

The complaint

Mr C's representative has complained, on his behalf, that Harbour Rock Capital Limited (HR) delayed the advice and transfer process for his defined benefits he held with an occupational pension scheme (OPS). The representative has said that this resulted in the expiry of the cash equivalent transfer value (CETV) and a loss to Mr C of almost £40,000.

What happened

HR had previously provided Mr C's sister with advice in relation to her pension. This is how Mr C became aware of HR and the service it provided. Mr C wished to gain access to the funds within his previous OPS. So Mr C contacted HR in early January 2022 to start the process.

By 10 January 2022, HR had received from Mr C a pension information form which detailed where his defined benefit pension was held. Shortly after this, HR requested a CETV from the scheme administrator.

A CETV was issued on 9 February 2022. The CETV for the pension was £130,694. This was guaranteed for three months, so it had an expiry date of 9 May 2022. Mr C then emailed a copy of this to HR on 14 February 2022. HR acknowledged receipt of this on the same day.

HR then carried out the initial analysis of Mr C's defined pension benefits and had prepared some information for the eventual transfer value analysis system (TVAS) it would need to carry out if "full advice" was to be given. At this point, it was identified by HR that it needed some clarification on one aspect of Mr C's defined benefit pension.

Clarification was requested by HR on 2 March 2022. HR hadn't heard from the scheme administrator by 9 March 2022, so it chased it for a response.

Mr C had in the meantime requested updates from HR on 23 February 2022 and 1 March 2022. On 9 March 2022, it updated Mr C to let him know that it had asked the scheme administrator for clarity on a particular point in relation to his pension. By 16 March 2022, HR still hadn't heard from the scheme administrator, so another email chaser was sent.

The administrator then responded to HR on 17 March 2022 with the required clarification that HR needed.

HR then continued to prepare for advice to be given to Mr C and an update with this information was provided to Mr C on 24 March 2022.

On 28 March 2022, HR contacted Mr C to let him know what his pension was worth, in terms of what the CETV was, and that an appointment with one of its advisers was needed. Initially, the appointment was scheduled for 30 March 2022, however this was then rescheduled to 4 April 2022.

At the appointment, HR was completed its fact-finding process. It obtained all the relevant information needed from Mr C about his circumstances, needs and objectives. A budget

planner was completed and HR was able to put together an “abridged advice” report. This was sent to Mr C on 5 April 2022.

The conclusion to the abridged advice report was that HR didn't have enough information to provide Mr C with a formal recommendation. So the suggestion was that Mr C would need full advice in order to ascertain as to whether it was in his best interests to transfer the benefits held within his OPS.

Mr C signed to confirm receipt of the abridged advice report on 10 April 2022 and this was received by HR on 12 April 2022. Within the receipt acknowledgement, it was confirmed that Mr C wanted to move forward to receive full advice.

HR acted upon this and carried out an attitude to risk (ATR) assessment on 13 April 2022. HR carried out a transfer value comparator (TVC) assessment, which was a regulatory necessity as part of full advice. HR completed its assessment and issued a full advice report on 19 April 2022.

HR recommended against Mr C transferring out of the OPS. It didn't feel it was in his best interests. This was communicated to Mr C, however, at the same time, HR explained the process Mr C needed to follow if he wanted to go ahead against the advice given and the necessary forms were included with the full recommendation report.

Mr C signed the relevant forms to say he had received HR's advice, but that he wished to go ahead with the transfer anyway and be treated as an insistent client. This was signed on 23 April 2022 and HR received these by 26 April 2022. Following on from this, HR needed to consider where Mr C's pension funds would be transferred to.

HR completed its research into where Mr C could transfer his pension to by 5 May 2022. Another advice report, detailing the recommended recipient arrangement for the pension funds (Aegon), was issued on 10 May 2022. The content of the report was essentially acknowledging that HR had given advice to Mr C not to transfer his DB pension, but because he had nevertheless insisted on proceeding, contrary to HR's recommendation, Mr C needed to know where to move his pension to.

On 9 May 2022 the CETV expired. So at this point, a new CETV would need to be obtained from the scheme administrator.

Mr C signed the advice declaration in relation to the report that had been issued on 10 May 2022, and HR received this on 17 May 2022. On the same day, the relevant forms were sent to Aegon, which was the provider of the pension Mr C was advised to transfer into. At this point, there was no further communication between the parties until 9 June 2022.

On 9 June 2022, Mr C called HR for an update. HR explained to Mr C that the relevant application forms had been sent to Aegon in order for the pension to be transferred to it. On the same date, HR noted that the CETV had expired and so it requested a new CETV from the scheme administrator.

The new CETV from the scheme administrator, dated 20 June 2022, was received by HR on 24 June 2022, confirming the new value to be £93,007.25. This had an expiry date of 20 September 2022.

Mr C had been informed of the new, lower CETV, by 27 June 2022. Mr C was concerned about the significant drop in the transfer value and had a number of conversations with HR about what to do next, notably on 27 June 2022, 5 July 2022, 7 July 2022 and 15 July 2022.

The outcome of these conversations was that Mr C would move forward and asked to transfer at the lower value.

HR sent its amended recommendation report on 20 July 2022. Mr C returned the necessary forms to HR, having signed them on 21 July 2022. HR received them on 25 July 2022. The necessary forms were forwarded to Aegon on 25 July 2022.

Between 25 July 2022 and 23 August 2022, HR didn't receive any substantial update from the scheme administrator as to when the transfer would be completed, despite chasing for updates multiple times throughout August 2022.

Between 23 August 2022 and 30 August 2022, multiple pieces of correspondence were exchanged between HR and the scheme administrator in relation to the correct forms needing to be forwarded to the latter in order to process the transfer. But by 30 August 2022, these issues were resolved and the transfer could move ahead once again. The scheme administrator confirmed on 30 August 2022 that it had everything it needed in order to move forward.

Between 30 August 2022 and 20 September 2022, HR didn't hear anything from the scheme administrator with regard to the progress of the transfer. HR provided Mr C with updates throughout this period. The scheme administrator then contacted HR on 20 September 2022 saying that it hadn't received the necessary identification documents needed to process the transfer.

This issue appears to have been dealt with quickly and, on 27 September 2022, the scheme administrator confirmed to HR that the transfer was due to be processed and the funds were going to be transferred imminently.

Throughout October 2022, Mr C chased HR for updates as to the completion of the transfer. HR also chased the scheme administrator several times asking for updates on when the transfer would be processed.

The transfer was ultimately processed, and the funds transferred to Aegon, on 20 October 2022. Mr C received the lump sum that he'd requested on 26 October 2022 and the relevant advice fee was paid on the same date.

On 7 February 2023, Mr C contacted HR by phone and raised a complaint. He was unhappy with delays to the transfer process, which he felt were caused by HR, and led to a drop in the transfer value of almost £40,000.

HR investigated the complaint and issued its final response to the complaint on 29 March 2023. HR partially upheld the complaint. It said that it considered it had delayed the transfer process by five days. It said this occurred in the five days prior to 2 March 2022 when it could have asked the scheme administrator for clarification on a certain part of Mr C's defined benefit pension scheme sooner.

In recognition of the distress and inconvenience caused by these delays, it offered £200 compensation. Apart from this, however, HR didn't think that it had delayed the process any further, adding that in its view the deadline would always have been missed.

Dissatisfied with the response, Mr C referred the matter to our service for an independent review. An initial investigator investigated the complaint and concluded that HR didn't need to do anything further.

Mr C was unhappy with this and sought representation in the complaint process.

In response to the first investigator's conclusions, Mr C's representative sent further information for consideration.

The complaint was then reallocated to a second investigator, who, having considered the available evidence, also didn't think that the complaint should be upheld. He didn't think that HR had caused any avoidable delays, other than that for which it had already offered compensation. In support of this position, he said the following in summary:

- Although it was the representative's view that HR could have requested the further information from the scheme administrator by phone, it wasn't unreasonable for HR to have done so by email. It was seeking formal clarification of Mr C's pension entitlement.
- It then chased the scheme administrator several times after this, and the latter responded after the second chaser, but HR couldn't be held responsible for this delay.
- The representative had also queried as to whether HR needed the information it had requested, but the detail relating to the cash account in the OPS, and whether this could be converted into an annuity, was relevant to its assessment of suitability of the transfer. HR needed to know Mr C's full pension entitlement.
- After receiving this information on 17 March 2022, HR did what it could to progress matters in a timely fashion. The appointment with Mr C of 30 March 2022 to conduct "fact finding" was rescheduled to a few days later, but this wasn't the result of any error or avoidable delay caused by HR. And once the appointment had taken place, abridged advice was swiftly provided. Once Mr C had confirmed that he wished to proceed to full advice, this was also done quickly.
- HR's advice was not to transfer. But as Mr C wished to proceed against advice, HR then needed to research the best recipient for Mr C's pension funds and provide a further report explaining its conclusions on this. This part of the process was also carried out quickly, and Mr C accepted HR's proposal. But there wasn't enough time for the process to be completed before the expiry of the CETV.
- HR made Mr C adequately aware of the expiry date of the CETV and, from 19 April 2022, Mr C was aware that it was HR's advice that he not transfer. Following this, HR did all it could to progress matters quickly, and it couldn't have done so any quicker. Had it done so, this would have been contrary to its position that the advice wasn't in Mr C's best interests.
- HR also needed to provide Mr C with time between its reports to understand what was being proposed and make an informed decision as to what he wished to do next. And so it wouldn't have been appropriate for HR to chase Mr C any more than it did during the process.
- It was the investigator's understanding that Mr C was able to transfer using the new CETV obtained on 20 June 2022.

Mr C's representative disagreed, however, saying the following in summary:

- Although it hadn't suggested that it was inappropriate for HR to request further scheme information, this should have been requested with its initial request. It had

experience of dealing with the scheme administrator, having previously assisted Mr C's sister, and so should have ensured that the required information was provided in the administrator's response.

- HR only chased the scheme administrator for updates in response to Mr C's own requests for updates.
- The timeline which HR had provided in its final response letter was incomplete. HR received information from the scheme administrator on 14 February 2022 and told Mr C on 16 February 2022 that it had all the information it needed and would be progressing matters.
- It was only after Mr C's chasers on 23 February 2022 and 1 March 2022 that HR said that it was waiting for the analysis to finalise the summary letter, and that this was being dealt with urgently. And only then was the further information request sent to the scheme administrator.
- A previous ombudsman's decision had noted that HR had struggled with backlogs and should have made it clear to Mr C at the outset that it may not be able to deal with the transfer in a timely manner. He could then have looked into using another firm.
- The missing information was received on 17 March 2022, and the TVAS was then undertaken on 24 March 2022. This was then posted on 28 March 2022, 11 days after the receipt of the information.
- The initial report which said that HR didn't have enough information to issue a full report was incorrect. HR had confirmed on several occasions that all the information had been received. And so it could have issued a full report.
- During the call of 4 April 2022, HR should have explained to Mr C that if he wished to proceed against its advice, the fees would be taken from the transferred amount rather than leaving him to believe that he'd need to raise around £8,000 before any transfer would take place.
- Mr C would then have agreed to transfer straight away and the subsequent report could have been issued immediately. The second call of 14 April 2022 would then have been unnecessary and this would have saved a further 14 days delay.
- The advice process was flawed as HR knew from the outset that Mr C was serious about transferring. HR should have explained that it would most likely advise against the transfer, that Mr C would receive a report confirming this and that a subsequent report would need to be issued if he decided to proceed against advice, and how the fees would be charged if he did so.
- HR could have established during every conversation that Mr C had already made his mind up to transfer, and HR's questionnaire could and should have been completed on receipt of the initial paperwork from the scheme administrator.
- Had this happened, the work could and would have been completed within the CETV deadline.

As agreement couldn't be reached on the outcome, it was referred to me for review.

I issued a provisional decision on the matter on 17 June 2024, in which I set out my reasons for upholding the complaint. The following is an extract from that decision.

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’ll firstly address some of the procedural issues which have been the subject of disagreement between the parties here. Mr C’s representative has acknowledged that HR was entitled to request further information from the scheme administrator relating to Mr C’s pension entitlement, but has said that this should have been requested with the initial request.

But HR could only have been aware of the cash account after it had received the CETV information – and so it couldn’t reasonably have been expected to request clarity on this point before it had received the CETV.

As to Mr C not being made aware early enough that, should he proceed with the transfer against HR’s advice, the advice fee could be taken from the transferred sum, the available evidence doesn’t support this position. The option to have the fee taken from the transferred sum was explained in the abridged report dated 5 April 2022 as follows:

“The options on how and when to pay it depend on the outcome of our advice and what you choose to do having received it:

- If we advise you to transfer and you agree with the recommendation, then our advice fee would be deducted tax-efficiently from your pension upon transfer.”*

HR did then need to allow Mr C time to consider his options and whether he wished to proceed to full advice, and once he confirmed that he did, it then issued the full advice report.

Mr C’s representative has also asserted that the advice process was flawed from the outset, as HR was aware of his intention to transfer. Had it acted on this basis, the process could have been streamlined and the CETV deadline met, the representative has argued.

But there could be no “corner cutting” here. HR needed to comply with its regulatory requirements and guidance on good practice, and so I don’t think it was unreasonable that it undertook the abridged advice process and then issued the full advice report. On the basis of there potentially being clear evidence as to why it was unlikely to be in Mr C’s best interest to transfer within an abridged advice outcome, it wasn’t unreasonable for HR to operate on the assumption that there was still the possibility that Mr C may not wish to proceed after all and not pay the advice fee.

A further aspect here was the “insistent client” process which took place after the full advice report had been issued. I think it’s fair to say that it’s reasonably expected that the full advice process could be completed within three months – with exceptions of course in accordance with the particular individual circumstances of a case. I don’t think it would necessarily be reasonable to expect there to also be time for a further report on the basis of an insistent client, although there may in some instances also be scope for this if the case is progressed in a timely fashion.

In this instance, I’ve noted that the full report was sent to Mr C on 21 April 2022, and sent back and received by HR on 26 April 2022. Ordinarily, this might have given time for the process to be completed if the advice had been to transfer. But an extra part of the process -

the insistent client process - was then required.

As I've alluded to above, however, HR did still need to act in a timely fashion, and so I've considered whether this was the case and, if not, whether any avoidable delays on HR's part might have meant that the CETV expiry deadline could in any case have been met, even including the additional insistent client process.

It's HR's position that there was an avoidable five day delay between it receiving the CETV information and requesting the further clarity regarding Mr C's cash account pension entitlement.

But the actual period of time between its receipt of the CETV information on 14 February 2022 and it requesting the further clarity on 2 March 2022 was 16 days. Even allowing for a week to assess the CETV information, which I think is reasonable, this meant that there was a nine day delay, rather than five days.

Once the full report relating to Mr C's insistent client status was issued on 10 May 2022, it was then received back from Mr C on 17 May 2022. And so if the report had been issued nine days earlier, Mr C's confirmation that he wished to proceed would have been received by HR on 8 May 2022.

This was one day before the expiry of the CETV on 9 May 2022, but from the information provided within the CETV covering letter from the scheme administrator, the only document which needed to be returned within the CETV guarantee period to secure the CETV was the transfer options form. It seems reasonable to me that, being mindful of the looming deadline, if Mr C needed to complete any part of the form, it could have been sent to him along with the insistent client recommendation report.

And so, once notionally received on 8 May 2022 along with Mr C's confirmation that he wished to proceed, this could have been submitted to the scheme administrator by the 9 May 2022 deadline.

There's the further matter of the additional information which Mr C's representative has said wasn't needed between the provision of the abridged advice and the full advice report. I also can't see that any further information was in fact requested and obtained. It seems that a further discussion was held between Mr C and HR relating to his future plans. And on this basis, HR then issued its full advice report, with the recommendation that Mr C not transfer. But no additional information as such was required as far as I can tell. This may also therefore have incurred a further unnecessary delay which would have meant that the required transfer options form could have been submitted to the scheme administrator earlier still.

At my request, the investigator has put the above proposition to HR and asked for its comments. But it hasn't responded. And so, on the basis of the evidence currently available to me, my view is that, had HR acted in a reasonably timely fashion, the required documentation ought to have been able to be sent to, and received by, the scheme administrator by the expiry date of the initial CETV.

Putting things right

Given the number of "moving parts" in this process and the number of different parties involved, I think things would more likely than not have proceeded at the same pace as they actually did after the required form had been submitted to secure the initial CETV. But that CETV would have been higher than that the one Mr C received.

And so to place Mr C as closely as possible in the position he would have been but for the delays caused by Harbour Rock Capital Limited, it should calculate the tax free cash which Mr C would have been paid, had the initial CETV been payable, and on the earlier date which would have applied by backdating the receipt of the required transfer options form by the scheme administrator to 9 May 2022.

Harbour Rock Capital Limited should pay Mr C the difference between the tax free cash amount he actually received and that which he should have received. Interest at 8% simple pa should be paid on the whole amount of the notional tax free cash amount from the earlier date that it should have been paid up to the date that the lower amount was actually paid.

From that date, the same rate of interest should be applied to the difference between the amount Mr C should have received and that which he did actually receive, up to the date of settlement, and paid to Mr C.

Harbour Rock Capital Limited should also compare the notional value of Mr C's residual transferred higher CETV, at the date of any final decision along these lines, had it been invested the same number of days earlier as calculated above. This should be compared with the actual value of Mr C's residual pension funds at the same date. If there's a loss, Harbour Rock Capital Limited should in the first instance pay into the pension plan to make its value up to the value it should be, taking into account any remaining tax relief allowance and charges.

If it's not possible to pay into the pension plan, then the amount should be paid directly to Mr C, with a deduction for the assumed 20% basic rate tax Mr C would need to pay on the pension funds.

I also think the £200 proposed by Harbour Rock Capital Limited in respect of the distress and inconvenience caused by this matter is appropriate in the circumstances. Mr C will have been caused not inconsiderable distress and worry due to the reduction in the CETV."

Neither party has submitted further comments in response to the provisional 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.

As neither party has commented further on my provisional findings, I see no reason to depart from them.

Putting things right

As set out above, I think things would more likely than not have proceeded at the same pace as they actually did after the required form had been submitted to secure the initial CETV. But that CETV would have been higher than that the one Mr C received.

And so to place Mr C as closely as possible in the position he would have been but for the delays caused by Harbour Rock Capital Limited, it should calculate the tax free cash which Mr C would have been paid, had the initial CETV been payable, and on the earlier date which would have applied by backdating the receipt of the required transfer options form by the scheme administrator to 9 May 2022.

Harbour Rock Capital Limited should pay Mr C the difference between the tax free cash amount he actually received and that which he should have received. Interest at 8% simple

pa should be paid on the whole amount of the notional tax free cash amount from the earlier date that it should have been paid up to the date that the lower amount was actually paid.

From that date, the same rate of interest should be applied to the difference between the amount Mr C should have received and that which he did actually receive, up to the date of settlement, and paid to Mr C.

Harbour Rock Capital Limited should also compare the notional value of Mr C's residual transferred higher CETV, at the date of this final decision, had it been invested the same number of days earlier as calculated above. This should be compared with the actual value of Mr C's residual pension funds at the same date. If there's a loss, Harbour Rock Capital Limited should in the first instance pay into the pension plan to make its value up to the value it should be, taking into account any remaining tax relief allowance and charges.

If it's not possible to pay into the pension plan, or it would conflict with any lifetime allowance protection in place, then the amount should be paid directly to Mr C, with a deduction for the assumed 20% basic rate tax Mr C would need to pay on the pension funds.

Any compensation arising from that calculation should be paid within 28 days of the date of Harbour Rock Capital Limited being notified of Mr C's acceptance of this decision. If it's not, interest at the rate of 8% simple pa should be added to the compensation from the date of this decision to the date of settlement.

I also think the £200 proposed by Harbour Rock Capital Limited in respect of the distress and inconvenience caused by this matter is appropriate in the circumstances. Mr C will have been caused not inconsiderable distress and worry due to the reduction in the CETV.

My final decision

My final decision is that I uphold the complaint and direct Harbour Rock Capital Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 July 2024.

Philip Miller
Ombudsman