DRN-5725690

The complaint

Mr W complains that Portafina, now Harbour Rock Capital Limited (Harbour Rock), gave him negligent advice about transferring out of his defined benefits ('DB') pension scheme. He complains that he has suffered financial loss as a result.

What happened

Mr W contacted Harbour Rock in January 2022 on the recommendation of a friend. In a welcome call he told Harbour Rock he was looking to release all his pension monies. He said he was looking to buy a car and do home improvements.

Harbour Rock requested information from Mr W's DB scheme and in June 2022 they had a fact find call with Mr W during which his personal and financial circumstances, objectives, details of his DB scheme and attitude to risk were discussed. In this call Mr W said he wanted to use the money to start a business, buy a car and maybe go on a holiday.

At the time Mr W was 60 years old, married and employed. He also had been self-employed for many years selling furniture. He wanted to use large parts of the money to start a business selling beds. The transfer value of his DB scheme was around £57,000. It consisted of three separate pensions relating to different periods of service. The two smaller pensions would provide tax free cash of £1,035 plus an annual income of £155 per year and £1,075 tax free cash with an annual income of £161 from age 65. The third and largest pension would provide tax-free cash of £15,776 plus income of £2,366 per year from age 67.

Mr W wanted to take all of the transfer value as a lump sum.

A suitability report was issued in July 2022 strongly advising Mr W to remain in his DB scheme. At the end of the suitability report Mr W was given the option to accept the recommendation or go against the advice by ticking a box and completing an insistent client form confirming that he understood the risks of transferring and that he was going against Harbour Rock's advice.

Mr W chose to proceed with the transfer. A second suitability report was then issued reiterating that the recommendation was not to transfer, however as Mr W had decided to proceed against the recommendation as an insistent client, they recommended him to transfer to a SIPP with Aegon and invest in cash.

The transfer was then delayed as the transfer value quotation from the DB scheme had expired and they would only issue one transfer value within 12 months. The transfer went ahead in July 2023 with a higher transfer value of over £65,000. In August 2023 an adviser called Mr W to check whether he was still planning to take everything as a lump sum given the transfer value had increased. Mr W advised he still wanted all the money and would invest the additional money also into his new business. Mr W eventually received a tax-free cash lump sum and the remaining funds as a lump sum which was subject to income tax.

In November 2024 Mr M raised a complaint through a professional representative that the advice given was negligent and the insistent client was flawed.

Harbour Rock rejected the complaint. The complaint was then referred to this service where one of our investigators considered Mr W's complaint. She criticised Harbour Rock's processes of providing an option in the suitability report to ignore their recommendation not to transfer which made it easy for Mr W to proceed. However, she concluded that based on the evidence Mr W wanted to transfer and would have done so even if Harbour Rock's advice process had been better.

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

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.

<u>The applicable rules, regulations and requirements</u>

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.

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.

Specifically relevant to this case is COBS 9.5A which includes additional guidance on insistent clients. It 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.

Acknowledgement from the insistent client - COBS 9.5A.4 – required:

(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.

<u>Harbour Rock's advice process</u>

It's clear that the recommendation to Mr W was not to transfer out of his DB schemes. So it's agreed that a transfer wasn't in his best interest. This doesn't mean Harbour Rock wasn't allowed to facilitate the transfer and make recommendations about where to transfer the DB benefits to if Mr W still wanted to proceed. The regulator doesn't require businesses to generally refuse acting for clients after a negative recommendation. It's possible for clients to proceed on an insistent client basis and guidance for this is set out in COBS 9.5A

I'm satisfied that it was made clear that Mr W was going against Harbour Rock's recommendation. Both the original suitability report and the second suitability report which recommended the Aegon SIPP as a receiving pension scheme made it really clear that their recommendation was not to transfer and if Mr W proceeded this was against their recommendation. Mr W also signed several declarations to this effect including setting out in his own words why he wanted to proceed. He said:

'I have read and fully understand the implications of taking my pensions early. I have other plans in place for my future and I am more than satisfied the decisions I have made are the correct ones after a long deliberation.'

I'm also satisfied that Mr W understood he was giving up a guaranteed income for life in return for a lump sum immediately. The benefits he was giving up were clearly explained in the fact find call and were set out in the suitability reports and in the various declarations he signed. He was required to specifically acknowledge what he was giving up. Mr W also wanted to take all of his pensions as a lump sum, so it was clear to him there would be nothing left in these pensions when he retired.

The general risks of transferring out of a DB scheme were set out clearly to Mr W and the suitability report noted the specific reasons why Harbour Rock didn't recommend a transfer which were:

- Starting a new business is high risk, particularly in the current economic environment i.e. high inflation, imminent recession.
- You will lose valuable guaranteed benefits.
- You will be pushed into a higher rate tax bracket by making this withdrawal.

- You could meet your objectives through alternative methods such as borrowing/business loan.

- You have limited alternative retirement provisions.

- The cash value required to purchase a like for like income as your [DB scheme] on the open market is significantly higher than the transfer values offered.

So I'm not persuaded that Mr W didn't understand what benefits he was giving up or that he was acting against advice.

Having said that, I agree both with the investigator and Mr W's representatives that the advice process here was flawed in some aspects. Mr W was obviously keen to access his entire pension immediately in the form of a cash lump sum. Although the reports issued recommended against the transfer, in my view Harbour Rock didn't seem to do a lot to try and dissuade Mr W from transferring his pension which they considered not to be in his best interest.

The fact find call discussed in detail what Mr W would be spending his lump sums on and the call handler was talking positively about this which gave the impression this is what would be happening rather than pointing out that transferring DB schemes was unsuitable for most people. I think the suitability report not recommending the transfer would have come as a bit of a surprise to Mr W. It also gave Mr W the immediate option to go against the recommendation which made it really easy for Mr W to ignore advice that was in his best interest. I would not expect to see that an adviser caveats the recommendation it makes with how its client can disregard it.

Harbour Rock called Mr W for a "trade off call" afterwards which was intended to check that he understood what he was giving up by transferring. Harbour Rock wasn't able to provide a call recording for this call so I don't know what exactly was discussed, however the call note recorded that:

- Mr W understood that the guaranteed income for life that the DB scheme would have paid would no longer be paid and guaranteed.

- As he is stripping out the capital he is aware that there is an immediate tax bill that could also be avoided

- Mr W confirmed that there is no change in circumstances or objectives.

- Mr W was happy that he understood everything and was happy to proceed

This was the first call after Mr W had decided to proceed against the recommendation. I would have expected an adviser who wanted their client to follow their recommendation to go over the reasons why they weren't recommending the transfer and listen to and challenge Mr W's reasons why he wanted to proceed against advice. I can't see evidence this happened here.

Mr W considered the lump sum would allow him to buy beds and start a business which would provide significantly more income than the DB benefits and he also said he was the sole beneficiary to a family member who had substantial assets. Mr W was asked in the fact-finding call about alternatives to raising the funds he wanted, for example by using savings or taking out a business loan. Mr W said he didn't have sufficient savings and he didn't like debt and didn't want to take out further borrowing. Whilst it's understandable that Mr W might have preferred not to take on any debts, Harbour Rock did nothing to explain that taking out a loan might be cheaper in the long run than giving up defined benefits. They also didn't challenge in the fact-finding call or in the trade off call what he would do in retirement if his business failed or he didn't inherit as much as he thought from his relative.

In my view Harbour Rock's processes were more geared towards facilitating Mr W's objective to take his pension as a lump sum than persuading him to follow their recommendation not to transfer. I don't consider Harbour Rock acted in Mr W's best interest here.

<u>If Harbour Rock had acted fairly, would Mr W have acted differently?</u>

I considered carefully whether Mr W would have followed Harbour Rock's recommendation not to transfer if they had challenged him more about not wanting to take out debts and what he would do if his plans didn't work out. And whether he would have insisted on transferring if Harbour Rock hadn't introduced the option of going against their recommendation in the initial suitability report.

Having done so and having listened to the phone calls between Harbour Rock and Mr W, I agree with the investigator that I think Mr W more likely than not would still have insisted on transferring his pension. I'll explain why.

In the welcome call when being told that his DB scheme would send him benefit options and it was recommended he should take full financial advice before making any final decisions about his pensions, Mr W was adamant that he had already made his decision and knew exactly what he wanted to do which was to fully strip his pensions. He said he wouldn't listen to anything the DB scheme would tell him. In the fact find call Mr W again started the call by saying he had already made his decision. He said he had been seriously considering starting the new business for a year to a year and a half and 'his mind was 100% sure' what he wanted to do. So I don't agree with Mr W's representatives when they say Mr W approached Harbour Rock for financial advice on what to do with his pensions. He had already decided he wanted to release his pensions and wanted Harbour Rock to help him achieve this.

I want to be clear that it wasn't Harbour Rock's role to simply act on Mr W's wishes. They needed to provide full and clear advice on what was suitable for Mr W. However, the above demonstrates that Mr W's starting position was fairly set. I'm not saying that everyone who approaches an adviser with an idea of how they want to proceed will not listen to advice. In fact many people will listen to a professional adviser. However, in Mr W's particular circumstances I don't think more information or further challenging of his views would have resulted in a different outcome here.

Mr W had been looking at taking his pensions as he had been made the sole beneficiary of a family member who he said was very wealthy and "minted". Mr W said he was taken care of which allowed him to release his pensions to use the money now. With regards to the new business, he had experience of selling furniture and already had access to a warehouse through a friend and contacts in this field. A friend of his was already doing this and was very successful. Mr W was convinced he could make this work for him and could earn around £40,000 per year within the next one to two years. He said he was sure he could do more with the lump sum now than he could with a monthly guaranteed income in retirement. The call handler asked him about how he felt about the risks of his business not doing well, for example like something similar happened to the Covid pandemic where people might stop buying new furniture. Mr W felt comfortable with this and didn't think his business would be significantly impacted and he could still sell online.

Having listened to the phone calls and how Mr W talked about his business and plans, I don't think it's likely Harbour Rock could have said anything that would have dissuaded Mr W that this was a viable business idea or made him doubt that he would be receiving a lot of money from his family member once he passed away. I have taken into account that when Mr W approached Harbour Rock he had obviously decided he wanted cash from his pensions but hadn't fully decided what exactly he would use the money for. In the welcome call he spoke about a car and an extension to his house whereas in the fact finding call he said he wanted to use significant parts of the money for a new business. However, even a year later when the increased transfer value was discussed, Mr W still talked about investing into his business, so I think this objective didn't change after the fact find call and had been something Mr W had been thinking about for some time. I understand Mr W ended up not investing in a new business, however I'm satisfied that at the time of the advice and up to the point he took the money this still seemed to be the plan.

Mr W only had £2,200 in savings and it would have taken him too long to save up to release enough cash to do what he wanted to do. In the fact find call the option to remortgage or take out a loan were discussed with Mr W. He said he didn't like debt and he didn't want to take out a loan or remortgage. He said he had even paid for his current car in cash as he didn't like to borrow. Instead of challenging this, the call handler told Mr W she could understand that given his mortgage was coming to an end soon, he didn't want to do restart a mortgage or take out new borrowing. This emphasises the point I made earlier about endorsing Mr W's view rather than challenging it more.

I considered what likely would have happened if Harbour Rock had pressed this point more and pointed out that taking a loan or remortgage might possibly have provided better overall value than using his pensions. However, I'm not persuaded that this would have more likely than not changed Mr W's mind. I say this because Mr W was quite adamant about not wanting any debt. He also said he wanted to proceed even if the costs looked higher than expected. I also note that Mr W was told on the fact find call how much he would be roughly paying in tax if he took everything as a lump sum. The call handler suggested that he could consider taking everything he needed but then take the rest (which he didn't have concrete plans for) in the next financial year meaning he would pay a lot less tax on it. Mr W said he didn't want to do that. I think this demonstrates that Mr W wasn't particularly bothered how much this cost him. He was set to take everything at once and so I don't think a more detailed discussion about cost would have made him reconsider taking out a loan instead.

As I said previously, I think Harbour Rock's advice process was flawed and didn't focus on explaining their reasons for their recommendation not to transfer nor sufficiently challenging Mr W's reasons to go against the advice or consider alternative funding options. However, on balance I think Mr W would have proceeded anyway even if Harbour Rock's advice process had been better. I also think that it's likely that if Harbour Rock had not included the option to proceed against advice in the suitability report, Mr W would likely have still asked about ways to release his pension. I say this as he had approached Harbour Rock knowing exactly what he wanted to do and with the view that investment in a new business would make him a lot of money. So I don't think he would have simply accepted advice not to transfer.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 January 2026.

Nina Walter

Ombudsman