DRN-5759984

The complaint

Mr H complains that HARBOUR ROCK CAPITAL LIMITED trading as Portafina gave him unsuitable advice to transfer out of his Occupational Pension Scheme (OPS).

What happened

Our investigator set out the background to this complaint in her recommendation letter. For ease of reference, I have included an amended copy of this below:

Mr H met with an adviser from Harbour Rock Capital Limited in July 2022 to discuss his retirement planning needs.

At the time of the advice Mr H was 59 years old and had been signed off work due to illness. He wasn't planning to return to work. Mr H had been sadly diagnosed with terminal cancer in January 2022 and had been told he had three years to live. At the time Mr H was single with no dependents.

Mr H held a British Steel Pension Scheme, an Aviva personal pension and a Phoenix personal pension.

Mr H was looking to take the benefits from his pension plans as a lump sum to repay his debt of £8,000 and use the rest of the funds to enjoy on some holidays.

Harbour Rock completed a fact find analysis to establish Mr H's circumstances and financial objectives. An assessment of Mr H's attitude to risk determined his risk appetite was cautious.

Harbour Rock sent a suitability report on 17 August 2022. They recommended that Mr H didn't take his benefits as a lump sum and instead take his tax-free cash and purchase an annuity with the remainder of his funds. They said fully encashing his pensions was not in his best interests because:

- He would be pushed into a higher tax bracket by making the withdrawal.
- He had an income need that a monthly payment from an annuity will cover.

They advised that Mr H should release the tax-free cash from his pension and purchase a lifetime annuity. They explained the reasons for their recommendation in the suitability letter and said:

- Mr H would remain within the 20% income tax bracket.
- When his statutory sick pay and employer top up ends, he would have a monthly income need that the guaranteed annuity income is likely to cover.
- The tax-free cash amount would allow Mr H to clear his debts and have some funds remaining to enjoy as he wished.

- He would avoid paying higher rate income tax
- He had no financial dependents.

Mr H agreed to proceed with the advice and a further suitability report was sent on 1 September 2022. In the report the adviser recommended that Mr H transfer his British Steel Pension Scheme, and personal pensions to purchase an enhanced life annuity.

They said we recommend that you release tax-free cash of £23,609.04 and purchase a lifetime annuity of £1,830.46 per month, from the residual of your OPS and personal pension funds.

It said *'We do understand your wishes to have flexibility with the funds, however, we believe our recommendation best suits your overall circumstances and immediate needs'*.

Mr H accepted the recommendation in September 2022. The CETV had to be revalued and the adviser wrote to Mr H to confirm he accepted a recalculation be carried out. Mr H accepted this on 15 November 2022, the value had dropped significantly from approximately £90,000 to £60,000.

The annuity was set up on 18 May 2023. Tax free cash of £16,320.78 was paid and Mr H's annuity payments are £1,426.22 per month payable monthly in advance.

Mr H complained via his representative Spencer Churchill Law Ltd to Harbour Rock and said that the advice was unsuitable for the following reasons

- Mr H wasn't aware of the guaranteed nature of his British Steel Pension scheme and he only proceeded with the advice as he thought this was the only option open to him.
- Harbour Rock didn't fully consider Mr H's circumstances or treat him as a vulnerable client and failed to take into account his health.
- Mr H said that because of his prognosis he was thinking short term, but Harbour Rock didn't query his objectives or tailor the advice to ensure he understood the risks.
- The option of taking the benefits from his British Steel Pension Scheme wasn't discussed.

Harbour Rock disagreed with Mr H's complaint saying that they believed the advice was suitable and met Mr H's objectives and provided him with a guaranteed income for the rest of his life.

Our investigator looked into matters but felt the advice was suitable as Mr H would receive substantially more income a year because of the enhanced annuity than he would've done having stayed within the scheme. And in taking an annuity, Mr H was covered if he outlived his life expectancy, whereas if he'd taken a lump sum or gone into flexi access drawdown, he may exhaust his funds and pay more tax. Taking an annuity meant his income needs would be met. Remaining in the scheme was a poorer option as it didn't provide improved early retirement terms on ill-health. And the tax-free cash offering wasn't better than could be received from the scheme. As Mr H was single with no dependants, losing the death benefits on offer from the scheme wasn't important to him.

Mr H via his representatives responded to say he was unhappy with the outcome as the time taken to provide advice had meant he'd missed the original transfer value of £90,000 and instead had to accept £60,000. He said Harbour Rock was responsible for this.

However, the investigator pointed out that Mr H and his representatives hadn't complained about the delays to the business or our service and so we couldn't consider this part of the complaint. She explained to consider these matters we would first have to wait for Harbour Rock to have an opportunity to respond. However, Mr H didn't accept this and wanted 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.

And having done so I have reached the same conclusions as our investigator and for broadly the same reasons. Before I explain why, I'd like to add that I was very sorry to read of Mr H's situation.

From the response we've received to the investigator's view It seems that Mr H's complaint is actually about the delays caused by Harbour Rock. But this wasn't the complaint his representatives put to it and brought to our service. We can only consider issues that a business has first had chance to respond to and try to resolve without our involvement. So I cannot consider whether it was responsible for the delays that meant Mr H's transfer value was significantly reduced.

In relation to what I can consider, the advice to transfer his OPS benefits and take tax-free cash and an annuity, I don't think this advice was unsuitable. This provided a much improved income for Mr H when compared to the BSPS scheme's offering. The enhanced annuity was approx. £1,420 a month or £17,000 per year, whereas the BSPS would only have provided £2,300 a year according to the retirement quotation for April 2022 produced by the administrators of the scheme. The aforementioned figures aren't completely like for like as the personal pensions were grouped in with the OPS fund to provide the tax-free cash and annuity quotes. However, the values of the personal pensions were very small and so largely insignificant when looking at the figures and considering whether transferring the OPS was beneficial.

So I think the transfer would make Mr H financially better off. He had no dependants and was single and some of the value of the scheme would've been used to provide benefits that were not needed. On transfer Mr H could access an annuity enhanced due to his health which provided a much higher income upfront – this was very relevant to Mr H's needs.

As the transfer made Mr H better off and it suited his circumstances better than taking the reduced early retirement benefits on offer from the scheme, I don't think the advice was unsuitable to transfer.

With regards to the specific complaint points, I can see the guaranteed nature of the scheme was set out. Mr H's health was considered hence the enhanced annuity quotes and recommendation. Mr H's health prognosis meant that thinking long term in terms of staying in the scheme was a much poorer option rather than taking an enhanced annuity. I can see the option of taking benefits from the scheme was set out but not considered in any detail as it was clear from the figures it wasn't a suitable option for Mr H.

The other potential option to benefit from as much of the value as possible within his expected lifetime was to take the benefits all as a lump sum which it appears was Mr H's original plan or go into flexible drawdown. However, the downsides to this were that Mr H would pay more in tax if withdrawing all in one go and there was the potential he could exhaust his funds leaving him no income in retirement other than his PIP which wouldn't be enough to live on. This is also a downside of having his funds available on flexi income drawdown, he could leave himself without an income in retirement and/or be reliant on investment returns to sustain his income. By taking tax-free cash and an annuity, he had enough money upfront to pay his debts and have some extra left over to spend on holidays etc, whilst having a secured income for life. I think this was important because Mr H may live longer than his prognosis and in that event he'd still have regular income. Without an annuity, Mr H would have to manage his drawdown expenditure with no surety about how much he could spend without leaving himself short. I think the annuity option provided a level of security that was important given the nature of his circumstances that other options couldn't give him.

In conclusion the enhanced annuity provided a much improved level of income compared to the scheme. And I think the need for the security of a regular income outweighs the potential release of more income in his lifetime through other options. Finally, it appears that this complaint largely stems from the reduction in the transfer value (and the knock-on effect to Mr H's tax-free cash and annuity) but this wasn't the subject of this complaint and so I cannot consider this here.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 October 2025.

Simon Hollingshead
Ombudsman