

The complaint

Mr A complains about the advice HARBOUR ROCK CAPITAL LIMITED ('Harbour Rock') gave to him concerning the transfer of benefits from his defined-benefit ('DB') occupational pension schemes to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr A to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr A's.

At the time of the events complained about Harbour Rock was operating under a different name. But for clarity I will just refer to Harbour Rock in this decision.

What happened

In 2021 Mr A asked Harbour Rock to review his pension provision. He told it about three DB schemes he was a member of. I will refer to those as scheme 1, scheme 2 and scheme 3. Harbour Rock gathered information about Mr A's entitlement from the schemes. Mr A's three schemes had the following cash equivalent transfer values:

- Scheme 1 £118,766
- Scheme 2 £75,210
- Scheme 3 £71,731

Harbour Rock conducted a fact-find with Mr A to establish his circumstances and objectives. Amongst other things it noted that:

- Mr A was 55 and single. He had three non-dependent children.
- He was employed but considering his future employment options.
- He paid around £600 a month in rent.
- He had £3,000 in a deposit account and a further £1,000 invested in crypto currency.
- He had debts amounting to £8,400, which he was repaying at a cost of around £350 a month. Of that debt, Mr A was repaying £3,000 under the terms of an IVA¹.
- He jointly owned with other family members a property abroad. That was worth around £300,000. Mr A anticipated it would bring in a rental income of around £500 a month once he had tenants in it.
- He said he'd already taken £12,000 tax free cash ('TFC') from another pension and was also receiving a regular monthly income of £145 from it.

In terms of objectives Mr A said he was looking to take TFC from his DB schemes in order to be able to:

- Clear all his debts.
- Invest £20,000 in buying another property abroad. Mr A said that would also generate rental income of around £500 a month.

¹ An individual voluntary arrangement (IVA) is a formal and legally binding agreement between a debtor and creditor to repay a debt.

- He wanted to save and/or invest the remaining TFC sums.
- He said he wanted to retire at age 60 and believed he would most likely live in one of his properties abroad.

Harbour Rock spoke with Mr A. It told him its advice would be that he should not transfer out of all three of his DB scheme's. Mr A said his mind was made up and that was what he wanted to do.

Shortly after Harbour Rock issued its first suitability report setting out its analysis and recommendations. Harbour Rock said Mr A should not give up the safeguarded benefits from schemes 1 and 2. But it said he should transfer scheme 3 to a personal pension. It said that doing so would allow him to release TFC of almost £18,000. It said he could then withdraw a taxable sum of £12,000. Its rationale for doing so was that Mr A could use the funds to pay off all his debts and buy the £20,000 property abroad. It appended forms for Mr A to sign and return. It noted that if he wanted to go against its advice it would treat him as an 'insistent client'.

Mr A signed Harbour Rock's forms to say he wanted to go against its advice.

Harbour Rock spoke with Mr A. It asked him about what he understood its advice was and if he knew what he would be giving up by transferring. Mr A said he understood its advice was that he shouldn't transfer two of his three DB schemes. He said he would be giving up security and safeguarded benefits by doing so.

Around the same time Harbour Rock established that Mr A had already taken the benefits from Scheme 3. In fact that was the source of the £12,000 TFC and £145 regular income Mr C referred to when completing the fact-find. Mr A later said he'd used the TFC from scheme 3 to pay for funeral expenses.

Harbour Rock revisited its advice and sent him another suitability report. It again said that Mr A should not transfer out of scheme 1. But it said he should transfer from scheme 2 and again use the TFC, of around £18,800, and a taxable withdrawal of £12,000 to repay debts and to buy the property abroad.

Mr A again told Harbour Rock that while he understood its advice he wanted to go against it. He again set out in writing why he wanted to do that.

Harbour Rock sent Mr A another suitability report. This repeated the information from the earlier report but said it was treating Mr A as an insistent client. On that basis it recommended he transfer his benefits from schemes 1 and 2 to a named personal pension. Mr A signed the appropriate forms to allow the transfers to go ahead.

In 2022 Mr A complained to Harbour Rock. In brief he said it had inappropriately advised him to transfer his DB schemes' funds; hadn't told him of the advantages and disadvantages of doing so, hadn't made him aware of the safeguarded benefits he would be giving up and hadn't advised him that he could have taken benefits directly from the schemes.

Harbour Rock didn't uphold Mr A's complaint. In short it said it had advised Mr A not to transfer from scheme 1. And that Mr A was fully aware of the benefits he was giving up by transferring and it had treated him as an insistent client.

Mr A brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He didn't think that Harbour Rock should have advised Mr A to transfer out of scheme 2. The Investigator also said there were flaws in Harbour Rock's insistent client

process. But he said that he believed Mr A would have gone ahead with the transfer anyway. So he didn't recommend that Harbour Rock took any more action.

Mr A didn't agree with our Investigator's complaint assessment. So, as the matter couldn't be resolved informally it's been referred to me to issue a final 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.

In bringing this complaint and in replying to it Mr A and Harbour Rock have raised a number of points. I've considered carefully everything on file. But in this decision I don't intend to address each and every matter raised. Instead I will focus on the issues which I see as being at the heart of Mr A's complaint and the reasons for my decision.

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. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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.

Since 2018, COBS 9.5A 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.

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.

Having considered all of this and the evidence in this case, I've decided not to uphold the complaint for largely the same reasons the Investigator gave. In particular, as I will explain, I think Mr A would have gone ahead with the transfers even if Harbour Rock's advice had been faultless. But I don't think that was the case.

Was Harbour Rock's advice to transfer the benefits from scheme 2 to a personal pension in Mr A's best interests?

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Harbour Rock should have only considered recommending a transfer if it could clearly demonstrate, on contemporary evidence, that it was in Mr A's best interests. And having looked at all the evidence available, I'm not satisfied Harbour Rock's recommendation that Mr A should transfer the benefits from scheme 2 was in his best interests.

It's notable that Harbour Rock's first suitability report said that Mr S should **not** transfer the benefits from either schemes 1 or 2. It said that transferring out of those schemes was not in Mr A's best interests because of, amongst other things, the guarantees he would lose and the impact on his long-term retirement planning. It also said it believed the transfer value being offered "may not be a fair valuation" as the cost of replacing those guaranteed benefits in the open market was significantly higher than the transfer values being offered.

Harbour Rock added that the income from schemes 1 and 2 could be "truly essential" to Mr A for his retirement. It said he didn't have any pressing needs that would justify a DB scheme transfer, outside of his desire to buy a home abroad and the requirement to pay off debts. But, it said in order to meet those needs he should transfer scheme 3 and use cash from that for those purposes.

Harbour Rock then learned that, while it had been gathering evidence, Mr A had already taken benefits directly from scheme 3 and so transferring those benefits was no longer an option.

Harbour Rock revised its advice and issued another suitability report. In that report, rather than recommending that Mr A should remain in scheme 2, it said he should transfer its benefits to a personal pension. But, at that time, none of the reasons it had given for not transferring in its earlier report had changed. So Mr A still stood to lose valuable guarantees that he was unlikely to be able to replace by transferring out of the scheme. And the transfer value of the scheme – at that point – hadn't changed, so the cost of replacing it in the open market was still significantly higher than the value offered, which Harbour Rock had previously said it didn't think was a "fair valuation". That valuation wouldn't suddenly become more favourable simply because Mr A had already taken the benefits from scheme 3.

So, Harbour Rock had itself already identified that transferring the benefits from scheme 2 wasn't in Mr A's best interests. But, it recommended he do that anyway. I understand it did so as it was proposing a solution to enable Mr A to repay his debts and to buy the property abroad. But I don't think either of those objectives justified Mr A transferring his DB schemes.

I can understand that repaying debts was likely a drain on Mr A's resources. I'm also aware that Mr A already had an IVA which would most likely affect his credit score, making further borrowing more difficult and expensive. But, IVA's will generally affect a credit rating for six years regardless of when its paid off. And Mr A told Harbour Rock his debts were manageable. So, while being debt free would no doubt have sounded like an attractive proposition, it simply wasn't worthwhile giving up his guaranteed and safeguarded income his DB schemes offered in retirement for.

I'm aware Harbour Rock did raise the possibility of Mr A raising cash from the property he owned abroad, but Mr A confirmed this was jointly owned and couldn't be sold. Harbour Rock also referred to consolidating his existing debts or seeking specific debt advice, both in the paperwork it sent to him and when it conducted its fact-find. Mr A told Harbour Rock that he wasn't interested in consolidating his debt as he wanted to be debt free. However, I don't think that went far enough.

Harbour Rock's role was to discern what Mr A's wants and needs were and why he wanted to transfer his pension. Its role wasn't simply to do what Mr A wanted without appropriate analysis and challenge of his motives for doing so with the implications of taking those actions with him. But Harbour Rock did little by way of challenging Mr A's reasons for transferring even though it wasn't in his best interests. For example, Harbour Rock simply appears to have accepted Mr A's statement that he wanted to clear his debts and didn't want to consider consolidating those or simply to continue repaying them. When those were better solutions than losing the safeguards from his DB pension for. And while Harbour Rock had raised this with him it didn't make express mention in its suitability reports why transferring a DB pension in order to achieve this was most likely not in his best interests.

Similarly, Mr A had a very clear goal that he wanted to buy a property abroad. He believed that he could purchase such a property for £20,000 and that could generate a rental income of £500 a month or £6,000 a year. And Mr A believed he would relocate abroad in his retirement. Harbour Rock did ask Mr A if he could realistically buy a property for £20,000 in his desired country. Mr A confirmed that he could. But I can't see that Harbour Rock really explored with him how realistic that was. Nor did it establish if he'd done the research into likely rental yields and compared those to what he would be giving up from his DB scheme in order to be able to achieve that. So I don't think Harbour Rock met its obligations to challenge his objectives in light of what he would be giving up. Neither did it fully explore if he could achieve his objectives through another means without giving up the benefits from his DB scheme.

For example, another possibility for Mr A could have been taking the benefits from one or both of his DB schemes immediately. But Harbour Rock didn't explore this with him. In its response to Mr A's complaint, it said this was because Mr A wouldn't accept the considerable actuarial reductions that taking his benefits at that time would have entailed. That might have been the case. But I can't see that Harbour Rock ever raised this with him. I've listened to some calls between it and Mr A, and the subject of taking his DB benefits early isn't raised in any of those. Neither does Harbour Rock address this issue explicitly in its suitability reports. And in order to give Mr A full advice I think it should have done that.

It follows that I don't think Harbour Rock's advice for Mr A to transfer the benefits from scheme 2 to a personal pension was in his best interests.

Harbour Rock's insistent client process and Mr A's choices

Mr A twice returned forms to Harbour Rock in which he said he understood its recommendation was not to transfer out of one scheme. He also wrote, in his own words, why he wanted to go against that advice. I've also listened to a call in which Harbour Rock asked Mr A what its advice was. Mr A could clearly articulate that its advice was that he shouldn't transfer all of his DB schemes; that he would be giving up guaranteed benefits by doing so; and that he ran the risks of not meeting the DB scheme income in retirement. So I'm satisfied he clearly understood what Harbour Rock's advice was in terms of DB transfers.

But I don't think that means that Harbour Rock did all that it should have done in the circumstances. Harbour Rock's initial recommendation was that Mr A should not transfer out of either scheme 1 or scheme 2. For the avoidance of doubt I think that was the right advice. And I don't think Harbour Rock should have altered that advice when it learned Mr A had already taken his benefits from scheme 3. But there were also other flaws in its process and the manner in which it presented its recommendations, which I think confused matters.

For example, I've heard a call in which an adviser explained to Mr A that the benefits from a DB scheme were extremely valuable and it was unlikely that Mr A would be able to match the returns by transferring and investing elsewhere, including rental returns. But during the same call, the adviser said he would go on to advise that Mr A should transfer the benefits from scheme 3 (although it later transpired this wasn't possible). So, in the same call, Harbour Rock told Mr A both that his DB scheme benefits are extremely valuable and should be left where they were but also that he should transfer the benefits from one of those schemes in order to meet other objectives. I think that's sent mixed messages about the value of the DB schemes. Instead, I think Harbour Rock's message should have been that Mr A should not transfer any of his DB schemes and instead explored with him other methods of achieving his objectives.

Further, Harbour Rock went on to say that if Mr A wanted to go against its advice then it wouldn't stop him from accessing his DB funds but instead would give him the option of doing so. I don't think that advice was appropriate given that it had already determined it wasn't in Mr A's best interests to transfer out of some of his schemes. Instead Harbour Rock presented the possibility of transferring out of all three schemes on an insistent client basis, alongside the recommendation not to transfer from two of them. I think this made it far too easy for Mr A to simply decide that transferring was a suitable alternative to staying in the schemes, when Harbour Rock was aware that decision was not in his best interests. And that process continued once Harbour Rock sent Mr A its revised suitability report adjusting its advice to only reflect schemes 1 and 2. But, as I've said above, by that time Harbour Rock changed its advice from a transfer from scheme 2 being against Mr A's best interests to it being something it recommended.

It follows that I think there were a number of issues with the process Harbour Rock applied in treating Mr A as an insistent client that means the process wasn't robust. And, in other circumstances, I would say it was unfair to rely upon it.

But, in this case, having had the benefit of listening to Mr A's calls with Harbour Rock, I've concluded that, on balance, Mr A was always likely to have transferred even if Harbour Rock's advice had been faultless.

I know Mr A was unaware that Harbour Rock's advice and process were flawed at the time. But I think he went into the process with a clear idea about what he wanted to achieve from it and was determined to see it through.

I say that because, from an early stage Mr A was clear that he wanted to take the maximum TFC in one go. He said he'd made up his mind before speaking with Harbour Rock that was what he wanted to do. He said accessing TFC was very important to him and he wished to proceed regardless of the impact on his long term future in retirement. He also told Harbour Rock that his plan was not to rely on the DB scheme income in retirement. And, when Harbour Rock put it to him that he would lose the guarantees the schemes offered and so be worse off he said that was a chance he was willing to take.

Similarly, in later calls, when Harbour Rock said it wouldn't be in his best interests to transfer out of all three schemes and asked him if he wanted some time to think about it he said "not really, no". He added that his mind was made up. That it was something he'd been considering for a considerable time and he wanted to "*stick to [his] plan*".

Also, when Harbour Rock called him to test his understanding of its advice, he was clear he understood that was not to transfer and the reasons why. He said he was willing to give up the guarantees from the schemes, and take on the risks inherent in doing so, in order to receive the maximum TFC available to him. So he gave every indication he wanted to go ahead regardless of the likely long-term effect on his retirement provision.

I'll add that, as I've said above, Harbour Rock didn't ever advise Mr A that he could have taken benefits from his DB schemes straightaway. But I don't think that would have made any difference even if it had. Harbour Rock had twice made recommendations for transfers to Mr A that would address some of his objectives, but he clearly rejected those on both occasions. And while he could have taken funds from his DB schemes immediately, those sums would most likely have been reduced by around 35% to allow for the early retirement actuarial factors. But the evidence shows that Mr A was intent on releasing the most TFC he could. So, I don't think that the lower sums available from his DB schemes would have been attractive to him, even if they did preserve some of his guaranteed benefits.

Further, Mr A had already accessed one of his DB funds himself directly. He confirmed he did so because he needed money to pay for expensive funeral arrangements. And, he'd begun receiving a regular payment from that scheme at the same time. So, I think it's likely he was aware he could have taken benefits from his other schemes immediately, and that those would have been reduced for taking them early. But as this wasn't something he wanted to do, he didn't raise it himself or see it as an oversight when Harbour Rock didn't refer to it when giving advice.

Having considered all the available evidence very carefully, I'm satisfied Mr A would have wanted to proceed with the transfer regardless of any flaws in Harbour Rock's advice process. So I don't think he was solely reliant on Harbour Rock's advice. I think he entered into the advice process with a clear goal in mind and with an idea of what he could achieve by transferring. It seems the prospect of having a generous sum of TFC was a considerable motivating factor for him. He also appeared resistant to any other ideas. And he couldn't have received the same size of lump sum payment by staying in the schemes. So, I don't think any further clarity or detail in Harbour Rock's advice or it employing a more robust insistent client process would have resulted in Mr A acting differently. So I don't think he's lost out because of any flaws in Harbour Rock's advice process.

My final decision

For the reasons set out above I'm not going to instruct HARBOUR ROCK CAPITAL LIMITED to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 March 2024.

Joe Scott
Ombudsman