DRN-4732159

The complaint

Mr B is unhappy with advice given by Harbour Rock Capital Limited (Harbour Rock) to transfer his pension plan to a Parmenion SIPP (self invested personal pension). Mr B says the advice was unsuitable and he's suffered financial loss in consequence.

The advice was given in June 2021 by Portafina Investment Management Limited, by which name Harbour Rock was then known. But for ease, I've just referred to Harbour Rock in this decision.

What happened

In brief, at the time of the advice, Mr B was 61, single with no financial dependents. He didn't own a property and he was semi-retired. He had £12,000 savings in a deposit account and no debts. He worked part time with a monthly income of £600. He was also receiving state benefits. He was looking to access his retirement benefits at age 67. His attitude to risk was assessed to be cautious.

Mr B had an existing pension plan with ReAssure Limited which, at the time of the advice, was worth around £36,274. That included a final bonus payable in respect of a with-profits fund, in which Mr B's pension fund was in part invested.

Harbour Rock recommended that Mr B switch to a Parmenion SIPP and invest, via a Discretionary Fund Manager (DFM, in the PIM Strategic Multi Option Value and Small Cap: Global Perspective portfolio.

The reasons given by Harbour Rock in its suitability report dated 25 June 2021 were:

- A greater level of pension service and transparency;
- Greater future flexibility as to how Mr B could access his pension;
- Peace of mind for Mr B that his pension investment was tailored to him;
- Transparent and lower charges on the new plan;
- The transfer would allow Mr B to crystallise his final bonus – over £20,000 – on the with profits element of his ReAssure plan.

The suitability report set out costs for the new plan (not including the initial advice fee of £1,088.22) of 1.46% pa, made up of Harbour Rock's ongoing management fee (1% pa); Parmenion's annual management charge (AMC) (0.23% pa); and investment funds fee (0.23% pa). The suitability report said a discount had been negotiated with Parmenion in respect of the latter's fees. In total, the fees were £513.72 pa (based on the then current transfer value).

Mr B accepted the advice and the switch went ahead.

In July 2023 he complained, via his representative, to Harbour Rock. In summary Mr B said the advice to switch had been unsuitable for him and he'd suffered financially in consequence. His complaint wasn't upheld and it was referred to us.

The investigator upheld the complaint. She said Mr B's circumstances and needs didn't warrant a DFM. His pension fund was modest and the additional charges were likely to erode his fund. Mr B didn't have a huge capacity for loss – he didn't have other funds to rely on if his SIPP didn't perform well. He had a cautious attitude to risk. He was semi retired and dependent on state benefits. He didn't require a specialist service from a DFM and he wasn't interested in taking risks with his pension. The adviser hadn't sufficiently explored Mr B's objectives and there was no immediate need for more flexible access to his pension. Mr B was some six years away from when he'd said he wanted to access his retirement benefits. Mr B's existing pension with ReAssure would've allowed him to take 25% tax free cash and was suitable for his needs. Further the recommended investment wasn't suitable, given Mr B's cautious attitude to risk – it had a risk rating of 6 (out of 10) and so would appear to be more suitable for a medium risk investor.

The investigator set out how Harbour Rock needed to put things right for Mr B.

Mr B's representative confirmed that Mr B was happy to accept the investigator's view.

Harbour Rock didn't accept what the investigator had said and made the following points:

- It wasn't the case that Mr B could've taken 25% tax free cash from his existing pension with ReAssure – he'd have to take a single life annuity, guaranteed for five years with optional features such as inflation proofing and take the 25% tax free cash at the same time. The only other option would've been to fully encash the pension.
- The recommended plan was, on a like for like comparison, significantly cheaper than the ReAssure policy – the respective AMCs were 0.46% and 0.98% so the AMC for the new scheme was just under half that of the ceding scheme. Mr B wasn't previously receiving any financial advice on his policies so it wasn't a fair comparison to include those costs. He could've opted out of that service if he'd wished.
- Mr B had been invested in the following funds with ReAssure: Choices Equity Accumulator (Series 1); Choices Managed Accumulator (Series 3); Choices Unitised With-Profits Long Term Accumulator (Series 1). Fund fact sheets were attached. The Choices Equity Accumulator contains 97% equities and the Choices Managed Accumulator 71% equities. The fund fact sheet for the Choices Unitised With-Profits Long Term Accumulator didn't give an asset breakdown, but the Fund has been risk rated 3 on a rising scale from 1 to 5, with both of the other Funds achieving the highest risk rating available of 5.
- That didn't support what the investigator had said about Mr B not being interested in taking risks with his retirement provision. Even the With-Profits Fund carried more risk than the investigator had said Mr B was prepared to accept. So, rather than increasing the level of risk Mr B was exposed to, his risk exposure was reduced to a more appropriate level.
- When Harbour Rock had carried out Mr B's annual review in 2022, a change of fund to a PF Future Life Considered Portfolio was recommended. The asset allocation was 27% fixed interest/bonds, 32% equities and 40% near cash. The fund was re-balanced again in 2023, with the asset allocation remaining similar to that of 2022. Mr B agreed with these recommendations. So, although the investigator said the recommended portfolio represented too high a level of risk, it was subsequently de-risked. It is in line with the Investment Management Association's (IMA) lowest risk portfolio which contains 0 - 35% equities. And the former IMA Cautious Managed Portfolio had an equity content ranging from 20 - 60%.

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.

I've considered carefully everything on file. But I'm not going to address each and every point that's been raised. For example, I note there's some disagreement as to how Mr B came to be advised by Harbour Rock and if he'd been cold called. But there's no dispute that Harbour Rock advised Mr B to switch to the Parmenion SIPP. So I'm going to focus on what I see as the key issue – whether Harbour Rock's advice was suitable for Mr B.

Having looked at all the evidence available, I'm not satisfied that Harbour Rock's recommendation that Mr B should switch his pension with ReAssure to a Parmenion SIPP was suitable. My reasons are much the same as the investigator's. I don't have much to add. In short, I don't think the switch was justified by the reasons Harbour Rock gave. In particular, Mr B wasn't a sophisticated investor and I don't think, taking into account his fund size, that he needed the services of a DFM. A relatively basic arrangement, with access to a range of funds which an adviser could review occasionally, would've been more appropriate.

I've considered carefully what Harbour Rock has said in response to the investigator's view. But I'm not persuaded that Harbour Rock's comments mean a different outcome should prevail.

I take the point that Mr B couldn't have just taken 25% tax free cash from his existing ReAssure policy. But, from what I've seen, although there were some discussions about possible future expenditure, Mr B didn't need to access his tax free cash at the time the advice was given. If a need subsequently arose, that could've been addressed then. I don't think it was suitable advice to recommend a switch on the basis that it provided flexibility, should Mr B at some future point require it. When Mr B came to take his benefits, which was some way off, taking his tax free cash and an annuity may well have suited him anyway.

The AMC for the new plan may have been lower. But, all in all, the new plan would cost Mr B more than his existing plan with ReAssure. Those higher costs did include ongoing advice and management from Harbour Rock. But if that wasn't something Mr B really needed – and I agree here with what the investigator said about why he didn't – then that won't justify the recommendation. Even if Mr B could've opted out at any time, I don't see it should've been up to him to decide he didn't need and didn't want to pay for the service Harbour Rock had recommended and so take steps himself to ensure he was no longer being charged for it.

Harbour Rock says Mr B was invested, via his ReAssure plan, in higher risk funds than those Harbour Rock recommended. Mr B's attitude to risk had been assessed as cautious. It was up to Harbour Rock, as part and parcel of the advice to switch, to recommend funds that were in line with that. A recommendation to invest in a medium risk portfolio would still be unsuitable on the basis that it didn't match Mr B's attitude to risk and even if the funds recommended were lower risk than Mr B's existing funds. It seems that Harbour Rock itself may have recognised, when carrying out Mr B's annual review in 2022, that the funds initially recommended in connection with the switch weren't suitable for a cautious investor such as Mr B. Hence fund changes – to a lower risk fund – were recommended.

Harbour Rock says that, at the time of the advice to switch to the SIPP, Mr B's existing pension with ReAssure was invested across three funds which were risk rated 5, 4, and 2. If that represented a higher degree of risk than Mr B wanted to take, that could've been addressed by switching funds within his existing ReAssure plan. It seems that some 12 funds were available, ranging from a risk rating 1 up to 5. Several funds offered were rated 2 or lower, including the Choices Unitised With-Profits Long Term Accumulator (Series 1) which Mr B was invested in. I don't necessarily agree with what Harbour Rock says about that fund carrying a greater degree of risk than Mr B was prepared to accept. It will depend on the amount invested and the funds selected for the balance of the fund. But, in any event, as I’ve said, I consider Mr B’s existing plan offered a suitable range of funds to rebalance his plan, in line with his agreed risk tolerance.

I’ve adopted the redress suggested by the investigator as being a fair and reasonable way to put Mr B, as far as possible, back in the position he’d be in now if Harbour Rock had given him suitable advice. I think suitable advice would’ve been that Mr B retain his existing ReAssure plan. But, like the investigator, I can’t be certain that ReAssure will be able to provide a notional up to date value for Mr B’s policy, had he retained it. So I’ve said, in that case, a benchmark should be used to ascertain what, if any, loss Mr B has suffered.

As Harbour Rock has told us that changes to the portfolio were recommended in 2022, I’ve just referred to the SIPP. I’ve decided against saying that redress should be calculated up to when the changes were implemented. That’s because I think the SIPP was unsuitable overall and not just by virtue of the funds that were recommended. So it’s fair and reasonable that redress is on the basis that the switch was unsuitable from the outset and that Mr B has remained throughout in a pension vehicle that isn’t suitable for him and despite any adjustments to the recommended funds.

Putting things right

To compensate Mr B fairly Harbour Rock Capital Limited should:

- Compare the performance of Mr B's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there’s a loss and compensation is payable.
- If there’s a loss, Harbour Rock Capital Limited should pay into Mr B’s pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Harbour Rock Capital Limited is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would’ve provided a taxable income. Usually the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn’t a payment of tax to HMRC, so Mr B won’t be able to reclaim any of the reduction after compensation is paid. The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age. But here the investigator said it was reasonable to assume Mr B is likely to be a nil rate taxpayer at the selected retirement age, so no reduction would apply in this case. Neither party has challenged that assumption so no reduction to the compensation should be made.
- In addition, Harbour Rock Capital Limited should pay Mr B £350 for the trouble and upset caused to him by the poor advice.
- Details of the calculation should be provided to Mr B in a clear, simple format.

Portfolio name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
Parmenion SIPP	Still exists and liquid	Notional value from previous	Date of investment	Date of settlement	Not applicable

		provider/as below			

actual value

This means the actual amount payable from the investment at the end date.

notional value

This is the value of Mr B's investment had it remained with the previous provider until the end date. Harbour Rock Capital Limited should request that the previous provider calculates this value.

Any additional sum paid into the SIPP should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if all those payments are totalled and that figure deducted at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Harbour Rock Capital Limited will need to determine a fair value for Mr B's investment instead, using this benchmark: average rate from fixed rate bonds. To arrive at the fair value when using the fixed rate bonds as the benchmark, Harbour Rock Capital Limited should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

I've chosen this method of compensation because:

- Mr B wanted to achieve a reasonable return without risking any of his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for fixed rate bonds would be a fair measure given Mr B's circumstances and objectives. It doesn't mean that he'd have invested only in a fixed rate bond. It's the sort of investment return a consumer could've obtained with very little risk to the capital.

My final decision

I uphold the complaint. Harbour Rock Capital Limited must redress Mr B as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 May 2024.

Lesley Stead
Ombudsman