable that Mr F would access his pension in the very short term again, so I think the investments recommended needed to be less volatile. More cautious investments should have been recommended in my view.

Was Mr F given enough information to make an informed choice?

As already touched on above I think discussions about his options and retirement plans in the long term were not detailed enough and exactly what Mr F was giving up was never properly discussed.

I agree with Mr F's representatives that in the "trade off" call in July Mr F was confused and couldn't answer what benefits he was giving up in the DB scheme. Mr F had already agreed to transfer and so he was a bit confused of why he was suddenly being asked questions around his DB scheme and it's clear he didn't really understand what the paraplanner was "getting at" with her questions. However, HRC did point him to the relevant page of the suitability report and I think at the end of the call he did understand that the income in the DB scheme was guaranteed and his new pension was not and subject to investment risk. I also

note that in the very first call with Mr F he was told he would be giving up guaranteed benefits and what income he could receive from his DB scheme. And on 30 June he signed a one page declaration which told him clearly what benefits he could have received at age 65 from the DB scheme and that a spouse's pension would be provided.

He was also told in the calls and in the suitability report that taking benefits early would have an impact on his retirement in the long-term and risks of depleting his pension by withdrawing significant sums too soon.

Given that Mr F would have ideally wanted to just take all of his pension money and spent a significant part of it in the short-term, I think he understood that if he took his pension now and spent most of it, he wouldn't have the guaranteed and higher benefits available later in life and he was prepared to make this choice to benefit from a better life in the short to medium term.

The key difference between the options presented to him were that staying in the DB scheme meant he wouldn't receive any money for another 10 years and I don't think this was an option Mr F was prepared to accept. So even if he had been given more information about the value of his benefits and even if he had been told to keep his DB scheme until normal retirement age, I don't think he would have accepted that.

However, I did also consider that there would have been a possibility for Mr F to access his DB pension at 55. This was only mentioned in the first call with Mr F but he was told HRC didn't have any numbers they could share. Then this option was never mentioned again.

I note this option would have come with significant reductions. The transfer report showed the benefits that the DB scheme would have provided at 56 which was a lump sum of just under £10,000 and an annual income of £1,492 per year. At age 55 both lump sum and income would have been slightly lower still. I can't see that this scenario was considered at all when this was another option for Mr F. The tax-free cash lump sum would have been able to pay off Mr F's arrears and some credit card debt, so would have brought some relief and the additional income would have been helpful too to service the other debts and provide possibly a little disposable income. I think this option should have been considered and discussed with Mr F. I think both transferring the pension or accessing the DB pension early would have been suitable recommendations here.

So I'm not persuaded Mr F did receive all the information he required to make an informed choice. However, even if he had been given full information about everything, I think he would have chosen to transfer his pension.

I think accessing more tax-free cash to clear more of his debts and being able to access further lump sums when and if needed to be able to reduce his outgoings further by paying off some of his mortgage as well would have appealed more to Mr F. And so I think even if he had been presented with both options, I think he would have more likely opted for the higher tax-free cash by transferring his DB pension.

I say this because even just taking the tax-free cash of around £20,000 was a compromise for Mr F. He wanted to access all his pension at once and use the money to pay off some of his mortgage and help his children with some debts of their own. So I don't think he would have opted to take his DB benefits early even if this had been presented as a recommended option.

Summary

I think there were flaws in the advice process, however overall the recommendation to

transfer out of the DB scheme and access tax-free cash to alleviate his financial situation in the short to medium term was suitable here in my view. I also think Mr F wasn't given sufficient information about his options, but even if he had been given all the information required, I think he still would have followed HRC's recommendation to transfer his DB pension rather than access it immediately or keep the benefits untouched until normal retirement age.

However, I do think the investment recommendation was unsuitable. So I think HRC needs to carry out a loss calculation to work out what position Mr F would be in now if he had been invested more cautiously.

Responses to my provisional decision

HRC accepted my findings. However, they did point out that on 22 December 2022 Mr F was transferred to a lower risk portfolio within his pension. He changed portfolio again to a newly available portfolio in 2023 which also carried lower risk. So HRC considered that the redress calculations should only be run for the period between 2 December 2020 and 22 December 2022.

Mr F's representatives agreed with my findings on the investment advice. However, they maintained that the advice to transfer the DB pension was also unsuitable. They felt HRC should be penalised for the flaws in their advice and that it was inappropriate to speculate what Mr F would have done if the advice process had been satisfactory. Mr F said he was managing his debts at the time and would have continued to do so to better his income in retirement. And if he had been advised about the benefits available in his DB scheme, he would have opted for this.

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.

For the reasons in my provisional decision, I still remain satisfied that despite some flaws in the process the advice to transfer Mr F's DB pension was suitable in his particular circumstances. I understand Mr F is now says he was managing his debts and would have opted for benefits from his DB scheme if this was bettering his retirement income. However, this isn't supported by the conversations he had with HRC at the time of the advice. It's clear from the conversations he had at the time with HRC that Mr F didn't consider his debts to be manageable and that this was weighing heavily on him. His key objective was to improve his financial situation in the short to medium term.

It's also not my role to penalise HRC for flaws in their advice. My aim is to put Mr F as much as possible back in the position he likely would be in if HRC had acted as expected. As I said before, I consider both transferring the DB pension or accessing DB benefits at age 55 were suitable options. I acknowledge that I can't know for certain what Mr F would have done if he had been told about his option of taking DB benefits at 55. I need to reach a decision on the balance of probabilities weighing up all the evidence provided. And for the reasons set out in my provisional decision I think Mr F most likely would have preferred the option to take a larger lump sum at 55 with the possibility of taking more cash flexibly when and if needed, rather than taking a lower lump sum with a small annual income starting at age 55.

Overall, I therefore remain satisfied that even with flawless advice, Mr F would have transferred his DB pension. I consider compensating him for the investment advice only is fair and reasonable in this case.

I also considered HRC's comments. They provided more information on the portfolios Mr F was invested in from December 2022 onwards and I agree that these were more cautious. However, I don't know how exactly Mr F would have invested if he had been given advice in line with his attitude to risk in 2020 and whether he still would have subsequently changed portfolios. So I remain satisfied that the redress methodology I previously suggested and which I have set out again below is fair and reasonable in the circumstances. It uses a benchmark for the whole period between 2020 and my final decision.

Putting things right

My aim is that Mr F should be put as closely as possible into the position he would likely now be in if he had been given suitable advice to invest in more cautious investments.

It's not possible to say *precisely* how Mr F would have been invested, but I'm satisfied that what I've set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

What must HRC do?

To compensate Mr F fairly, HRC must:

- Compare the performance of Mr F's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- HRC should also add any interest set out below to the compensation payable.
- If there is a loss, HRC should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If HRC is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. Mr F had already taken his tax-free cash lump sum, so everything would have been taxed at this rate.
- If either HRC or Mr F dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr F receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

Income tax may be payable on any interest paid. If HRC deducts income tax from the interest, it should tell Mr F how much has been taken off. HRC should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Aegon SIPP	Still exists and liquid	average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, HRC should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if HRC totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

Mr F wanted to achieve a reasonable return without risking any of his capital.

The average rate for the fixed rate bonds would be a fair measure given Mr F's circumstances and objectives. It doesn't mean that Mr F would have invested only in a fixed rate bond. It's the sort of investment return a consumer could have obtained with little risk to their capital.

My final decision

I uphold the complaint in part and require Harbour Rock Capital Limited to calculate and pay redress to Mr F as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 August 2025.

Nina Walter
Ombudsman