

## The complaint

Mr V complains about the advice given by HARBOUR ROCK CAPITAL LIMITED trading as Pension Access to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a flexi-access drawdown personal pension. HARBOUR ROCK CAPITAL LIMITED processed the transfer of Mr V's scheme benefits to the personal pension on an 'insistent client' basis. Mr V says it badly advised him and has caused him a financial loss.

Mr V was advised by one of HARBOUR ROCK CAPITAL LIMITED'S predecessor firms called 'Portafina'. For ease of understanding, I shall refer to the respondent firm as 'Portafina' throughout this decision.

## What happened

In around May 2018, Mr V approached Portafina having received some marketing about pensions through the post. Portafina sent Mr V a pension review information form to complete; the completed forms also gave Portafina permission to approach the provider of his DB scheme for information about his existing benefits.

Portafina received the requested information from Mr V's DB scheme in early July 2018. The letter stated that Mr V had accrued seven years and four months' of pensionable service and was forecast to receive an annual pension of £2,243.47 at the scheme's normal retirement age (equivalent to the member's state pension age) which for Mr V was age 67. The cash equivalent transfer value ('CETV') of the scheme was £43,963.32.

Advising Mr V over the phone on 10 August 2018, one of Portafina's paraplanners completed a fact-find to gather information about his circumstances and objectives. It established the following:

- That Mr V was 55 years old, in good health and single with no dependents.
- Mr V was employed, earning a gross annual salary of £24,000 (£1,600 net per month) with death in service benefit of three times his salary.
- Mr V's chosen retirement age was age 67.
- Mr V lived in a rented property; he paid £460 in rent each month. His other outgoings (phone, utilities etc.) were noted as totaling £350. His most significant outgoing each month was £800 for holidays, socialising and general spending. Mr V did not foresee needing £800 per month to spend this way in retirement as he believed he would not reach retirement age.
- Mr V was looking to take the maximum tax-free cash ('TFC') from his transferred DB scheme as he thought he could die tomorrow so might as well take it now. Portafina recorded that Mr V was going to put the TFC in savings.
- Mr V also intended to take a further lump sum of £16,500 from his pension upon transfer for 'general use'. Portafina noted that Mr V considered getting TFC to be very important even if the costs of doing so were very high.
- There were no other sources of cash available to Mr V. He had no savings, no disposable income, owned no property and wanted no debt. Mr V was also noted as believing he would not pass a credit check to take on a loan.

- Aside from his state pension, Mr V's DB scheme was his only other pension provision.
- Mr V was noted as wanting flexibility to vary his income in retirement and to take TFC early.
- That Mr V wished to partially strip his pension fund to put it in the bank to spend how he wanted on holidays and socialising because he would not reach retirement 'due to his lifestyle'.

Portafina also completed a questionnaire with Mr V to ascertain his attitude to risk ('ATR') which it concluded was 'cautious'.

On 20 August 2018 Portafina sent Mr V its letter of recommendation where it advised him not to transfer his pension. It also sent Mr V its '*overview of your pension*' document and an illustration from the SIPP provider which illustrated a full pension fund withdrawal.

The recommendation letter included a section entitled, '*What happens if you still want to go ahead and access your pension early?*'. There Portafina stated that if that was the case it would need to treat Mr V as an 'insistent client'. At the end of the letter, under a section headed '*What you need to do now*' Portafina said there were a number of options open to Mr V which were described on the enclosed '*Options Form*'. It said Mr V should read the form, and the '*overview of your pension*' document, select the option that was right for him and return the form. Portafina went on to say that if Mr V intended to proceed against its recommendation then he should also complete the 'insistent client' and disclaimer forms too.

On 21 August 2018 Mr V signed the options form, ticking the box for 'Option 1 *Disregard our recommendation and continue as an insistent client*'. Next to where Mr V placed a tick it stated: -

*'...Take tax free cash and a taxable lump sum from my pension. I understand your recommendation not to access my [DB scheme] early. However, I want you to continue to review my pension, setting up a flexi-access drawdown plan so that I can release a tax free cash lump sum of £10,990 and a gross taxable lump sum of £16,500 from my pension. I am aware of the associated risks of in doing so...and the additional £3,300 due in tax in the year £2018/2019'.*

Mr V also signed the insistent client form where he ticked boxes which confirmed that he understood he was now an insistent client, that Portafina had recommended he did not proceed with the transfer, that he understood the benefits he was giving up and the risks associated with the transfer. Mr V also stated, in his own words, why he wanted to proceed with the transfer. He said he wanted to access his pension funds early because '*[I] strongly believe in the present not the future. Want to use the money how I want now not hope I would be able to use it at 68*'.

Portafina sent Mr V a letter on 23 August 2018 thanking him for completing and returning the forms and stating that it had been trying to contact him to have a quick chat to make sure he was aware of the risks of proceeding and the guarantees he was giving up.

On 8 September 2018, Portafina sent Mr V its suitability report. The report noted that Mr V's objectives were to put money in savings and general use. The report also restated several times that Portafina's recommendation had been not to transfer but that as Mr V had elected to disregard its recommendation it was now treating him as an insistent client. Further the report set out the risks associated with the transfer but said that, as an insistent client, Mr V had asked it how best to access his pension funds. Portafina said that it had recommended he transfer it to a flexi-access income drawdown personal pension with a provider I shall call

'A' where it would be invested in a cash fund. The report concluded by asking Mr V to complete the application, transfer and declaration forms.

Mr V signed the forms on 13 September 2018 and the transfer completed on 1 November 2018. Portafina's fee for the advice was £3,077.43. There was also a provider fee of £75 per year and an annual management fee of 0.48% of the fund value charged by A. Mr V received his tax-free cash ('TFC') of £10,991.75 and his net income payment of £10,720.05 (£16,500 gross) on 2 November 2018. On 1 May 2019 Mr V told Portafina he had requested another income payment of £13,253.75 from A. He removed Portafina as his servicing agent the same day.

Mr V emailed Portafina in January 2020 to ask if he opted back into his employer's pension for another four to five years could he opt back out and do another transfer like he'd done in 2018.

On 13 March 2024 Mr V, through his representative, complained to Portafina. He said he'd received negligent advice and had suffered a financial loss as a result. Mr V's representative said that at the time of the advice Mr V had been vulnerable and in poor health and that Portafina should have treated him as such.

Portafina looked into Mr V's complaint but didn't think it had done anything wrong. It said it had provided Mr V with a clear recommendation not to transfer and explained to him the risks associated with proceeding. Further, it said that it had only agreed to facilitate the transfer of Mr V's DB scheme at his insistence and thus had only advised him on the pension provider and investment fund.

Furthermore, Portafina said that Mr V had not disclosed any health issues during the advice process so there was no cause for it to be concerned. So it said the claims he made now were unsubstantiated and it said his references during the advice process to his belief that he would not reach retirement age were probed at the time. Having done so, Portafina said Mr V stated he had no health issues but just wanted to enjoy his money now. Portafina said it was entitled to rely on the information as given by a client so there was no reason to believe that Mr V would be inaccurate with the provision of information pertaining to his health.

Unhappy with the outcome of his complaint to Portafina, Mr V complained to the Financial Ombudsman Service. One of our Investigators looked into the complaint and recommended that it was upheld. He said he thought there were flaws in Portafina's insistent client process. Our Investigator recommended that Portafina compensate Mr V in line with the regulator's guidance for non-compliant pension transfer advice.

Mr V accepted our Investigator's recommendation but Portafina didn't. It said that if had declined to take Mr V through the insistent client process it is more likely than not that he would have sought advice to transfer elsewhere or used its 'Confirmation of Advice' letter in order to complete the transfer. So Portafina said Mr V would have pursued the transfer by any means necessary even if its insistent client process had been flawless.

The complaint was passed to me for 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for largely the same reasons given by our Investigator.

Since 2018, COBS 9.5A includes additional guidance on insistent clients. 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.

Acknowledgement from the insistent client - COBS 9.5A.4

(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.

In addition, the regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Portafina should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr V's best interests (COBS 19.1.6).

Portafina says that it provided suitable advice and acted in Mr V's best interests. It says that it followed the correct insistent client process. Mr V says Portafina's advice was negligent and he's suffered a loss as a result.

Having carefully considered all of the evidence presented, and despite the numerous statements made that it was not recommending a transfer, I think there were weaknesses and failings in Portafina's advice process, which meant it didn't act in Mr V's best interests. And I think Mr V likely understood, or believed overall, that Portafina was recommending he should go ahead with the transfer.

I say this because on 20 August 2018, following the telephone discussion that the Portafina paraplanner had had ten days earlier with Mr V about his circumstances and objectives, it sent him a recommendation letter with the outcome of its advice and an 'overview' of his pension. Portafina said that it strongly recommended Mr V did not proceed with the transfer for the following reasons:

- the 'growth rate' required to match Mr V's guaranteed benefits from his DB scheme was unachievable;
- there were tax implications with accessing his pension early;
- the risk to his retirement income;
- because he'd be losing his valuable DB scheme benefits.

But despite setting these reasons out, I don't think Portafina's letter clearly set out the risks associated with the transfer. And whilst Portafina later sent a more detailed suitability report, which I will refer to later on, at this stage Mr V had minimal information to go on to decide if being an insistent client was truly in his best interests.

The options form (which I referred to above) enclosed with the recommendation letter was sent to Mr V after the fact-find phone call which, I note, wasn't carried out by a financial adviser. And Portafina asked him to complete the forms – thereby making a decision about whether to disregard Portafina's advice based solely on the information in the letter and forms alone – before it issued him with its suitability report. I think that, on the face of it, the forms and the letter appear to conform with the regulator's regulations I've set out above. But I've thought about whether Portafina genuinely acted within the spirit of the regulations and communicated with Mr V in a way that was fair, clear, not misleading and taking into account his information needs; and I'm not persuaded that it did.

I should also say here that I've noted Portafina's reference in its final response letter to providing Mr V on 20 August 2018 with 'full transfer advice' in the form of a 'suitability report'. I've set out the sequence of events in some detail above in the background section to this decision and, as it can be seen from there, Portafina's suitability report was dated 8 September 2018 (and entitled as such) and thus post-dated its letter of recommendation of 20 August 2018. Indeed, in the suitability report, several references were made to the fact that Mr V had already decided to disregard the recommendation not to proceed (by virtue of having completed the options form and insistent client form).

So the recommendation letter (together with the insistent client and options form) of 10 August 2018 was not, as contended by Portafina, 'full transfer advice'. So I don't think that Mr V had enough information before him on 20 August 2018 to make a fully informed decision about whether to proceed as an insistent client.

The evidence I've seen – and to which I have referred above – indicates that, at the time he was being asked to sign the two forms, Mr V didn't fully understand the advice he was being given. Looking at what he wrote on the options form – that predated the suitability report – under the section entitled, '*in your own words*' Mr V says he '*strongly believe [sic] in the present not the future. Want to use the money how I want now not hope I would be able to enjoy or use it at 68*'. Mr V had stated that he wanted to put the TFC into savings and use the taxable lump sum for general use. But he had told Portafina during the fact-find process that he put £800 of income per month to general use already. So I don't think his words on the form explained why he needed yet more money for general use. And had he left his DB scheme where it was, he would have continued over the coming years to accrue benefits at a rate which likely would have exceeded any savings rate he could get himself. But it is not clear, from what Mr V wrote on the form that he understood truly why putting his TFC in a savings account was in his best interests when compared to the escalation he could see in his DB scheme benefits.

And whilst the completion of both forms pre-dated the suitability report, I can't see that Mr V's written comments lead to any review by Portafina in the suitability report of the advice it had given Mr V in the recommendation letter. Indeed, I can see that the suitability report

repeated his objective for the transfer, namely to put money into savings and for general use.

So it strikes me that Portafina's process here was geared towards facilitating the transfer. In this situation I'd expect the emphasis of the documentation to be the reasons why the transfer was not in Mr V's best interests. But the information on the form enclosed with the recommendation letter, which Portafina asked Mr V to complete and return, was limited to the loss of guarantees, the tax implications of accessing his pension early and the growth required to match his existing benefits. While Portafina later sent a more detailed suitability report, at this stage Mr V had little information to go off to decide if being an insistent client was truly in his best interests.

Without sight of the suitability report, Mr V was unable to read and digest it before having to decide if he wanted to go ahead anyway. So I'm not persuaded Mr V was able to make an informed choice here. It was only after receiving Mr V's confirmation that he wanted to proceed with the transfer that Portafina sent him its full suitability report. And while the report repeated the recommendation not to transfer out of his DB scheme, it was followed by a positive recommendation, advising Mr V to transfer his benefits to a flexi-access income drawdown pension with A to facilitate access to his tax-free cash and take a taxable lump sum. And this was all set out under a heading titled '*Our recommendation*'.

I think if Portafina firmly believed in its advice and recommendation, and it was acting in Mr V's best interests, it could have made greater effort to make sure he understood what he was giving up when he gave the reasons he did for wanting to transfer (on the forms and during the phone call on 28 August 2018 that followed Portafina's receipt of the forms). Where it was clear Mr V didn't understand, Portafina could have declined to execute the transfer for him. It wasn't obliged to continue with the transfer of Mr V's DB scheme. Instead it proceeded to effect the transfer in a situation where, I think it can reasonably be said, its client demonstrated he didn't fully understand what he stood to lose by agreeing to proceed. Mr V proceeded to transfer in return for TFC and a taxable lump sum he demonstrably didn't need.

I think it ought to have been clear to Portafina that Mr V had little to no knowledge or experience of financial and investment matters based on the information available at the time of the advice. I'm mindful too that Portafina assessed Mr V's attitude to risk as being 'cautious'. As Portafina thought this was the case I think it should have been on notice that it had to be very careful if it was to take him through the insistent client route.

In order to fulfil the regulator's requirements under COBS 9.2, Portafina needed to give Mr V advice on the overall suitability of the transaction envisaged, that is the transfer and the choice of pension and investment. Instead, it first gave Mr V advice on the advice to transfer, and only considered the suitability of the proposed alternative in the full suitability report *after* securing his confirmation to proceed on an insistent client basis.

By recommending that Mr V transfer his benefits to a particular scheme, not only did this undermine the recommendation not to transfer, but I also think Portafina has effectively given him a recommendation to transfer out of his DB scheme. If Portafina didn't think that transferring out of the DB scheme to a flexi-access drawdown pension was in Mr V's best interests, it needed to ensure that it gave clear advice that the *whole* of the transaction was unsuitable for him. In my view it shouldn't have separated out the elements. For this reason, I think on receipt of the full suitability report Mr V could have believed that Portafina approved of his decided course of action.

I'm sure that not waiting until he retired to have access to cash, to have some savings in the bank and another pot of money for 'general use' right then seemed like attractive objectives to Mr V. But, as Portafina is aware, a request by a client for a particular course of action, such as accessing cash, is not an objective. It was required to ascertain Mr V's actual investment objectives before advising on a suitable course of action.

To this end, and if Portafina was adhering to its obligation to know its client, then it should have ascertained whether Mr V had a real need to take a significant portion of his pension provision as early as he did. But there is no information about what Mr V truly needed such sums for – beyond some unexamined belief that he would not make it to retirement – or why he needed to access such a large portion of his pension at that point in time. Nor can I see that Portafina explored in any detail if the £800 per month Mr V already allocated for general expenditure could be used to achieve Mr V's objectives (be that saving or general use) as an alternative to irrevocably transferring the guaranteed benefits associated with his DB scheme. I've seen no meaningful discussion about alternative ways for Mr V to achieve his objectives.

So I can't reasonably accept that Mr V had no option but to transfer his pension, take the TFC and another taxable lump sum so he could have some savings and undertake some general expenditure instead of waiting until he retired. It appears to me that there was possibly some disposable income within the £800 allocated by Mr V each month for general expenditure that could have allowed him to save. It also appears to me that Mr V already devoted a significant amount of his monthly income to general expenditure and that Portafina failed to ascertain what further general expenditure he envisaged needing to make such that could not be covered by his monthly income and which warranted the transfer of his only pension provision. It was Portafina's duty to show Mr V that it was financially better for him to leave his guaranteed pension benefits where they were and to try and use some of his existing income to build up a savings pot if a savings pot is really what he wanted. Portafina should not merely have accepted Mr V's viewpoint without challenge. And I can't see that Portafina assessed how Mr V would fund his retirement if he transferred out. In my view, that was a key failing.

I've not seen a pension transfer analysis report prepared by Portafina for Mr V as required by the regulator. So Mr V was without any analysis around what it might look like for him if he took his scheme benefits early and what TFC he might receive at different ages in comparison to the flexi-access drawdown plan he was intending to transfer to. There is only a brief mention in the suitability report that Mr V could take TFC of £17,449 from the DB scheme and a reduced pension of £2,617 at age 67 (I can see that early access to the DB scheme was possible – providing Mr V had left his job). But crucially, Mr V was without this information and analysis when he was tasked with deciding to proceed as an insistent client.

Further, whilst I can see from the budget planner completed alongside the fact find that Mr V's essential monthly expenditure was £700 and that he did not expect the £800 he spent on general expenses to continue into retirement (because he wouldn't live that long), I can't see any analysis of this information in the suitability report. Without this, or a transfer analysis report, Mr V was unable to compare his forecasted DB scheme benefits, unable to see what his DB scheme could pay him if he took early retirement and unable to compare either with the flexi-access drawdown plan so that he could understand what the transfer truly meant for his future income needs.

I appreciate that Mr V 'believed' that he would not make retirement but with no health issues disclosed at the time of the advice, Portafina should have challenged him about this. I can see from the notes from fact-find meeting that Portafina's paraplanner told Mr V that he

would be left with just his state pension in retirement if he transferred. Aside from giving Mr V that warning however, the notes are just a record of Mr V's statements about wanting his money to spend now and his belief that he wouldn't reach retirement; there was no meaningful challenge put to Mr V from Portafina.

Portafina should also, if it was having due regard to his information needs, have provided him with information so that he could see what his retirement would look like as a consequence of transferring and drawing a large portion of his benefits at that point in time. If it had had due regard to Mr V's information needs, Portafina should have provided Mr V with a transfer analysis report, drawn his retirement income needs to his attention and explained he was putting his retirement income in jeopardy if he proceeded. It should have done all of this prior to making its recommendation and asking him to decide if he wanted to proceed as an insistent client. So Mr V was without the information he needed to make a fully informed decision about whether proceeding as an insistent client was in his best interests.

Portafina had to act with due care and skill and in Mr V's best interests. And by not seeking to properly understand his financial outgoings at the time of the advice or what his income needs in retirement may be, I'm not persuaded it can be said to have been acting in Mr V's best interests. Portafina's recommendation had to be clear and Mr V had to have understood the consequences of going against the recommendation. By not explaining the risks to Mr V of his supposed preferred course of action, and by not seeking to properly understand Mr V's objectives, financial circumstances and what he was really trying to achieve before carrying things out, I'm not persuaded Portafina can be said to have been acting in his best interests.

Ultimately I don't think Mr V was able to make an informed choice here – it seems to me that he most likely went ahead with the transfer as he believed it seemed like a good idea, he wanted to have access to money (not wait until retirement) and that transferring his pension was the only way to achieve his objectives. Portafina failed to properly understand Mr V's overall position and failed to recommend to him that it was in his best interests to do nothing. Furthermore, I think the way Portafina presented its recommendation to Mr V would've led him to believe it was giving him a positive recommendation to transfer out of the scheme. And I think this would've given Mr V the impression that Portafina agreed with his approach.

Portafina recommended that Mr V invest in a cash fund with A. As I'm upholding the complaint on the grounds that Mr V cannot be truly regarded as an insistent client therefore making the transfer out of his DB scheme unsuitable, it follows that I don't need to consider the suitability of the investment recommendation; the investments in the flexi-access drawdown pension wouldn't have arisen if suitable advice (on the whole transaction and having full regard to Mr V's information needs) had been given.

Overall, and on balance, given these failings, I don't think it would be reasonable for me to conclude the process Portafina followed meant that Mr V can truly be regarded as an insistent client - I think Portafina made it altogether too easy for him to agree that he was an insistent client. Portafina's overall communication with Mr V wasn't clear or fair. It didn't act in Mr V's best interests. And it failed to act with due care and skill.

I now need to consider if Portafina had followed the insistent client process correctly, whether Mr V would've still gone ahead. Portafina says that Mr V's objective to access his pension while he was still able was a persistent theme throughout the advice process so it is more likely than not that he would have sought advice elsewhere had it declined to transact his business; I disagree.



If Portafina had acted in Mr V's best interests, providing a recommendation on the suitability of the whole of the transaction envisaged at the outset, addressing Mr V's true objectives at the time and presenting alternative courses of action (including doing nothing, or waiting), assessing his retirement income needs and explaining that he was putting at risk his ability to be able to meet them if he transferred out, then I don't think he would've insisted on going ahead with the transfer. As I've outlined above, I don't consider Mr V to be an experienced investor who possessed the requisite knowledge, skill or had the confidence to go against the advice and recommendation he was given. I think he relied solely on the advice and process Portafina employed.

So whilst I accept that Portafina did provide some information about the risks and suitability of the transfer to Mr V, for the reasons I have given here, I am of the view that there were flaws to Portafina's insistent client process. Portafina's role was to understand what Mr V's wants and needs were and why he wanted to transfer his pension. Its role wasn't simply to facilitate what Mr V wanted. It had to act in his best interests.

In the absence of any clear objective, and in the knowledge that Mr V had no investment experience, a cautious attitude to risk and no capacity for loss I can't agree that Portafina was acting in his best interests by carrying out an insistent client process with Mr V. If things had happened as they should have, taking everything into account, I don't think it likely Mr V would have insisted on going ahead with the transfer.

In light of the above, I think Portafina should compensate Mr V for its failings using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

A fair and reasonable outcome would be for the Portafina to put Mr V, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr V would have most likely remained in the occupational pension scheme if suitable advice had been given.

Portafina must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, Mr V has not yet retired, and has no plans to do so at present. So, compensation should be based on his normal retirement age of 67, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr V acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Portafina should:

- calculate and offer Mr V redress as a cash lump sum payment,
- explain to Mr V before starting the redress calculation that:
  - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest his redress prudently is to use it to augment

his DC pension

- offer to calculate how much of any redress Mr V receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr V accepts Portafina's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr V for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr V end of year tax position.

Redress paid directly to Mr V as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Portafina may make a notional deduction to allow for income tax that would otherwise have been paid. Mr V's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Where I uphold a complaint, I can award fair compensation of up to £195,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £195,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require HARBOUR ROCK CAPITAL LIMITED trading as Pension Access to pay Mr V the compensation amount as set out in the steps above, up to a maximum of £195,000.

Recommendation: If the compensation amount exceeds £195,000, I also recommend that HARBOUR ROCK CAPITAL LIMITED trading as Pension Access pays Mr V the balance.

If Mr V accepts this decision, the money award becomes binding on HARBOUR ROCK CAPITAL LIMITED trading as Pension Access.

My recommendation would not be binding. Further, it's unlikely that Mr V can accept my decision and go to court to ask for the balance. Mr V may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 10 January 2025.

Claire Woollerson  
**Ombudsman**