DRN-3445365

The complaint

Mr C complains that Grove Pension Solutions Limited (Grove) gave him unsuitable advice in 2017 when they recommended he transfer his defined pension benefits to a personal pension.

This complaint is brought on behalf of Mr C by a claims management company but to keep things simpler, all correspondence will be referred to as coming from Mr C.

What happened

In February 2016, Mr C approached Grove in order to discuss accessing his defined benefit (DB) pension scheme with a previous employer. It is stated that he had already approached another adviser prior to this. As he was not aged 55, Grove said that he would not be able to access his fund, and that it would not be able to help him. The letter issued to Mr C at that time outlined the benefits of remaining in the scheme.

In May 2017 Mr C contacted Grove again, and following completion of a fact find and some analysis, they recommended that he transfer to the Royal London personal pension. The entire fund was invested in cash due to the client's stated objective of purchasing a property immediately following transfer.

At that time he was aged 54, not married, in good health with one non-dependent son. He was self employed and worked overseas, six weeks on and six weeks off. His income was stated to be approximately £4,000 per month from his job. The fact find states that he had no fixed outgoings and because he worked all around the world he couldn't indicate his cost of living, but that he tended to spend everything he earnt. The file also shows his partner's income as £450 "other" which is not explained. The rest of the details of the case suggest that this was rental income.

He had no savings or investment but had two properties, one overseas and one in England and both worth £70,000 – the fact find indicated that one of these was joint and the other in Mr C's sole name. Mr C's partner owned a property in the UK which was rented out – she had offered to sell it to Mr C for £60,000 although it was said to be worth £70,000. Mr C was looking to transfer his DB pension in order to provide the finances for this. Due to Mr C's age, he would not be able to access the money immediately, however it is stated that his partner was willing to wait until he was aged 55 and able to access the funds.

A suitability report was issued on 16 August 2017 (shortly before Mr C turned 55) which outlined his objectives at that time.

His attitude to investment risk was stated to be very cautious and his general risk profile was stated to be Intermediate – the description of this was "you like to consider your options when making a decision so the outcome will depend on your circumstances – sometimes you will err on the side of caution but sometimes you believe the benefits are worth taking a risk for".

The transfer value for Mr C's DB pension scheme was just over £106,000, which would have provided him with a pension of around £5,400 p.a. and tax free cash of around £23,000 at age 65, the normal retirement age of the scheme. There is no indication of the benefits that could have been available to him from the scheme on early retirement.

Grove recommended that Mr C transfer his pension to a personal pension with Royal London and access the maximum tax free cash along with a taxable lump sum in order to realise the £65,000 needed to purchase the property. It is noted that the property was intended to be sold to Mr C for £60,000 although the amount accessed was £65,000. Information provided by Mr C has confirmed that due to not being able to agree the details for the property purchase, it did not go ahead as planned and he did not buy a property.

Shortly after the transfer, in 2018 Mr C's circumstances changed and as a result of his health he was unable to work. Due to being self employed his income ceased, and his transferred pension fund was withdrawn in full. Mr C has stated that this was to cover living expenses and rent.

In 2020, Mr C complained that the recommendation to transfer was not suitable for him and he was not aware of the guarantees that would be lost on transfer. Grove rejected his complaint and so Mr C complained to this service. The investigator upheld the complaint however Grove did not agree and thus the complaint has been referred 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.

I've considered what I understand to be the key complaint point, namely whether Grove should have recommended Mr C transfer from his DB scheme to a personal pension. Having reviewed the file and considered Mr C's circumstances, my view is that a transfer recommendation was demonstrably unsuitable and the recommendation from Grove should have been for Mr C to retain his benefits in his DB scheme.

When considering whether it was appropriate for Grove to have recommended that Mr C transfer his benefits from his DB scheme to a personal pension, I have considered the relevant rules and guidance in place at the time, alongside Mr C's circumstances and objectives. I have also considered Mr C's role in the process and his apparent desire to transfer.

The Conduct Of Business Sourcebook (COBS) 9 and 19, two sections of the FCA handbook, set out requirements relating to suitability in general (COBS 9) as well as more specific rules and guidance relating to defined benefit pension transfers (COBS 19). I have considered whether Grove acted in line with these provisions. COBS 9 required Grove to obtain necessary information from Mr C to be able to make a recommendation, including ensuring he had the necessary experience and knowledge to understand the risks involved in the transaction. Mr C's objective (as recorded by Grove) of utilising his transferred DB benefits with the ultimate intention of purchasing a property would involve additional risks, which I will address below.

At the time of the advice, Mr C was self employed and despite having an above average income, had no savings or investments with the exception of property. He had been made bankrupt several years prior to the advice. There is no evidence of Mr C having any previous investment knowledge or experience which would have supported his understanding of the risks being undertaken, and the implications for his income in retirement. I have considered whether Grove took into account this lack of knowledge, experience and understanding when making their recommendation to Mr C, and on balance, do not believe that they have done so.

I have considered Mr C's income requirements in his retirement. The file states that it had not been possible to ascertain how much income would be required in retirement due to the flexible nature of his income and expenditure at the time of the advice. Whilst it is acknowledged that this would have been difficult to ascertain, I have considered whether Grove went far enough in attempting to identify Mr C's needs in retirement, and the part that his DB pension would have played in supporting this as required by COBS 19. I do not believe that they have gone far enough in this respect. Nonetheless, regardless of the income required, it is clear that the DB pension would have provided a secure underpin to his income in retirement alongside his state pension. Mr C's DB pension was his only other asset which would have provided a guaranteed level of income from the time he retired until his death. He did not have any other pension provision or assets on which he could rely to support his standard of living in retirement (given the fact find didn't record Mr C as receiving any rental income from his property ownership) meaning that he did not have the capacity for loss to be able to forego the guaranteed income available from his DB pension.

It is clear that the recommendation was driven by Mr C's desire to access his pension in order to buy a property, which would have provided (according to the documentation from the time) a rental income broadly in line with what would have been available from his DB pension. I have considered the fact that by transferring and buying a property Mr C would then own the asset, providing the potential for rental income similar to the scheme pension that would have been available as well as the potential for capital growth. However, whilst it is true that Mr C's objective was to purchase the property that was already providing a rental income, this would not provide any level of guarantees or security in terms of the income available. The recommendation does not appear to have taken into account periods of time where the property may not have been rented, nor the ongoing costs associated with property investment or the potential for house price falls.

As detailed above, Mr C would have been reliant on his DB pension in retirement because he would have had little in the way of other income sources to rely on. I have considered whether Grove acted in line with their duty of care when discussing with Mr C the risks of the property purchase when considered against the guarantees available with the DB pension. I do not disagree that Grove made Mr C aware of some of the benefits being given up by transferring. However, I do not agree that they made him fully aware of the risks of transferring in order to purchase a property with the intention of using this to provide an alternative income in retirement. It is indicated from the file that the rental income would be £450 per month, however it is unclear how realistic this was. There is no evidence that Grove explored the feasibility of this with Mr C, along with the implications on his income in retirement if the property was empty or rent not received for a period of time. They do not appear to have discussed with him the illiquid, undiversified, nature of property investment, and the ongoing costs of property management and the impact this would have on income received. His attitude to investment risk was assessed to be low. There is little evidence to suggest that Mr C had the risk appetite for an undiversified investment. I think it's apparent that Grove didn't discuss the implications of property management and ownership in the context of Mr C's underlying attitude to risk; something that was particularly glaring as he didn't have other investments he could rely on to generate a retirement income.

I have considered whether it was reasonable for Grove to make a recommendation to Mr C to access the majority of his pension provision at age 55 in order to purchase a property, effectively exchanging a secure income for an asset which would provide a similar level of income (based on the fact find and suitability report at least) on a non guaranteed basis. When considering this I have taken into account Grove's obligations as an adviser making a recommendation alongside Mr C's rights to access his pension in line with pension freedoms available to him and his wider circumstances. I do not believe that Mr C was in a position to be able to take a risk with his benefits such that a transfer recommendation was suitable.

Mr C approached Grove the year before his 55th birthday because he had the opportunity to buy a property at a discounted rate and had no alternative options for funding available to him. At that time he was self-employed with income that covered his expenditure and a personal loan, but no assets or investments with the exception of property.

His only recorded objective at that time was to access his pension to buy the property, he had not considered his expenditure needs in retirement. As they were required to do by COBS 19, Grove went through alternatives with Mr C, including take a loan, raising borrowing against his property (it was stated that he felt he was too old to take out a mortgage), or using disposable income to raise the money required. It was considered that there were no alternatives available to him. There is no evidence of Grove having considered whether taking early retirement from his DB scheme could have assisted him in some way (potentially in combination with some of the previously mentioned alternatives).

I have considered the statements from Grove that Mr C was intent on accessing his pension, and this was demonstrated by his actions firstly in contacting them twice to obtain advice (as well as having contacted another financial adviser) and by chasing them throughout the process. I do not disagree that this does seem to suggest that Mr C was extremely interested in exercising his rights under pension freedoms and accessing his funds in order to purchase the property available at a discounted price to him. However, Grove were in the position of a professional financial adviser who had a duty of care to provide a recommendation that was in Mr C's best interests. Grove have indicated that they believed that Mr C would have rejected a recommendation to retain his DB benefits. In all cases, a recommendation meeting the requirements and in line with Grove's duty of care as an adviser should have been made, regardless of their view that he was likely to reject that recommendation and proceed as an insistent client. I am not satisfied that Grove met this requirement.

Nevertheless, I have considered what Mr C was likely to have done if he had been advised to retain his benefits within his DB pension. Mr C approached Grove twice in relation to the transfer of his pension, indicating that it carried more than a passing level of importance to him. There is an element of uncertainty from Mr C in the fact find, which states that it was difficult to associate a level of importance with the objective as it was a "want" rather than a need. I accept Grove's comments that they did explore some alternatives with Mr C and made him aware of the loss of guarantees. However, as an inexperienced investor, Mr C would have been particularly reliant on the advice provided and on Grove making him fully aware of the implications for his retirement. Whilst the information available does indicate that Mr C was motivated and keen to transfer, given his lack of experience I have considered what Mr C was most likely to have done if presented with a recommendation from a professional financial adviser to retain his benefits with his DB scheme.

On balance, I believe that if Mr C had been recommended not to transfer in order to access his pension at the time of the advice, and had been made fully aware of the effect on his pension in retirement of accessing at age 55 along with the loss of guarantees and the likely impact on his standard of living in retirement, he would have been unlikely to act against that advice, particularly due to his statement in the fact find that his objective was a "want" rather than a "need".

Mr C has said that he was not made aware of the impact of the decision on his future finances in retirement. Grove have disputed this fact and stated that they did in fact make Mr C aware of the benefits that would be lost, and compared these to what he would receive as a result of transferring. As was required, Grove carried out a comparison of benefits, and calculated the critical yield required in order to match the benefits available from the scheme. I acknowledge that the critical yield can be seen as being a less meaningful comparison for someone with objectives such as property purchase, as opposed to replacing the benefits in a more traditional way such as annuity. However, this presupposes a property purchase was suitable which, for the reasons given above, wasn't the case here. And even putting this to one side, the critical yield is still an indicator of the value of the benefits being given up by transfer, and can be a simple way for an inexperienced investor to understand the implications of transfer. The critical yield stated was 7.54%. As Grove said in its suitability report, this is high and unlikely to have been achievable. It shows the quality of the benefits being given up – a point Grove also made. Unfortunately Grove hasn't drawn the right conclusions from all this, which would have been to advise against the transfer unless there were very good reasons to the contrary which, for the reasons given above, aren't present here.

That said, the stated rental income of £450 per month would have provided a yield of approximately 9% on a property costing £60,000, which compares well with the critical yield stated above. In addition, Mr C would have benefited immediately from the discount he was being offered on the property of £10,000 (if it had gone ahead). So, arguably, there was a financial rationale behind the transfer. However, as I've said previously, Grove hasn't done any sort of analysis of the proposed investment – an independent assessment of the property's worth, the predictability of rental payments, where rental payments would be reinvested, the need for property maintenance, the likelihood of the purchase going ahead, Mr C's experience in dealing with rental properties and so on. In that light, I don't consider it reasonable to put much faith in the financial benefits of the investment as presented. And, as I've also said, some of the risks in the investment weren't outlined to Mr C either. In an alert in 2013, the Financial Services Authority (FSA) outlined their view that when advice is given in relation to a pension wrapper, an adviser should consider the wider investment strategy, even in cases where they are not providing advice relating to the underlying investment. In Mr C's case, this means that Grove should have considered the suitability of the property purchase as part of the wider suitability of the transfer. As detailed above, there is nothing on file to suggest that they did this.

Grove have compared the income available following transfer and indicated that it would have put him in a similar position in retirement. Had the property purchase gone ahead as planned, he would also have had the property itself as an asset which could potentially have benefited his beneficiaries. However, the benefits of this need to be compared against the risk free income available to Mr C in retirement which was not the direct comparison that Grove appear to have presented to Mr C. I do not believe that they were clear that the benefits being forgone included a secure income for life, as opposed to an income from property which had not been validated in any way, nor the ongoing costs and potential for periods of time with no income being taken into account. Whilst neither the potential rental income nor the DB scheme pension would have been likely to provide a level of income sufficient to meet his living expenses, the DB pension would have provided a secure underpin to support his standard of living in retirement, which was more suitable for someone in Mr C's financial position.

The information provided by Mr C as part of the complaint correspondence states that in 2018, the fund was withdrawn in its entirety following transfer. Whilst neither Grove nor Mr C could reasonably have foreseen the chain of events leading to this, I have considered whether Grove should be expected to have identified that this was a possibility which could have been prevented by advising against the transfer. I believe that Mr C's financial position at the time of the advice, coupled with his previous financial history should have indicated to Grove that they would need to investigate further whether Mr C was likely to access his funds in an unplanned way, thus jeopardising his standard of living in retirement. This was contained within the guidelines in COBS 19.1.6G. I cannot find evidence to suggest that this was a key consideration when making the recommendation to Mr C, which should have been that he retain his benefits within the DB scheme.

For the reasons stated above, I uphold the complaint that the recommendation to transfer to a personal pension was not suitable.

Putting things right

My aim is that Mr C should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr C whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr C.

Grove must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its *Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.*

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of the decision.

Grove may wish to contact the Department for Work and Pensions (DWP) to obtain Mr C**'s** contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr C**'s** SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. 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 a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr C within 90 days of the date Grove receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Grove to pay Mr C.

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

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Grove to carry out a calculation in line with the updated rules and/or guidance in any event.

Grove should also pay Mr C £100 in respect of the distress and inconvenience caused by the concerns relating to his pension.

My final decision

I uphold Mr C's complaint and direct Grove Pension Solutions Limited to pay compensation to Mr C in line with the approach detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 March 2023.

Joanne Molloy
Ombudsman