

The complaint

Mrs G is unhappy that Harbour Rock Capital Ltd, trading as Pension Access, have asked her to pay an advice fee which she feels is not justified.

What happened

Mrs G had six separate workplace defined contribution pension policies with a pension provider I'll call RL here. She wanted to access the tax-free cash (TFC) element of these, leaving the remaining amounts to be drawn down when she needed.

Mrs G initially approached RL to discuss consolidating these (and taking TFC) and was told they wouldn't be able to assist her, so Mrs G approached an independent financial adviser, Portafina, now known as Harbour Rock Capital, trading as 'Pension Access' (who I'll refer to as PA in this Decision for ease of reference). She initially wanted to take advantage of their offer of free/no obligation advice, on how best to achieve her desired outcome.

PA gathered information from Mrs G about her financial affairs and sought relevant policy information from RL, who provided details of her various policies to PA in June 2023. She explained to PA why she only wanted to access the TFC available in her RL plans, and didn't want to take any income until she reached her 62nd birthday in a few years' time. PA explained how and when they'd be paid – only as soon as Mrs G accepted their advice and asked them to implement it. Mrs G signed to accept this.

PA provided Mrs G with their advice in August 2023 - transfer the policies (valued at just under £118,000) into one single policy with Aegon, taking TFC of about £30,000 and leaving the rest in draw-down. Their advice fee amounted to £5,829.34, plus annual management and product fees. Mrs G accepted this advice, and PA started the transfer process.

RL contacted Mrs G, as part of their own due diligence process having received PA's transfer enquiry. They realised they'd made a mistake when initially speaking with her, and had misunderstood her original request. They thought she was asking to consolidate all her policies into one of the existing plans (and then take her TFC). They now told her they also could set up a new plan allowing all her policies to be transferred in, with TFC then paid and the remainder left in drawdown. Hearing this, Mrs G contacted PA on 13 December 2023 to cancel the transfer. No funds had been transferred by this point from the original RL policies.

In March 2024, PA sent Mrs G an invoice for their full advice fee. Mrs G refused to pay this. She believed PA's advice was flawed, as it repeatedly said her RL policies could not be reinvested with RL, or any other schemes. This was despite RL, she was now aware, having notified PA (in June 2023, as above) they had their own transfer option.

Mrs G also felt PA wouldn't need to carry out a lot of the work covered by the fee, so there was no justification for them to insist on full payment. And she referred to their guarantee that she would be protected against their advice not being in her best interests – which she believes it wasn't.

PA didn't uphold Mrs G's complaint. They said the June 2023 RL communication simply said

she would need to transfer to another pension product, either with RL or another provider. Which is what PA advised to do. Mrs G accepted their advice, and they started the transfer process, and so their fee became due.

Mrs G brought her complaint to our service, but one of our Investigators didn't think PA had done anything wrong. He considered whether PA was entitled to charge for their advice, rather than the suitability of the advice itself. This was because the recommended transfer didn't take place, and so there was no (potential) financial detriment caused by the advice.

He said PA (or any regulated financial adviser) is required to recommend a suitable advice option, as opposed to the 'best' option. Linking that to the June 2023 RL communication, he noted that even if PA had thought RL's option was the best one to recommend, and advised Mrs G accordingly in that regard, they'd have still been able to charge their advice fee – because they'd have been providing a recommendation to 'stay' with RL. He said it was the provision of advice, that Mrs G chose (or would have) to act upon, that was the key issue here justifying PA being paid their fee. And Mrs G's original RL policies did need transferring if she wanted to access her TFC, and so a transfer recommendation was appropriate.

He thought the documentation setting out PA's charges was clear, and Mrs G signed PA's forms with clear knowledge of what these charges were. The relevant terms were clear in allowing PA to raise an invoice for their fee here, and he didn't think PA needed to reduce or remove it. Unhappy with this, Mrs G asked for an Ombudsman to undertake a fresh review of her complaint, so the complaint was passed to me for this purpose.

Having considered the evidence, I reached a slightly different conclusion. Whilst I agreed PA were entitled to charge their advice fee to Mrs G, I also felt their actions had caused her avoidable distress, and felt they should pay her some compensation in respect of that. I set out my thoughts and rationale in a Provisional Decision (PD), in which I explained as follows:

The main documents I need to refer to:

In deciding this complaint, there are certain documents that I need to consider. I think it would be useful to set out the relevant parts of these, which are as follows:

PA's terms and conditions:

PA's "About our Services" document variously states as follows:

"We will advise you on the benefits and drawbacks of accessing your pension benefits, and on the types of products you can use to do so...this includes advice on how to take benefits from your existing pension arrangements, if suitable..."

Where relevant, we will also provide advice on a suitable pension product for any remaining pension funds and where and how they are invested, constructing a suitable investment portfolio for you...

We will review your pension arrangements without obligation. You will only be liable to pay our charges if you decide to go ahead with our advice – whether you do so with us, or implement our advice with someone else".

And the General Terms and Conditions part of that document, at section 12 onwards, also variously states:

"These terms take effect from when we first conduct any work on your behalf...by continuing with our services, you accept the Terms and agree to be bound by them.

You can cancel a transaction we have facilitated within the set cancellation period for the product...within 30 days for pension products...of the date of confirmation or acknowledgement of application of contract."

RL's letter to PA, dated 29 June 2023

Following PA's general enquiries with RL, to confirm the values/details of each of Mrs G's six policies, RL sent the following to PA. Their cover letter said:

"To make this as easy as possible for you we have enclosed a letter for [Mrs G] outlining the different options available to her".

This letter (not on headed RL paper) appeared to be a copy of a letter that had been sent to Mrs G (it was addressed to her). It explained what she needed to know if she was thinking of accessing her pensions. In respect of each policy, a summary document confirmed its value and explained about the Government's 'Pension Wise' service. A generic risk warning document was enclosed. And towards the end, a section entitled "Your options explained" said (amongst other things) as follows:

"It's important to note that your policy does not offer all these options, and you may need to move your pension pot to another pension product, either with Royal London or another provider, if you think one of these options is better for you".

It then listed the different ways Mrs G could take her pensions – a one cash payment, a secure income for life, a series of cash payments, a flexible income, a 'mix and match', or take the pension at a later date. Descriptions for each were provided. And the final section "Tell us what you've decided to do" gave five options reflecting the above. Each of the above options provided a specific phone number for Mrs G to call.

PA's advice and recommendation, dated 21 August 2023

As well as recommending Mrs G transfer her six RL pensions to Aegon (taking her TFC and leaving the balance to drawdown), it also confirmed the initial transfer fee would be £5,829.34, with a 1% management charge thereafter. And within the suitability report, the section entitled 'Understanding the Potential Risks' set out (in respect of each of the six RL policies) PA's comparison between Mrs G's current pensions and her proposed new Aegon one. In respect of each of the existing RL policies, the reports stated:

"[You can take TFC now of...25%] but if you accessed this money you would then have to buy an annuity, the remainder of your pension could not be reinvested in the scheme, or any other scheme."

And in respect of Mrs G's proposed new Aegon plan, the reports stated:

"[You can take TFC now of...25%] and your remaining pot would be invested in your proposed new scheme, with the aim of achieving as much growth as possible in line with your attitude to investment risk and term to retirement."

Mrs G's signed declaration, agreeing to proceed with the advice, dated 25 August 2023

Mrs G accepted PA's advice on 25 August 2025, by signing their declaration. Amongst other things, the declaration confirmed Mrs G wanted to proceed with PA's recommendation, that she had received a copy of their terms of business and agreed to these, and that she was:

"...fully aware of and agree to the charges and fees detailed in [her] suitability report."

The key sequence of events here:

Having set out the above, I now need to look at the relevant sequence of events here, beginning with what happened before Mrs G approached PA.

Mrs G's initial contact with RL (before engaging with PA)

Whilst I don't have a copy of any initial (pre-PA) communications Mrs G had with RL, I have listened to a call she had with PA on 13 December 2023 – the call when she first advised them that she'd no longer be proceeding with the Aegon transfer.

In this call, she explained that she'd recently been in contact with RL, who now realised they'd misunderstood her initial enquiry/request. RL admitted they'd mistakenly thought Mrs G was originally asking to consolidate all her policies into one of the existing ones – which in theory they were right to say wasn't possible. And they admitted they could or should have realised that a new policy could have been set up with them, allowing the six policies to be transferred into it.

I've no reason to doubt Mrs G when she said this is what happened. It explains why she chose to make other (with PA) enquiries about taking her benefits in the way she wanted. I'll return to the importance of this later in this Decision.

The period between Mrs G approaching PA, and them issuing their advice:

PA met with Mrs G at her home, and obtained details about her financial situation, her intentions, and her risk appetite. I don't need to go into these in detail here, as they are known to both parties. Also, given Mrs G eventually cancelled the transfer PA had recommended (before any funds had been transferred), there is no need for me to consider whether that advice was appropriate and in her best interests, or whether she experienced any loss because of that advice (advice fee aside, which I address later).

But I do need to consider the information RL provided to PA on 29 June 2023 (as above). That's because, Mrs G believes, it contained information that PA ignored, or simply misrepresented, in their subsequent advice documents.

As included above, the information RL provided contained the usual information any pension company would provide when a consumer is considering taking benefits – full details of the value of the plan(s), and the various ways those funds can be accessed.

I'm satisfied RL provided their information to PA purely to provide accurate details of the various plans. I don't think there was any obligation on PA to forward that documentation on to Mrs G. RL's letter to PA didn't ask them to do that.

And I think it's also important to recognise that PA were engaged by Mrs G to provide advice on a suitable option for her to take her benefits, and not to advise her on ways in which she could take her desired benefits via a RL product.

In that regard, PA have advised they considered various providers as part of their research, including RL. They'd discounted RL as an option (along with others from their panel) because their offering was more expensive than that offered by Aegon. In relation to the RL product that was available, PA have explained the annual policy charges were 0.54% pa, compared to the Aegon annual policy charge of 0.32% pa.

PA have explained they were only obliged to provide what they considered, in their professional capacity, advice that was suitable for Mrs G. They didn't have to proactively

identify ways to ensure Mrs G took out an RL policy. This is correct. They've explained that, if they felt RL provided a more suitable offering than Aegon, they'd have considered recommending that offering instead. But, having looked at all the providers on their panel, including RL, they considered Aegon to be most suitable.

I've no reason to doubt what PA have explained here. And whilst, as I said above, I'm not looking at whether this advice was the most suitable for Mrs G given her particular circumstances at the time, I am satisfied PA were under no obligation to actively pursue and recommend an alternative RL product for Mrs G.

Further, echoing a point made by our Investigator, even if PA had recommended that an RL policy was most suitable, that in itself would have constituted advice which (if accepted by Mrs G and acted upon) would have justified them charging their fee.

So, in principle, I think PA were justified in charging their fee for the work that they undertook. Mrs G approached them for advice, They provided it. And she accepted it.

Inaccuracies in the advice documents provided by PA

Mrs G has said she was persuaded to accept PA's advice because of inaccurate statements made within their recommendation. In particular, she refers to the comparison between Aegon and her existing RL policies, as set out above.

I agree with Mrs G when she says PA provided materially inaccurate information. They said that Mrs G's only option, if taking TFC from each of her existing RL policies, would be for the balance to be used to purchase an annuity. That was clearly incorrect – RL's documents clearly state there were other options available. And I can appreciate why Mrs G thinks PA's statements were designed to persuade her to choose the Aegon option. Mrs G had specifically said she didn't want an immediate income using the balance of the funds – the recommended Aegon policy clearly provided that option, and PA's comments on RL clearly (and mistakenly) said that wasn't an option.

I asked PA why this mistake was made, but didn't receive a substantive response on that particular point. Instead PA explained Mrs G's RL policies didn't offer drawdown (which was correct), so her only option would have been to transfer to another RL product were she to have remained with them (again correct) – which was discounted on grounds of cost.

But they still didn't explain why PA told Mrs G that buying an annuity with RL was the only option available if Mrs G had stayed with them. This was clearly incorrect.

But, for the reasons I've set out above, I can't reasonably conclude that this 'mistake' has caused any material financial loss to Mrs G. Had PA's advice indicated that an RL product was available and suitable, Mrs G would still have become liable for the advice fee upon agreeing to accept that advice.

I think it's very important to recognise here that PA were engaged only after RL had provided Mrs G with incorrect information when she first contacted them. It's not PA's fault that RL did this. PA undertook a detailed advice exercise in good faith, based on what Mrs G had presumably told them at the outset. And Mrs G similarly approached PA in good faith, believing that RL couldn't provide what she'd originally wanted.

Whilst I think it's entirely probable that Mrs G wouldn't have approached PA at all had RL provided the correct information after her initial contact with them – and so would never have sought and received advice from PA warranting a fee being paid to them – the fact remains that RL's admitted mistake did effectively result in that approach to PA being made.

Accordingly, I don't think PA have done anything wrong in asking Mrs G to pay their invoice. I'm satisfied they undertook work that Mrs G asked them to, and that payment for that work became due after Mrs G accepted their advice. So, I won't be asking them to either reduce or cancel the amount claimed.

Distress and Inconvenience (D&I)

Notwithstanding, I do want to consider whether some of PA's actions have caused Mrs G distress, which could warrant a payment of D&I compensation.

I've already explained that PA's advice documents contained misleading statements. Whilst these made no difference to the outcome of the merits of Mrs G's complaint, I think those statements have caused Mrs G some distress. They caused her to believe she was being deliberately misled, which clearly caused her upset. Had the information contained in the documents been accurate, I think it's likely she'd have avoided some of the distress she's experienced here.

But I must be clear that I'm not saying PA are responsible for the distress Mrs G has experienced because they've charged her a fee. Whilst I appreciate she is clearly upset by this, I've already said PA's actions were justified. The distress she experienced here was unavoidable.

I've also listened to the phone call Mrs G had with PA on 13 December 2023, when she told them she was cancelling the Aegon transfer. In that call, she explained why she wanted to cancel, as noted above. She also explained RL's new policy would attract a similar management charge, but without the need to pay the £5,829 advice fee. PA's agent acknowledged this, confirming her Aegon transfer would now stop, and they'd close their file.

Mrs G specifically mentioned not having to pay an advice fee as one of the reasons why staying with RL was attractive to her, but the PA agent made no mention of their fee, either to say it would still be due, or that it wouldn't now be due. I think it's likely Mrs G left that call believing she wouldn't be charged the advice fee. And I don't think it's unreasonable to have expected the PA agent to have confirmed to Mrs G that their fee would remain payable. And it was nearly three months later that PA finally wrote to Mrs G to ask for the fee to be paid. That's quite a long period of inaction on their part.

Taking all the above together, I think PA's various communication shortcomings have caused Mrs G avoidable distress, and I think compensation is due to her in respect of those.

However, the amounts this Service awards for D&I are fairly modest in value. Our D&I awards are not designed to punish a business, but rather to put a monetary value on the distress a business' actions have caused. Guidelines setting out our approach to such awards can be found on our website. So, taking account of what I've said above, and having careful regard to our guidelines on this subject, I think a D&I award of £250 is appropriate here – and is an amount I'll be asking PA to pay to Mrs G

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.

Both parties have responded to my PD. PA have accepted my conclusions. Mrs G has also accepted the award of the D&I, and the rationale behind that. But she's asked that I consider again her belief that PA should not charge their whole fee, because they didn't end up

providing some of the services their advice fee covers. And she doesn't think I've properly considered that part of her complaint in my PD.

I do appreciate the points Mrs G is making, but I'm afraid I won't be altering my conclusions here. I'll explain why.

Mrs G has referred to page 18 of the suitability report, where it clarifies how much the advice will cost, and which also contains the following text:

"For this you will get..."

- *Your pension transferred and your tax-free cash paid as quickly as possible:*
 - o *We will liaise with providers to transfer your existing pension.*
 - o *We will set up your new policy with Aegon.*
 - o *We will set up funds in your new policy.*
 - o *We will arrange the payment of your tax-free cash to you".*

Mrs G says that PA didn't need to undertake any of the above actions, and so they should be asked to proportionally reduce the fee they are now charging.

I do agree that elements of the above actions subsequently weren't required after Mrs G cancelled her Aegon transfer. But I don't think that's the key point here. As I explained in my PD, it's the fact the fee became due and payable at a certain defined point – when Mrs G accepted PA's advice and they started the process of implementing it, which they did.

And I think it's also fair to recognise there was a significant period between when Mrs G accepted PA's advice on 25 August 2023 (at which point the fee became payable), and 13 December 2023 when she cancelled the transfer with PA. That's a period of nearly four months, during which PA would have started much of the work associated with the advice and transfer (as set out above) – it's clear that there had been exchanges with RL, for instance, about transferring the funds (prompting RL's contact with Mrs G that set in motion the whole cancellation process).

Further, there is nothing in the terms and conditions that apportions elements of the fee between what I'll call 'pre-advice' activities, consideration and compiling the advice, and activities that are required after the advice is accepted. It's a fee that became payable, in full, after the advice was accepted, and as such I remain of the opinion that PA were entitled to charge the full advice fee in this current situation.

I return to a point I'd made in my PD – I have little doubt that, but for the mistake RL made when first speaking with Mrs G, she'd have likely never approached PA for advice. But, as I said, that's not PA's fault. They undertook their role in good faith, and provided a recommendation that Mrs G accepted, and clearly started the process of implementing that transfer advice. So, given all I've said above, I won't be asking PA to reduce the fee that they have charged Mrs G.

Finally, Mrs G has explained that she doesn't have readily available funds that would allow her to pay PA's fee in full, and will need to explore an instalment plan with them. She asked if our Service will have any input in agreeing this.

I'm afraid this isn't something we'd be able to become directly involved in, nor be able to insist on an instalment figure which should be paid. I've concluded the amount is fairly due to be paid to PA, and it would now be a matter of discussion between both parties as to how that payment is made – although I'd expect PA would seek to treat Mrs G fairly, in line with established principles, in calculating what and when she can afford to pay the fee due.

My final decision

I partially uphold Mrs G's complaint about Harbour Rock Capital Ltd trading as Pension Access, and require them to pay her £250 in respect of the distress their actions have caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 15 August 2025.

Mark Evans
Ombudsman