

## **The complaint**

Mr D complains that Harbour Rock Capital Limited (then trading as Portafina Investment Management Limited) took too long to provide him with advice on his pension transfer. And that the delay meant that the transfer value he received was lower than it would have been if it had acted quicker and that it took him too long to access his pension benefits.

## **What happened**

Mr D responded to an advert from Portafina Investment Management Limited in late 2021 about pension advice. And he signed a letter of authority in December 2021 allowing it to request pension information from his pension schemes. Portafina Investment Management Limited has since changed its company name to Harbour Rock Capital Limited ('HRCL'). This is reflected on its record with Companies House and on the register of regulated firms held by the Financial Conduct Authority ('FCA'). For the purposes of this decision it is appropriate for me to refer to HRCL as the respondent business even though Mr D dealt with it under its former name.

Mr D had two pension schemes. He was a deferred member of one of those schemes having left it in 1986 after approximately six years of membership. I will refer to this scheme as OPS1. He was an active member of a second occupational pension scheme, with around 20 years of active service. I will refer to the second scheme as OPS2.

On 6 December 2021 HRCL wrote to the scheme administrators of both OPS1 and OPS2.

HRCL received a full response from OPS1 on 4 January 2022. It contained transfer information for Mr D's deferred benefits held in that scheme. Which included explaining the defined benefits that the pension offered. And that its cash equivalent transfer value (CETV) was around £100,000. This CETV had been calculated on 22 December 2021 and was only guaranteed until 22 March 2022.

HRCL have shown us correspondence with the OPS1 administrators to query something that it didn't consider was clear in the information provided. And this was resolved in late January 2022. HRCL have also shown us that it then re-contacted the administrators of OPS2 at the end of January 2022 chasing transfer information.

On 8 February 2022 HRCL received a response from OPS2 to explain that it wouldn't provide information to a third party and would instead send information to Mr D.

On 2 March 2022 HRCL contacted OPS2 for further information, and on 10 March 2022 Mr D phoned HRCL to let them know he had that further information and arranged to email it to HRCL.

In late March 2022 HRCL called Mr D to arrange a time to go through his details with him. This was completed on 29 March. In that call Mr D agreed with HRCL that he wouldn't consider transferring OPS2. And on 2 April HRCL provided Mr D with a written recommendation about the suitability of transferring OPS1. That advised him not to transfer OPS1 because he would lose the valuable pension benefits that he was just a few years

from being able to obtain. And HRCL didn't consider that Mr D had enough of a reason to access the benefits in a different way to make transferring his benefits in his interests.

Mr D decided to go ahead with the transfer of OPS1 to a self-invested personal pension against HRCL's recommendation. HRCL processed Mr D's transfer request treating Mr D as an 'insistent client'. The initial CETV that Mr D had been given had expired prior to the recommendation so a new CETV was required. The new CETV, around £83,000, was provided in August 2022.

Mr D decided to go ahead with the transfer with the new CETV and the transfer completed in late November 2022.

Mr D complained to HRCL about how long the transfer had taken, explaining that he thought it was responsible for causing him to miss the first, higher, CETV.

HRCL responded to his complaint and partially upheld it. It explained that it wasn't responsible for the time taken to provide its initial recommendation as it had no control over the time it took to receive the information it needed from OPS2. Which it says it didn't have until 10 March 2022, and which was still insufficient so required further queries of the administrators of OPS2. It didn't think it was responsible for the fact that the guarantee period for the first CETV was missed. But it did identify a couple of areas where its service could have been better. And offered Mr D £500 for the distress and inconvenience that had been caused by the delays due to those failings.

Mr D didn't accept HRCL's answer and referred his complaint to our service. Our investigator didn't think that HRCL were responsible for the fact that Mr D was unable to secure the first CETV. And explained her thoughts on the stages of the process and the fact that HRCL couldn't provide a recommendation whilst it was waiting for information about OPS2 that came so long after the CETV for OPS1 had been provided. But she did agree that HRCL's service could have been quicker and meant that Mr D's transfer should have concluded sooner than it did.

Our investigator was unable to resolve this complaint and it was referred for an ombudsman's decision. I looked at the circumstances in this case and agreed that HRCL had caused delays. I issued a provisional decision to both parties explaining why I thought the complaint should be upheld and what I thought HRCL should do to put things right.

Mr D responded to explain that he didn't think that HRCL had made him aware of the deadlines. But he provided no further evidence for me to consider. And HRCL didn't respond.

### **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 considered all of the information in this case, including comments in response to my provisional decision, my final decision is the same as I already explained to both parties in that provisional decision. I uphold Mr D's complaint for the reasons set out below.

I understand that Mr D doesn't think that HRCL made him aware of the timescales. But HRCL have shown us what it provided Mr D at the start of the process. It is a leaflet that explains the difference between defined benefit and defined contribution pension schemes. And explains the process when considering transfers. This leaflet contained a section headed "*your transfer value and the ticking clock*". It made Mr D aware that a transfer value

calculated by his pension scheme would only be valid for three months. During which a complicated transfer process would need to be completed. But whether or not Mr D was aware wasn't the thing that caused deadlines to be missed as I will explain.

Advising on the transfer of pension schemes like Mr D's is a highly regulated area of financial advice. HRCL had to comply with FCA rules that are set out in its handbook. It includes rules in the Conduct of Business Sourcebook (COBS). Of specific relevance are COBS 9 which relates to the provision of financial advice and COBS 19 which explains the rules about defined benefit pension transfers. The level of scrutiny around transfers of this type is so high because of the potential that the FCA has identified for harmful outcomes for consumers. In fact COBS 19.1.16 gives a starting assumption for such transfers that they should be considered unsuitable for most consumers. And only allows firms to recommend the transfer if it can clearly demonstrate that it's in a consumer's best interests.

So I would expect to see that HRCL provide a prompt and efficient service for Mr D. And to be aware of the importance of the CETV deadline as requesting a new one would undermine much of the transfer analysis needed to provide transfer advice. But getting a suitable recommendation to a consumer is important so I don't think that HRCL should unreasonably hurry the process of a CETV deadline.

In this instance HRCL was looking at both OPS1 and OPS2. And, whilst it ultimately only advised on the suitability of transferring OPS1, I think it's fair to acknowledge that it was looking at all of Mr D's pension provisions. I say that because I don't think that Mr D was clear at the outset whether he wanted to transfer one or both of his pensions. Even as late as the fact finding call in March 2022 Mr D was still considering the available tax free cash by transferring both pensions. Although he was ultimately persuaded that he might be better not to do anything with OPS2.

Even if Mr D was clear that he didn't want to do anything with OPS2, I think that understanding the benefits available to him through that scheme would still be relevant to his overall retirement planning, including the potential suitability of transferring OPS1. It would have a bearing on how Mr D might be able to meet his expenditure in retirement and therefore his overall capacity for loss on any transferred and invested pension fund.

This means that, even though HRCL had received the transfer information it needed about OPS1 by late January (including responding to its query), I think it needed to wait until it had the information it had requested about OPS2 before being able to give a recommendation.

The administrator of OPS2 wouldn't send that information to HRCL. And it made HRCL aware of that by e-mail on 8 February 2022. HRCL says that it contacted Mr D on 17 February 2022 to obtain this information. This was seven working days which, whilst it could have been quicker, was not obviously unreasonable. And it received it from Mr D by 23 February 2022.

I've seen the information that was provided regarding OPS2 and it didn't contain a great deal of detail. So I understand that HRCL thought it required further information to be able to properly understand the benefits and properly advise Mr D. HRCL e-mailed the administrators of OPS2 on 2 March 2022 for further information. And called Mr D the same day to let him know that any response would most likely be sent to him. And asked that he notify them when he heard from OPS2. Which Mr D did on 10 March. I think this was reasonable and I don't think that HRCL contributed to a delay here. It thought it needed additional information and given what was at stake in giving this advice I think it was reasonable for HRCL to make further enquiries.

But I can't see why HRCL didn't have the information it needed on 10 March 2022 to be able

to provide the advice. When instead it waited until 22 March 2022 to make a phone call to the administrator of OPS2. This call didn't really provide any further information. And seemed to merely confirm that the scheme couldn't provide a guaranteed CETV or transfer pack because Mr D was an active member of the scheme. Which HRCL ought to have known or been able to find out from Mr D. Effectively, I think that HRCL's delay in unnecessarily contacting the OPS2 administrators on 22 March caused a **delay of 12 calendar days**. Which was unreasonable.

HRCL booked an appointment with Mr D in a call on 23 March 2022 explaining that it had all of the other information it needed. The appointment was made for 29 March which was four working days after. And it was then able to produce a written recommendation for Mr D by 2 April 2022. I think that these steps were conducted promptly. Even if I account for the above delay of 12 calendar days, that I think HRCL caused, that would still mean that the earliest that the suitability report might have been available for Mr D was 21 March 2022. This would have been the day before the deadline for the CETV. But the remaining steps in the process meant that it isn't fair or reasonable to conclude that Mr D could have secured the CETV from OPS1 that he'd been given.

I say that because I don't see any reason that HRCL's recommendation would have been different if it had been made a few weeks earlier. So would still have been that it wasn't in Mr D's best interests to transfer OPS1. If this advice had been followed this would have concluded the advice process. But Mr D decided that he wanted to transfer in spite of HRCL's recommendation.

The rules and guidance in COBS allowed HRCL to assist Mr D with a transfer in circumstances where he was going against the personal recommendation it gave him. COBS 9.5A gives guidance about 'insistent clients' that I think HRCL needed to follow to ensure that Mr D was treated fairly. The guidance is there to provide a safeguard against firms making it too easy to facilitate consumers acting in a way that it thinks is against their best interests.

HRCL needed to know that Mr D had considered his choice and that he understood that he was acting against the advice he had been given. COBS 9.5A placed additional record keeping obligations on HRCL. This would have been an unavoidable step in the process that would have added time. This was an important decision and I think it was only reasonable that Mr D took the time needed to consider it. And I wouldn't expect HRCL to pressure, rush or influence him in it.

I can see that, at this stage in the process, HRCL say that it provided Mr D with incorrect documentation to be able to complete the process. And has apologised for that. It understood that Mr D wanted to go ahead with the transfer of the CETV for OPS1 in order to withdraw the whole fund. And it knew this on 11 April 2022 according to its records. It appears that Mr D initially returned the first declaration on 12 April 2022 having selected the option to accept the recommendation he was given. This was a simple error, although not something that it is fair to hold HRCL responsible for. And, given HRCL's obligations to be sure about Mr D's wishes, it needed to be corrected. But HRCL didn't get the correct form to Mr D until 19 May 2022 after sending the wrong form first. So 37 calendar days from receipt of the wrong form.

Taking 37 calendar days to get the correct form to Mr D was unreasonable. It was delaying Mr D from obtaining access to his pension income unfairly. HRCL haven't said what it would expect a fair turn around to be but given that this was a simple administrative issue that would have been immediately apparent, I think that five working days (so seven calendar days) would have been enough time. So I think that HRCL's mistake here caused a further **delay of 30 calendar days** to the completion of Mr D's transfer.

I can see that HRCL went on to make a further recommendation based more specifically on Mr D's request. Which at that stage was to transfer the CETV of OPS1 in order to take the entire fund as a lump sum. I think this was also a reasonable and necessary step to make sure that Mr D fully understood the implications of going against the advice given. It did this for him by 1 June 2022. Which I think was a prompt response to the request of 25 May 2022.

The transfer process then required an application to be submitted to a new pension provider that would accept the transfer. Which I can see was done in mid-June 2022. Again, I think this was reasonable as it included time to obtain a further declaration from Mr D of his intention still to go ahead against the new recommendation.

#### *Summary regarding missed CETV:*

For the reasons I've given, I've not been able to identify delays that HRCL caused that meant that the transfer could have been completed by the deadline of 22 March 2022. I've identified certain areas where HRCL could have acted faster. But the combination of other factors would not have meant that the first CETV could have been secured if those delays hadn't occurred. The combination of other necessary steps and delays outside of HRCL's control made that impossible. And the crux of Mr D's complaint is that he should have had the CETV that was valued around £100,000. So I'm not upholding this complaint on the basis that HRCL's delays caused the first CETV to be missed.

#### *What I am upholding Mr D's complaint for:*

I understand Mr D's frustration with the time his pension transfer took from start to finish. He started the inquiry in late 2021 and didn't have the funds from OPS1 until 29 November 2022. I agree that this seems, on the face of it, to be unreasonable. And, like our investigator concluded, I agree that the urgency in pursuing Mr D's transfer seemed to disappear after the application in June.

It appears that delays subsequently occurred in obtaining a new CETV and that HRCL are responsible for some of this.

HRCL was informed by 4 July 2022 that the OPS1 administrators didn't have everything needed to be able to process the transfer. And that the CETV had expired anyway and a new one would be required at a cost of £250. HRCL contacted Mr D about this on 20 July 2022. I think this should have been done quicker. Given the time already taken I don't see why this request couldn't have been made within a week rather than the 16 days it took. So contributing a further **delay of 9 calendar days** to the total time frame.

Mr D provided his authority to HRCL to pay for a new CETV. I have looked at the letter HRCL sent Mr D on 20 July and it told him that the new CETV may go up or down. But said "*in our experience these changes in value, either up or down, are usually very small*". which I think gave Mr D an unfair expectation about what the difference in his CETV might be. Causing unnecessary distress when those expectations weren't met.

When the new CETV was received on 22 August 2022 it was around £83,000. Which was a significant fall. It triggered a further set of processes whereby HRCL provided Mr D with a new transfer value comparator so he could see how much more this CETV fell short of being able to provide compatible benefits to OPS1. HRCL says it sent this on 28 September 2022. I think there is an unreasonable delay here when considering the time frame it was able to provide its suitability report previously. It needed no further fact find or meeting with Mr D. It had everything it needed once it had the new CETV to provide an update that was largely what Mr D had already been told. I think that allowing 2 weeks for this seems reasonable rather than the 37 calendar days that it actually took. Which means that I think HRCL caused

a further **delay of 23 calendar days** to the total transfer time due to this.

Having looked at the remaining process, although it undoubtedly seemed slow to Mr D, I don't think there were further unreasonable delays that were caused by HRCL. Overall I have referred to a number of delays both prior to the first CETV expiring and subsequently in obtaining and then action in the second one. I have marked these in bold in the text above. **it means that I think that this transfer would, more likely than not, have been concluded a total of 74 days sooner but for HRCL's handling.**

### **Putting things right**

I understand that Mr D thinks he should be reimbursed the difference in the CETVs. but that wouldn't be a fair outcome because I have decided that HRCL are not responsible for the fact that Mr D was unable to secure the first CETV for OPS1. it meant that Mr D was always going to need a second CETV and then decide whether or not to go ahead with the transfer, that wasn't recommended, based on that new transfer value.

We have contacted the administrator of OPS1 and it has told us that it will not be able to provide any notional CETV based on a notional request having been received on an earlier date. So, even though I think that the stages of the transfer prior to the new CETV should be moved forward to account for HRCL's delays, it isn't possible to determine whether Mr D would have received a CETV that was higher or lower than the one he ended up accepting.

The impact of the delays was that Mr D ended up receiving his transfer value 74 calendar days later than he should have. Whilst I can't know what an earlier CETV might have been, I think a fair way to put things right now is for HRCL to do the following:

- A- HRCL must ascertain the net payment that Mr D received for this pension and pay Mr D compensation of 74 days' worth of interest at 8% simple for Mr D's loss of use of that sum.
- B- HRCL Should pay Mr D £750 for the distress and inconvenience the delays caused. He has been left in the position where HRCL added to the delays in his receiving the transfer and taking of benefits that he intended and was led to believe that the new CETV was unlikely to differ much from the original figure.

If payment of compensation is not made within 28 days of HRCL receiving Mr D's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

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

### **My final decision**

I uphold Mr D's complaint for the reasons I've explained above and direct HARBOUR ROCK CAPITAL LIMITED to compensate Mr D as I've set out within the section 'Putting things right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 December 2023.

Gary Lane  
**Ombudsman**