

## **The complaint**

Mr F complains about the advice he was given by Harbour Rock Capital Limited to transfer the benefits in his occupational pension scheme to a Self-Invested Personal Pension (SIPP). Mr F believes the advice to transfer was unsuitable and has caused him a financial loss.

## **What happened**

I issued my provisional decision on this complaint on 16 December 2025. The background and circumstances to the complaint and the reasons I wasn't provisionally minded to uphold it were set out in that decision. I've reproduced the relevant parts of that decision below, and it forms part of this final decision.

## **Copy of relevant part of provisional decision**

Mr F's complaint was considered by one of our investigators. She issued her assessment of it to both parties on 23 January 2025. The background and circumstances to the complaint were set out in that assessment and so I won't repeat them all again here. However to summarise, in September 2019 Mr F contacted Harbour Rock Capital Limited (Harbour Rock) to discuss his options for his pension and in particular about taking tax-free cash from it. Harbour Rock sent Mr F a Welcome Letter on 4 September 2019 which explained that it would confirm exactly how much tax-free cash he could take.

Mr F spoke with a paraplanner by phone on 7 October 2019. The paraplanner completed a fact-find to establish Mr F's wider circumstances. It was recorded that Mr F was in his mid-fifties, married, was employed and earning around £31,000 per annum. He had an outstanding mortgage of around £45,000. Mr F was a member of his employer's Defined Benefits (DB) pension scheme with 35 years of service accrued in it. The pension's transfer value was £283,473, and would pay Mr F around £18,400 per annum from age 67.

It was recorded that Mr F had no other pensions, investments or savings. He had unsecured debts of around £20,000 which were managed monthly. Mr F had no previous investment experience, and had a moderately cautious attitude to risk.

Harbour Rock reviewed Mr F's circumstances and sent him a letter dated 10 October 2019. The letter said since its conversation with Mr F Harbour Rock had completed its analysis of his circumstances, and it "strongly recommend that you do not proceed."

The letter noted that Mr F wanted to access tax-free cash to pay off his mortgage, tackle debt, and make home improvements. Mr F had said he wanted to do this because he was

older than his wife and it would give him piece of mind. The letter went on to outline the reasons why Harbour Rock recommended against proceeding with a transfer. However the letter then said if Mr F still wanted to go ahead with a transfer he would need to be treated as an 'insistent client', and needed to complete a form to that effect in order to proceed. Mr F returned the signed form to Harbour Rock to proceed with a transfer. The form included a hand-written paragraph by Mr F saying that paying off his debts was very important to him as it would provide him with piece of mind.

Harbour Rock sent its pension review report to Mr F on 21 October 2019. The report reiterated that Harbour Rock's advice was to stay in the DB scheme, as the financial benefits from it were unlikely to be matched in a private pension arrangement. But it said if Mr F wished to continue with the transfer it recommended a SIPP with a particular pension provider.

Mr F returned a signed declaration form to Harbour Rock on 4 November 2019 confirming that he understood the financial benefits he was giving up by going ahead with the transfer. The transfer completed on 7 May 2020. Harbour Rock charged Mr F £15,673 for its advice. Mr F took the tax-free cash available. And he subsequently withdrew all the remaining value of his pension within a few months of the transfer.

Mr F complained to Harbour Rock about the transfer, through a representative, in September 2024. He said that he believed the advice he received was unsuitable and negligent, and he would now be worse off in retirement as a result. Harbour Rock didn't uphold Mr F's complaint. It said it had advised Mr F against transferring, but achieving his objectives were his priority and he was therefore rightly treated as an insistent client. Mr F subsequently referred his complaint to us to investigate.

Our investigator thought that the complaint should be upheld. She said, in summary, that the Regulator's Conduct of Business Sourcebook rules (COBS) required that the starting position for a firm advising a member of a defined benefits scheme on whether to transfer or opt-out was that it wouldn't be suitable. And that a firm should only consider a transfer or opt-out to be suitable if it could demonstrate, on contemporary evidence, that it was in the client's best interests.

The investigator noted that the investment return (critical yield) required on the transfer value to match the benefits that would otherwise have been provided by the DB scheme at its normal retirement age was 9.1% a year. The investigator said the relevant discount rate closest to when the advice was given was 3.8% per year for 12 years to retirement. The investigator said whilst businesses weren't required to refer to these discount rates when giving advice on pension transfers, she thought they provided a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. She also said that for further comparison, the regulator's upper projection rate at the time was 8%, the middle projection 5%, and the lower projection rate 2% per year.

The investigator also said it was important to consider Mr F's capacity for loss. She said he was transferring 35 years' worth of pension service from his occupational scheme. The investigator said Mr F had no other provision to provide income in retirement apart from his state pension. So she didn't think he had the capacity to absorb any losses following a transfer.

The investigator noted that Mr F had said he wanted to use the tax-free cash to pay off his mortgage and outstanding debts, as he was older than his wife and it would provide him with piece of mind. However she said Mr F was in good health, he'd confirmed his debts were manageable and he wasn't in arrears. The investigator said the DB scheme would also have provided a spouse's pension in the event of Mr F's death. She said she thought there was no real need for Mr F to access his pension for the reasons given. And that Harbor Rock should have been clearer in emphasising the importance of Mr F protecting his defined benefits.

#### Insistent Client

The investigator said Harbour Rock had sent Mr F a Welcome Letter that said he could access his tax-free cash from his pension before it had discussed the matter with him. She

said during the fact-finding call which was with a paraplanner, the insistent client process had been discussed, and Mr F had been told that no one would stop him accessing his own money. She said it appeared that Mr F had been asked to confirm his intention to be an insistent client before receiving a suitability report. And she thought this undermined the advice process – it normalised going against Harbour Rock’s advice and made it easy for Mr F to be treated as an insistent client. The investigator said she didn’t think Harbour Rock should have advised Mr F about his options to disregard its advice prior to receiving it.

The investigator said she didn’t think the evidence showed Mr F truly understood the benefits he was giving up by leaving the DB scheme. She said although Mr F’s handwritten note set out the reasons Mr F wanted to access the money, she said this was only a repeat of what he’d told Harbour Rock during the fact-finding call. She said at no time had Mr F confirmed in his own words that he fully understood the benefits of the DB pension and what he’d be losing by transferring away from the scheme. She said by merely ticking a box on a form, Harbour Rock had again made it easy for Mr F to transfer.

Overall, the investigator didn’t think a transfer was suitable for Mr F and she didn’t think he was a true ‘insistent client’. She said Harbour Rock had a responsibility to act in Mr F’s best interests, and not simply facilitate the action he thought he should take. She said she thought if Harbour Rock hadn’t made its insistent client process so transparent and instead provided some resistance to Mr F’s plan, she didn’t think Mr F would have insisted on transferring. She said she thought he would likely have accepted its advice and remained in his DB pension scheme. So the investigator thought Mr F’s complaint should be upheld, and she set out how Harbour Rock should calculate and pay fair compensation to Mr F.

Harbour Rock didn’t agree with the investigator’s findings. It said it was Mr F who had originally contacted Harbour Rock, and in his initial telephone call he’d said some of his work colleagues had already transferred their pensions. It said this gave an indication he was looking to access his pension from the very beginning. Harbour Rock said Mr F’s wife who was a few years younger than him was working for the same employer, had higher earnings than Mr F and was a member of its DB pension scheme.

Harbour Rock said it had explained the differences between the schemes and the benefits Mr F would be losing by leaving the DB scheme were made clear. It said its advice to Mr F had been not to transfer.

Harbour Rock also said less than three months after Mr F had received his tax-free cash he withdrew the full remaining value of his pension. Mr F had said this was to pay off loans of £72,000 in total. It said the severe tax implications of taking the whole remaining pension were explained to Mr F, including the significant sum that would be taken in tax. It said Mr F received a net payment of just over £121,000 in December 2020 – paying over £96,000 in tax.

Mr F’s representative said Mr F agreed with the investigator’s findings.

### **What I’ve provisionally 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.

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.

The following is not exhaustive, but sets out the rules and regulations which are particularly

relevant to the transaction here at the time the advice was given:

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.

The provisions in COBS 19 which specifically relate to a DB pension transfer.

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.

Harbour Rock didn't recommend that Mr F transfer – it advised Mr F not to proceed with a transfer. The letter dated 10 October 2019 set out (in a highlighted box) that Harbour Rock strongly recommended that Mr F didn't proceed with a transfer. It said it wasn't in Mr F's best interests because it was his main retirement provision and it didn't believe the reasons for withdrawal justified the impact on Mr F's long term retirement planning.

The report letter dated 21 October 2019 repeated that Harbour Rock's recommendation was not to proceed with a transfer. The letter set out more detailed reasons for it not recommending that Mr F proceed. Harbour Rock clearly advised Mr F not to proceed with a transfer.

Insistent client

In my opinion Harbour Rock clearly explained its reasons for not recommending that Mr F transfer and Mr F ought reasonably to have been aware of its position. Harbour Rock had

explained that Mr F was giving up guarantees, he would have less money to live on in the future, and the pension benefits he received could be less than the guaranteed benefits he was giving up.

However Harbour Rock had also explained to Mr F that, if he still wanted to go ahead and not follow its recommendation he would be treated as an insistent client. That message was repeated throughout the process.

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 largely did that. As I've said, it made it clear to Mr F 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 Mr F to acknowledge that the transaction wasn't in accordance with Harbour Rock's personal recommendation and that the transaction was being carried out at Mr F's request. Mr F also set out in his own words why he wanted to proceed against the adviser's recommendation.

Having said all that, it seems to me that Harbour Rock's process from the outset was geared towards Mr F transferring so he could access his tax-free cash. For example, Harbour Rock's Welcome Letter dated 4 September 2019 said that once information from Mr F's current pension provider was received, Harbour Rock would contact him to 'confirm how much tax-free cash' he could take from his pension. In my view that somewhat presupposes that's what he would 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.

I also note that near the end of the telephone conversation on 7 October 2019 when the paraplanner was explaining next steps, he told Mr F that the recommendation from the adviser may be for Mr F not to transfer. But that 'at the end of the day' nobody was going to stop Mr F taking his own money. So although he should 'take heed' of the advice, as he had got this far it would happen if he wanted to go ahead.

The Pension Review Report dated 21 October 2020 advised Mr F to opt back into his employer's scheme to benefit from employer contributions. To explain, Mr F was only able to transfer if he left his employer's scheme, that is, opted out of it. Once the transfer had gone through, he could rejoin. So Mr F would start accruing benefits in the employer's scheme again. But he wouldn't be in the same position as if he'd not transferred out his accrued benefits. He'd be paid a transfer value for those. But there'd be a gap in his pensionable service until he rejoined, during which time he'd have lost out on employer contributions and life cover provided by being a member of the scheme. And the value of the accrued benefits he transferred wouldn't be linked to his salary/career earnings at retirement date as provided for by the employer's scheme rules (assuming he'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 Mr F and so didn't meet the requirements in COBS 9.5A or PRIN 7 (communicate information in a way which is clear, fair and not misleading).

Further, although the letter dated 10 October 2019 said Harbour Rock 'strongly recommended' Mr F not to proceed with a transfer, in its final section headed 'What you now need to do' it said:

'You now have a number of options which are described in full in the enclosed Options form, including how much tax-free cash you could take in total depending on which option you choose.' It went on to ask Mr F to choose the option he thought was right for him and said: 'If you decide to proceed against our advice then please also complete the insistent client declaration and return this to us in the same envelope.'

I don't think giving that option at the same time was appropriate. Harbour Rock's advice was not to proceed with the transfer which was therefore what it thought was effectively in Mr F's best interests. I think then explaining in the same document how Mr F could circumvent that advice undermined the advice not to transfer. It made it seem like disregarding the advice was commonplace.

It seems to me that Harbour Rock's process from the start was with a view to facilitating a transfer even if it recommended not to transfer. Like the investigator, I think Harbour Rock made it too easy for Mr F to proceed against the recommendation, and I think Mr F would have understood that disregarding the advice and proceeding as an insistent client was fairly routine.

So, I think there were some failings in the insistent client process that Harbour Rock followed. But that doesn't mean that Mr F 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 had been more robust and not so focused, from the outset, on Mr F wanting to transfer?

Some of the reasons Mr F gave for wanting to access his tax-free cash weren't things that were strictly essential, such as home improvements. In the fact-finding call Mr F said he wanted to pay off his mortgage, and he said he had about £20,000 in unsecured debt – loans.

On the one hand, Mr F said the debts were well managed and my understanding is that repayments were up to date and serviceable from Mr and Mrs F's income, and Mr F wasn't in an arrears situation with either the mortgage or the debt. However on the other, Mr F said that he was somewhat older than his wife, and paying off the debt would give him piece of mind in the event that anything were to happen to him. So like the investigator, I don't think Mr F's situation was such that there was an urgent need from a financial perspective for Mr F to repay those debts at that time. But I do think repayment provided a benefit to Mr F, in so far as he had the comfort of knowing they had been repaid.

However, I think what Mr F subsequently did with his remaining pension after he took his tax-free cash helps to decide what Mr F would likely have done if Harbour Rock's insistent client process had been more robust in respect of the transfer.

Just a few months after transferring, Mr F approached Harbour Rock to take out the remaining value of his pension fund. Mr F had a telephone call with Harbour Rock (with a paraplanner on 20 October 2020). Mr F had completed a form saying he wanted to withdraw the whole fund. Mr F explained he had around £52,000 in debts, and he had also recently

bought a new car for his wife with a further loan of £20,000. So his total debt was about £72,000.

The paraplanner explained that the most recent valuation it had for Mr F's pension was just over £202,000, and that this value would fluctuate. The paraplanner said that he wasn't a tax expert, but that he could give Mr F an indication of what tax he would expect to pay if he took the pension in full. The paraplanner said based on an income of £31,000 he calculated on a

'broadbrush' basis that Mr F would receive about £120,000 of the £202,000 and pay about £81,000 in tax.

The paraplanner asked Mr F for his thoughts on that given the amount of tax payable. The paraplanner explained that if Mr F didn't take all the funds they would remain in the pension; that it was flexible and he could take it out at a later date; that a pension provided a tax efficient environment; it was sheltered from inheritance tax (IHT), and that Mr F would not get a lot of interest on it if he left the residual amount after paying debts and gifting in a bank account.

Harbour Rock subsequently sent Mr F a report dated 2 December 2020. This said it strongly recommended that Mr F didn't take the £202,000 from his pension. It said this was because Mr F could meet his objectives through alternative means, he had said his debt was manageable and the impact of income tax on withdrawing this sum. It recommended instead that Mr F withdraw £18,000 (as it would mean he remained in his current income tax bracket).

Mr F proceeded (again on an insistent customer basis) to take the full amount from his pension which was paid to him in December 2020.

As explained, Harbour Rock had set out the benefits provided by the DB scheme and the disadvantages of transferring. And Mr F had decided to go against its recommendation not to transfer and he was treated as an insistent customer. The transfer of benefits accrued in a defined benefits scheme is a complex matter, and it is often difficult to judge whether a client really did understand all the benefits they were giving up, and if they could weigh that against the benefits and risks presented by a transfer. And then have made an informed decision about proceeding with a transfer through the insistent client route where a firm recommended against it.

However here Mr F decided to take the whole remaining pension fund only a short time after transferring. As I've said, this resulted in Mr F incurring a very significant tax charge. The evidence indicates that Mr F was aware of that tax charge. In my opinion it was something that Mr F likely understood, yet he still wanted to take the full value of the pension irrespective of the significant downside of it. That suggests to me that Mr F was very motivated to take the benefits from his pension, irrespective of the disadvantages and significant 'costs' of doing so.

In the circumstances and taking everything into account, I think Mr F would always likely have wanted to transfer to access his tax-free cash, even if Harbour Rock's procedure had been different. It was Mr F who had initially approached Harbour Rock to investigate the possibility of gaining access to his tax-free cash. And as I've said, he ultimately took the whole of his remaining pension as a lump sum, despite knowing the significant tax implications of doing so.

Accordingly, I can't say that any financial detriment Mr F has suffered from transferring (if he has lost out financially) is a consequence of what Harbour Rock did or didn't do. In all the circumstances, I'm not persuaded that Harbour Rock needs to compensate Mr F.

## **Responses to Provisional Decision**

Mr F's representative didn't agree with my provisional decision. It said, in summary, that the starting position was as that set out in COBS 19.1.1.6G - a presumption that a transfer wouldn't be suitable. And that a firm should only proceed if it could clearly demonstrate, on contemporaneous evidence, that a transfer was in the client's best interests. It said in this case Harbour Rock hadn't advised that a transfer was suitable, and in applying the rules it

was clear a transfer wasn't suitable. So a transfer shouldn't have gone ahead unless a robust and non-facilitative insistent client process was followed.

The representative said it was common ground that whole process was flawed. The welcome letter referring to how much tax-free cash could be taken pre-supposed the outcome that the FCA rules required of advisers to treat as presumptively unsuitable. During the fact-find, Mr F had been told "no one will stop you taking your own money", which normalised the idea of overriding advice before it had even been given. And Mr F was then invited to elect to proceed as an insistent client before he had received the full suitability report. The representative said the letter of 10 October 2019 simultaneously "strongly recommended" against the transfer then explained how to bypass that advice. It said that wasn't consistent with PRIN 7 or COBS 9.5A.

The representative said the documentation relied upon by Harbour Rock didn't meet the requirement in COBS 9.5A.4 that, where possible, the client's acknowledgement should be in their own words and evidence understanding of what was being given up. It said Mr F's handwritten note just repeated his objectives. It thought it was the type of superficial "tick-box" insistent client process that the FCA rules were designed to prevent.

The representative said there were serious problems with Harbour Rock's record-keeping. It said there were missing recordings relating to the most important parts of the advice and persuasion process. It said a regulated firm couldn't rely on its procedures or communications to justify a clearly unsuitable transfer when key records were missing. It said if evidence that should exist wasn't produced it was reasonable to draw an adverse inference about that the records would have shown.

The representative said the key question wasn't whether Mr F might have been generally inclined to access his pension; it was what would probably have happened if Harbour Rock had followed its regulatory duties and given proper, non-facilitating advice in line with COBS 19 and 9.5A.

The representative said the provisional decision placed decisive weight on what Mr F did months later, after he had already been transferred out of his DB scheme and placed into a flexible, easily accessible SIPP. It said the later encashment behaviour couldn't be used to justify the original transfer, because that behaviour was only made possible by the transfer.

The representative said this was a classic example of hindsight. Once the pension was converted into a pot of accessible capital, it was psychologically and practically reframed as money that could be spent. The representative said the DB transfer rules were designed to stop people being put in a position where they could easily do themselves long-term financial harm. It said this was consistent with PRIN 6 (a firm must pay due regard to the interests of its customers and treat them fairly).

The representative said given Mr F's financial position in 2019 there was no need for him to give up a guaranteed £18,000 a year inflation linked income for the rest of his life. It said Mr F wanted peace of mind, not because he had to, but because it felt more comfortable to him. And it thought, as the FCA guidance made clear, that simply wasn't a good enough reason to give up benefits and particularly where Mr F had no capacity to absorb losses and no other meaningful pension provision.

The representative said during Mr F's call with the paraplanner he explained that he wanted to clear his debts so that he could then start saving. He also confirmed that he wasn't paying into any workplace pension at that time. It said this was consistent with someone who did not properly understand how his retirement provision was working. When the case was passed to the adviser this should have been treated as a clear warning sign about Mr F's lack of

understanding of how his pension worked and how his objectives could be met without giving up his safeguarded benefits. However these red flags weren't acted on.

Mr F's representative said Harbour Rock didn't have to facilitate the transfer, and didn't have to take a fee. It said while pension freedoms gave clients more flexibility, an adviser's role was to guide them through the risks, consequences, and long-term implications of their choices—not to encourage or facilitate action that may be unsuitable. The representative said from the outset Harbour Rock's actions actively set Mr F up for the transfer.

The representative said my provisional findings undermined the regulatory framework designed to prevent what had happened in this case. It said the provisional decision normalised conduct that fell short of professional duty and threatened the integrity of regulated financial advice. It said to suggest that Mr F "would have done it anyway" reverses causation, ignored regulatory safeguards, and failed to account for the adviser's duty to prevent foreseeable harm.

The representative said but for Harbour Rocks failings, Mr F would almost certainly have remained in his defined benefit scheme and avoided the substantial and irreversible financial harm that followed.

Harbour Rock didn't provide any further evidence or arguments to consider.

### **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.

Having done so I've seen no reason to depart from my provisional decision not to uphold the complaint.

I agree with Mr F's representative that there didn't appear to be an essential need for Mr F to access his pension benefits at the time he was advised in 2019. And whilst Harbour Rock advised Mr F against transferring, as I said in my provisional decision, in my opinion its process from the outset was geared towards facilitating a transfer even if it recommended against it.

Again, like Mr F's representative and as the investigator said, I think Harbour Rock made it too easy for Mr F to proceed against the recommendation. And I agree it normalised the process, and I think Mr F would have understood that disregarding the advice and proceeding as an insistent client was fairly routine. As I said in my provisional decision, in my opinion Harbour Rock didn't meet its regulatory obligations under PRIN and COBS.

However, whilst all this is clearly an unsatisfactory position, Mr F could transfer if he so wished – even with Harbour Rock advising against it. And ultimately, as with all complaints of this nature, I still need to decide on causation; whether Harbour Rock's errors or omission caused Mr F to make a decision he would otherwise not have made.

As Mr F's representative said, the key question was what Mr F would likely have done if Harbour Rock had met its regulatory duties and given proper, non-facilitating advice in line with its responsibilities under PRIN and COBS. This is the question I'd considered in my provisional decision. And for the reasons set out in that decision, in my opinion Mr F would more likely than not have still decided to transfer on an insistent client basis if Harbour Rock *had* met all of its regulatory obligations.

Mr F's representative said the provisional decision used the benefit of hindsight. It said the

later encashment behaviour couldn't be used to justify the original transfer because that behaviour was only made possible by the transfer. And it said *"to suggest that Mr F "would have done it anyway" reverses causation, ignored regulatory safeguards, and failed to account for the adviser's duty to prevent foreseeable harm."*

I don't agree that taking into account Mr F's actions following the transfer, in Mr F's representative's words, 'reverses causation'. Or that it is inappropriate to do so. Deciding what Mr F would likely have done at the time of the transfer is a matter of judgement. Clearly I cannot know with complete certainty what Mr F would or wouldn't have done. And neither can Mr F's representative. A decision has to be made on the balance of the evidence that is available, taking all the circumstances into account and deciding on the particular facts.

Whilst I recognise that Mr F couldn't have withdrawn his remaining pension fund if Harbour Rock hadn't arranged the transfer in the first place, that doesn't mean considering Mr F's decision about it can't be used to help decide his wider mindset. As I explained in my provisional decision, the transfer of benefits accrued in a defined benefits scheme is a complex matter, and it is often difficult to judge whether a client really did understand the real value of all the benefits they were giving up, and able to weigh them up against the benefits and risks presented by a transfer. And then have made an informed decision about it.

However in this case Mr F decided to take the whole remaining pension fund only a short time after transferring, even though there was a very significant tax charge incurred as a result. In my opinion that was something that Mr F would likely have been able to weigh up and understand – effectively the very significant cost of taking the whole pension in one go at that time – the value of his fund, compared to what he would actually receive in his hands if he took it as a lump sum. They were straightforward monetary amounts to compare, and I think it likely Mr F would have understood them. Despite the significant costs, Mr F still went ahead and took the whole remaining pension as a lump sum. He was prepared to incur the significant cost to get hold of those monies.

I recognise that Mr F was only in the position to take the money because of the transfer and accept he was psychologically and practically in a different position. But the point is he didn't have to take the money in one go as a lump sum – he could have taken it gradually over time in a way to minimise the effect of tax. But he took it in one lump sum with the associated significant tax consequences. He didn't have to do that, even though it was easy to access the money following the transfer. Mr F chose to do that and incur those significant costs.

In my opinion that suggests that Mr F was very motivated to take the remaining benefits from his pension as a lump sum, irrespective of the clear financial cost of doing so. I think it's reasonable to conclude that he was similarly motivated at the time of the transfer and he would likely have made the same decision about the transfer in order to access the tax-free cash initially, even if he had been fully alerted to the significant financial costs/downside of doing so and with a robust insistent client process in place.

To be clear, I'm not finding that the later encashment behaviour *justified* the original transfer, not in as far as I thought it meant the transfer was in Mr F's best interests or that I think Mr F should have gone ahead with it. My finding is that Mr F would more likely than not have transferred irrespective of any failings on Harbour Rock's part, as I think he wanted to access that money despite the high 'costs'.

As I said in my provisional decision, in the circumstances and taking everything into account, I think Mr F would always likely have transferred to take the tax-free cash even if Harbour Rock's procedures had been in line with the regulatory requirements. I accept that the FCA's procedures and rules are designed to prevent consumer harm, and as I said, I think there

were some significant weaknesses and failings in the insistent client process that Harbour Rock followed. But ultimately, if Mr F was always likely to want to transfer irrespective of the the procedures that the FCA had put in place, then I don't think those failings caused the losses that are being claimed.

It was Mr F who had initially approached Harbour Rock to discuss his options for his pension and about taking tax-free cash from it. And as I've said, Mr F ultimately took the whole of his remaining pension as a lump sum, despite knowing the significant tax implications of doing so. Taking all the circumstances into account I think Mr F was strongly motivated to access the funds in his pension through a transfer, irrespective of the high costs and financial downside of doing so.

### **My final decision**

Accordingly, my final decision is that I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 February 2026.

David Ashley  
**Ombudsman**