DRN-3617511

The complaint

Mr M complains about the advice Grove Pension Solutions Limited gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

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

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employer's' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

Mr M was concerned about what his employer's announcement meant for the security of his Pension. He sought information from a financial adviser who, in July 2017, referred him to Grove to advise him about his pension options.

Grove gathered information about Mr M's entitlement under his current DB scheme and obtained a transfer value analysis (TVAS) report. It completed a fact-find with Mr M and an assessment of his risk appetite. It concluded the advice process in November 2017. Amongst other things, in the meantime, it noted that:

- Mr M was 40 years old. (This was actually incorrect as Mr M turned 39 during the advice process).
- His DB scheme had a cash equivalent transfer value ('CETV') of £379,600.
- It would pay him a projected yearly pension of £28,108 at age 65 or tax free cash (TFC) of £124,188 and a reduced pension of £18,628.
- The growth rates required (the critical yields) to match those sums from a personal pension were 6.77% and 5.92% respectively.
- He was living with his fiancée (they married during the period when Grove was gathering evidence).
- Mr M had two dependent children from his first marriage, ages 12 and 8 and also a stepdaughter age 6.

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- He was employed and earning £47,000 a year. He had a share in the former matrimonial home where his ex-wife lived and he could expect to received £7,500 from its sale once his children were no longer dependent.
- Mr M's fiancée was earning £34,000 a year and would have her own income from a DB pension in retirement.
- He had £3,000 savings in a building society, and a *"potential inheritance"* of £100,000.
- He would require an income in retirement of around £20,000 a year.
- He had a medium attitude to risk.
- He was contributing to his employer's group money purchase pension scheme. Mr M paid contributions of 6% and his employer paid 10%.
- As part of a divorce agreement Mr M's ex-wife had an entitlement to 24% of his pension.

In October 2017, the provider of the personal pension, 'O', that Grove was considering advising he transfer his pension to gave Mr M an illustration of what his pension could be worth on transfer. That said that the total amount transferred and invested would be £288,496 before it made a deduction of £4,884 for Grove's fee. It gave projections for what Mr M's personal pension would be worth at age 60 based on three levels of growth – as required by the regulator – and after adjustment for charges and allowing for inflation at 2.5% as follows:

Rate	Percentage	Pot value
Low	-1.4%	£148,000
Mid	1.61%	£258,000
High	4.62%	£443,000

In November 2017, after speaking with Mr M, Grove sent him its report setting out its recommendations to Mr M and the reasons for those. Such reports are commonly referred to as suitability reports, so I'll use that term in this decision. It recommended Mr M transfer his DB benefits to the personal pension with O. Its report set out some of the risks that Mr M would be taking by transferring, including that he could be worse off as a result.

Amongst other things Grove noted that Mr M's principal retirement objectives were:

- To break all ties with his former employer as he had concerns about their viability.
- Improving death benefits before retirement.
- To be able to withdraw TFC and/or income flexibly from age 55.

The suitability report said that Mr M "*definitely*" wanted to transfer his pension. He was concerned that it might move to the PPF and he would receive reduced benefits as a result. So, for "*peace of mind*" he wanted his own personal pension. Grove also noted that Mr M wanted to retire at 58 and then maybe work part-time in a less physically taxing job.

Grove explained to Mr M that if his personal pension grew at the mid-level and he lived to his life expectancy of 84, then he could be £63,000 worse off in terms of total pension payment. But, if the personal pension grew at the high rate of 4.62% then he could be £273,000 better off than remaining in the DB scheme. It said that Mr M was aware that he might not be better off by transferring and that wasn't the reason he wanted to transfer. Grove noted that Mr M was prepared to lose out in the long run. It set out some of the advantages and disadvantages of transferring and explained why it had recommended O's product.

In 2021 Mr M complained to Grove. He said he didn't think its advice to transfer his pension was suitable for him. Grove replied that it didn't think it had done anything wrong.

Mr M brought his complaint to us. One of our investigators looked into it. He didn't think Grove's advice was suitable for Mr M. Amongst other things he said that given that the critical yield was higher than the discount rate – which I explain below – Mr M would be worse off by transferring. Our investigator said Grove should pay Mr M compensation including £300 for the distress and inconvenience he experienced.

Grove didn't agree with our investigator's assessment of the complaint. Amongst other things it said that our investigator hadn't acknowledged the "*unknowns*" with the BSPS2 in particular with regard to early retirement. It said that the comparison between critical yield and discount rate our investigator had referred to wasn't an appropriate measure when considering the suitability of its advice. It added that there were a number of good reasons for Mr M to transfer. And given the term to retirement there was an opportunity for Mr M to increase his benefits, while moving the pension away from his employer and giving him the flexibility he wanted.

Our investigator wasn't minded to change his assessment of the complaint. So he referred it for an ombudsman's consideration.

Since then Grove commissioned a consultancy firm (the consultant) to conduct a "*technical analysis*" of the advice. In a detailed report the consultant provided his view on the merits of Grove's advice as well as providing various cashflow models to support his conclusions. In brief he felt that the transfer was viable as the CETV was generous and it allowed Mr M to meet his objectives, particularly of retiring early, and said that Mr M was better off as a result.

The complaint has now been passed to me to make a final decision.

What I've decided – and why

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

In bringing this complaint and in responding to it, Mr M, Grove and the consultant have made many detailed points. I've considered everything on file. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key matters at the heart of Mr M's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Grove's actions here.

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those given by the investigator.

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

Uncertainty and distrust

Grove noted that Mr M's key objective for considering transferring his pension was because he wanted to break all ties with his employer. Grove's also pointed out that, at the time that it gave it's advice, there were still a number of "*unknowns*" around the BSPS2.

I'm aware that many BSPS members like Mr M had serious concerns about their employer's attitude towards their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr M. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the requirement for suitable advice.

I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. And it's clear that Mr M's concerns of that nature were a primary motivating factor in considering transferring his pension away from the influence of his employer. Indeed it's notable that Mr M said that transferring was to give him *peace of mind* rather than to necessarily make him better off. So he might well have been leaning towards transferring his pension when he sought advice. But Grove was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr M should transfer out of his DB scheme, Grove needed to be able to clearly demonstrate that doing so was in his best interests.

When Mr M approached Grove there was still the possibility that his pension could move to the PPF. But, by the time Grove gave its advice, it was then known that it was more likely than not that the BSPS2 would be established, even if all of its benefits weren't known.

In May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr M's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017. Subsequently on 28 August 2017 – before Grove provided it's advice – the BSPS administrators provided scheme members, including Mr M, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr M's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. The confirmation that Mr M's employer had made the payment referred to was announced on 11 September 2017. Around two months before Grove sent Mr M its suitability report.

So, while entry into the PPF was still a possibility, I think Grove should have explained to Mr M that this was unlikely to be his only option and taken the necessary steps, including analysis within it's advice of the relevant benefits of the BSPS2. But its suitability report makes almost no mention of the BSPS2. And I've seen no evidence that Grove sought to reassure Mr M that his employer and the BSPS trustees were not one and the same thing. So he didn't need to transfer his DB benefits away from the BSPS2 because of concerns over the actions of his employer's treatment of pension pots. And as such, once established, it would be the trustees rather than his employer that would make the key decisions about the BSPS2. So, in order to fully advise Mr M I think Grove needed to make it clear that , moving forward, his employer's would have very little influence over the future of BSPS2. And as such his concerns about his employer's' actions wasn't a genuine reason to transfer his pension. But it didn't do that.

Grove's advice process and the financial viability of a transfer

Grove conducted a fact-find in which it gathered information about Mr M's circumstances and objectives. Also, as was required by the regulator, it obtained a TVAS report. That gives comparisons and critical yields showing what Mr M might receive from his BSPS scheme against what he might receive from the O personal pension. But I've noted that there are a number of omissions from that TVAS.

Importantly Mr M had a *pension sharing order* as part of his divorce settlement which entitled his ex-wife to 24% of his pension funds. And that sum would need to be paid to his ex-wife on transfer. That reduced the amount Mr M would receive from transferring his DB pension from an initial CETV of £379,600 to £288,496. But the TVAS doesn't at any point amend its figures to adjust for this reduced sum. Instead it assumes that Mr M would invest the full CETV of £379,600 in his personal pension, and that investment would then grow from there. But, in reality, given that he was required to share 24% of that sum with his ex-wife, his initial investment would be £91,104 lower. In those circumstances I don't find the figures in the TVAS reliable.

In addition, I think it's worth noting that while compiling the fact find with Mr M, Grove made a mistake as to his date of birth. In effect it recorded that Mr M was born two years before his actual birthday. So, for the rest of its advice, it assumed that Mr M was two years older than he was.

Further, Mr M had said that he would like to take early retirement at age 58. And Grove said its recommendation would allow him the flexibility to achieve that aim. But it provided very little analysis in its suitability report of how he would achieve that. Neither did it provide a comparison of what Mr M might receive from the different pension sources at that age. The suitability report quotes the figures setting out what he might be entitled to at age 60 from his personal pension as similar to those provided in O's illustration, depending on its growth rate. And given Grove's mistake as to Mr M's date of birth, those figures actually equate to Mr M being 58, although neither O nor Grove was aware of that. But, in any event, neither the TVAS nor the suitability report provided any analysis or comparison about what Mr M could expect to receive from the DB schemes or the PPF if he chose to retire early. And in order to ensure that he had all the information he needed to make an informed decision, that was something that I think Grove should have provided.

That's particularly the case as the PPF was known to provide more generous benefits for those retiring earlier than the BSPS, particularly where TFC was taken – at least in the short term. But Grove didn't bring that to Mr M's attention. And given the gaps in its advice, I don't think Grove communicated with Mr M in a way that was clear, fair and not misleading. So I don't think it gave him enough information on which he could reach a fully informed opinion of what was in his best interests.

That said, I've noted that Grove did go to some lengths to spell out to Mr M some of the risks inherent with a transfer of this nature. In particular it made it clear that there was no guarantee that a personal pension would make him better off. That was something that the regulator required Grove to do. But identifying risks and bringing disadvantages of a course of action to a consumer's attention, is not the same as clearly explaining why transferring was not in Mr M's best interests.

Grove said the relevant critical yield at age 65 for Mr M taking TFC and a reduced pension from the BSPS was 5.92%. Our investigator noted that the relevant discount rate was 4.6%. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rate's to make a DB transfer financially viable. And our investigator noted that as the discount rate was lower than the critical yield, then the investment was unlikely to match the DB benefits.

Grove's argued that a comparison between the discount rate and the critical yield isn't an appropriate measure. In other cases, I would say that a comparison between those two measures is a useful indicator of whether or not an investment is likely to grow at the required rate.

However, in this instance Grove only ever calculated the critical yield based on Mr M's full pension pot of £379,600, rather than the reduce sum of £288,496. And it only based those on BSPS figures. But Mr M had no entitlement to the BSPS sum, he either had to choose to move his pension to the BSPS2 or the PPF. So those critical yields are unlikely to be relevant. I note that the consultant calculated the relevant yield figures to match the likely benefits from the BSPS2 (he referred to these as being *annuity* yields) using the correct CETV and date of birth. He did so both for the investments being reduced by only product charges or also with an ongoing adviser charge. And, as Mr M was paying an adviser charge, I've only shown that one below

Age	Full pension	TFC of and a reduced pension
58	6.57%	6.09%
65	5.80%	5.47%

The regulator also published projection rates which it required pension providers to use when giving illustrations of likely future pension entitlements. Those projected rates were: 2% low, 5% mid and 8% high. So, even without considering the relevant discount rate Mr M's investment would have had to perform consistently above the mid-level to match the benefits equivalent to those he would be giving up by retiring. But the regulator's projection rates are before considering the effects of charges and inflation, both of which will reduce the value of the investment in real terms.

O produced an illustration for what Mr M's pension might be worth at age 60 in October 2017. However, as O used an incorrect date of birth for Mr M then in reality its illustration is what Mr M's pension pot might be worth at age 58. O adjusted its figures to show the effects of adviser and product charges together with inflation on Mr M's investment. I've shown that below.

Rate	Percentage	Pot value
Low	-1.4%	£148,000

Mid	1.61%	£258,000
High	4.62%	£443,000

So, far from showing a generous growth in the value of Mr M's pension, O's illustration indicates that unless his pension grew at the high level, after 19 years the investments would actually show a loss in real terms.

The consultant has also provided a table of what he refers to as "*drawdown yields*", which I believe is his calculation of the growth rates required if Mr M were to take income by way of drawdown from his personal pension. He's assumed Mr M would draw down the same level of the BSPS2 from retirement, at ages 58 and 65, until Mr M's death between ages 85 and 100. Those yields range from 3.15% to 4.94%. So, assuming Mr M's investments did perform at the mid-level the regulator projected then Mr M could achieve an income broadly similar to that he would achieve from remaining in BSPS2. However, if the investment performed at the lower level then he would be worse off. Also, there would be no guaranteed spouse's income for his wife on his death. And as Mr M was due to remarry, I think that would've been an important benefit to him.

In any event there would be little point in Mr M giving up the almost entirely risk-free benefits available to him through his DB scheme only to achieve a similar level of benefits outside the scheme. I appreciate that Mr M was a considerable time away from retirement; so he did have a reasonable period to allow his investments to grow. And, I acknowledge that the time-frame involved also gave him some capacity to absorb investment losses – as it might allow the markets to recover in the event of a crash. But unless Mr M's personal pension performed consistently at the mid-level or higher, in real terms he was likely to be worse off by transferring out of his DB scheme.

Further, if Mr M's investments suffered significant losses or a period of sustained poor performance, there was the possibility that he would deplete his funds earlier than anticipated. In contrast the BSPS2 benefit would last him for the rest of his life. So I'm not persuaded that it was financially viable for Mr M to transfer out of the DB scheme. And, for that reason alone, I don't think it was in his best interests for Grove to recommend that he do so.

Of course, financial viability isn't the only consideration when giving transfer advice. And Grove has argued that, as a result of its recommendation, Mr M could achieve his other objectives. So I've gone on to consider whether it has clearly demonstrated that the advice to transfer was in Mr M's best interests.

When doing so I've been mindful that Grove's role was to find out what Mr M's wants and needs were and why. Its role wasn't simply to do what Mr M wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and early retirement

Grove said that by transferring Mr M could enjoy flexible access to his pension income and it would allow him to retire early. But having considered the evidence, I don't think Mr M needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

As I've said above Grove's suitability report contains very little in the way of analysis to show exactly how Mr M could achieve early retirement at age 58. It doesn't have any cashflow models showing how Mr M drawing down from the pension might reduce his fund over time. But it does give figures showing what he might receive at age 60 (actually age 58) from his personal pension depending on the level of returns. It’s not entirely clear to me where Grove got those figures from as they don't exactly match any I can find elsewhere in the papers it’s given us. Although there are very similar (but not identical) figures in O’s illustration. But in that case the illustration was for Mr M taking his pension by way of an annuity rather than by drawing it down. But, given that those are the figures Grove included in its suitability report, so were the figures Mr M had to rely on, I've shown those below:.

Growth level	Low	Mid	High
Fund value	£148,000	£258,000	£443,000
Full yearly pension	£4,120	£9,980	£22,600
Or TFC of and a reduced pension o	£37,100 £3,090	£64,600 £7,480	£111,000 £16,900

Mr M had told Grove that, in ‘today’s prices’ he would need £20,000 a year income in retirement. So, the figures at the low and mid-level above are unlikely to have supported that. But, putting those figures aside, if he drew down £20,000 each year (without adjustment for inflation) and his personal pension grew at the mid-level, based on the figures above, that would likely last him for around 13 years or so before being depleted. But, although those were the figures which Grove presented to Mr M they don’t give the full picture. For example they don’t factor in Mr M’s income from his money purchase pension.

At the time of Grove’s advice Mr M and his employer had recently begun contributing to a group money purchase pension scheme. The contributions were around 16% a year of Mr M’s salary which in 2017 would be £7,520. And, if the contributions continued at that level without ever changing or increasing, and without factoring in any growth, the fund could be worth around £142,000 by the time he reached 58. I appreciate that Mr M couldn’t guarantee that he would stay in the same job until retirement. But if Mr M had moved on it was likely he’d have sought another job and continued paying into a pension. And that sum accrued could help sustain Mr M’s income levels for a further seven years or so, based on an income of £20,000 a year. This is a simplistic model, which doesn't allow for increases in contributions, fund growth or the effects of inflation. But it demonstrates that if Mr M’s investments didn’t perform consistently well he faced the very real prospect of depleting his pension fund before his life expectancy which, in 2017, was 84.

I’ll add that the consultant produced cashflow models which show that Mr M could retire at 58 by transferring out of the DB scheme and retaining his desired level of income long past his life expectancy. The consultant’s models are adjusted for inflation and factor in fees, but they also assume a year-on-year growth in the personal pension of 4.5%. So the models don’t show what would happen if the personal pension grew at a lower level nor are they stress tested to allow for any periods of poor investment performance. So I don't think they paint a complete picture of the likely future scenarios that Mr M could be facing. I also think it’s worth pointing out that the models weren't available to Mr M at the time Grove gave its advice in order to enable him to make an informed decision. Instead the consultant’s report is something Grove’s commissioned five years later in order to defend its position.

The consultant’s models also show that, after including income from Mr M’s money purchase scheme, he could have retired at age 58 by remaining in the BSPS2 and taking his benefits from that early, if that is what he‘d wanted to do. And if he’d chosen that route then he wouldn’t have had to rely on the vagaries of investment performance to ensure that he could meet his income need. Instead his income would have grown year-on-year in line with indexation, regardless of the performance of the markets. But Grove didn’t make this clear to Mr M at the time.

Further, I've noted that, Mr M told Grove that while he would like to retire at age 58 he might at that point decide to work part time, perhaps in another job. So, I think Mr M most likely realised, that, while early retirement was something that would be nice to do, it wasn't necessarily essential for him. Many people would like to retire early. But, for most, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. As a result, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that's seems to be a more likely prospect for Mr M. But there's no evidence that Grove seriously challenged Mr M's objective of retirement at age 58 and questioned how realistic that was for him. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

At the time of Grove's advice Mr M was still 19 years away from 58. So he had no need to make an urgent decision to transfer out of his DB scheme as he could have opted to move into the BSPS2. And, if he still felt that he wanted to retire when he reached 58, and thought that the income from the BSPS2 wasn't enough for his needs at that time, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he was still only 39 years old. But it doesn't appear that Grove put that option to him.

The consultant said that the CETV at the time of Grove's advice was generous and was likely to reduce if Mr M deferred transferring. One of the key differences between the BSPS2 and its predecessor was that the indexation levels weren't as generous in the BSPS2. And that lower indexation might well have led, in real terms, to a reduced CETV at a later date than that offered at the time of the advice. But I don't think that the prospect of a lower CETV at some point in the future was reason to give up DB benefits at the time that Grove gave its advice. As by doing so Mr M would be taking a risk with his pension he didn't need to take. And its notable that this wasn't an argument that Grove made at the time to support the suitability of its recommendation.

Further, the consultant said that deferring consideration of a transfer until nearer the preferred retirement date is akin to a saver not beginning pension contributions until eventual retirement. But given that Mr M already held deferred benefits in a DB scheme, that is plainly inaccurate. By remaining in the DB scheme Mr M could look forward to receiving a guaranteed income, even if that was at a reduced rate from the PPF, at a date in the future. So he had in effect already accrued a significant pension pot. That's not the same– as the consultant suggests – as someone not contributing anything to a pension until nearer their retirement, as they would not have any pot of any nature to draw an income from.

I recognise that, at the time of Grove's advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr M had opted into the BSPS2 and it hadn't gone ahead, he would have moved with the scheme to the PPF. At age 65 Mr M would have been entitled to a pension of around £22,000 a year from the PPF. This was likely lower than the pension he'd be entitled to under the BSPS2, but I don't think it would have been substantially lower such that it should have made a difference to Grove's recommendation. And Mr M would also have had an income from his money purchase pension to draw on until his state pension became payable. So, I think Mr M could have met his income needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

For completeness, I note that Mr M told Grove that he would like to be in a position to pay off his mortgage at the time he retired. The evidence on the file that Grove has given us is somewhat confusing about the status of Mr M's mortgage. It says that his mortgage payments are £400 a month but that the mortgage is actually on his ex-wife's house. But there's also information on file which shows that – as part of the divorce settlement – Mr M was no longer responsible for paying the mortgage on that property. Also, in the consultant's report he said that Mr M bought a property in October 2017 for £167,000 but that the details of Mr M's actual mortgage aren't held on file. I don't know where the consultant found the information about Mr M's house purchase from, as it's not mentioned anywhere in the papers Grove gave to us. So I can only assume that the consultant had access to evidence Grove hasn't provided us with. But I've further noted that the consultant had calculated that Mr M would, most likely, have been able to pay off a mortgage on a property at age 58, whether he transferred from the scheme or took the benefits from BSPS2. So it appears that, Mr M had no need to transfer his DB benefits in order to achieve that goal.

Overall, I'm satisfied Mr M could have met his income needs in retirement through the BSPS2 if he decided to take early retirement. So, I don't think it was in Mr M's best interests for him to transfer his pension just to have flexibility that he didn't need.

Death benefits

One of Mr M's key objectives when discussing the possibility of a transfer with Grove was to improve the death benefits payable before retirement. Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr M. That's because whatever was left within Mr M's personal pension at the date of his death would be passed on to his wife and children. And, if that happened before his retirement then that would likely be a significant sum.

But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of his DB scheme Mr M was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his wife and family that they may not need for many years to come.

Further, Mr M was 39 years old at the time of the advice and he was in good health. So, he had no pressing need to consider a death benefit provision before he retired. But, if he genuinely wanted to leave a legacy for his family, which didn't depend on investment returns, I think Grove could have explored life insurance with him. Mr M already had a significant death in service benefit through his employer which would have been worth around £188,000. But if he wanted to improve on that position then he could have taken extra cover out on a whole of life basis. But there's no evidence Grove discussed this with him.

I also think the existing death benefits attached to the DB scheme were underplayed. I've noted that Grove did point out to Mr M that, in the short term, death benefits from a personal pension might be more generous but that, in the longer term the death benefits available from the DB scheme could be more beneficial for his wife and family. And this was something Mr M needed to think about. But it didn't stress to Mr M that differing death benefits were not a good reason to transfer out of the DB scheme, so doing so wasn't in his best interests.

Grove's suitability report says that, if Mr M died before retirement, his DB scheme would pay his new wife a lump sum of £43,173. But I think that figure would need to be adjusted to allow for the 24% payable to Mr M's ex-wife as part of the pension sharing order. That would reduce the lump sum payable to around £32,800. But the DB scheme would also pay Mr M's new wife a spouse's pension equivalent to 50% of whatever Mr M's pension entitlement was at that time. And that pension would be index linked and would be payable for the rest of her life. And I think Grove could have done more to make the value of these benefits clear to Mr M. Further, the amounts available to Mr M's family from a personal pension would be dependent on investment performance, And as I've indicated above, if the fund didn't perform well or suffered losses, then there would be less available as a death benefit.

Further, the fund would reduce as Mr M drew down money from it. And if Mr M drew down heavily from it in the early years of his retirement, then those deductions would reduce the lump sum benefit available in the event of his death. And the fund would continue to deplete unless left untouched.

It follows that I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr M.

Summary

I don't doubt that the flexibility, and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But Grove wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice Grove gave to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr M was likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

So, I think Grove should have advised Mr M to opt into the BSPS2.

Of course, I have to consider whether Mr M would've gone ahead anyway, against Grove's advice. I've noted that Mr M believed that transferring out of the DB scheme would give him peace of mind given his concerns about his employer's actions with regard to the pension scheme. I've considered this carefully, but I'm not persuaded that Mr M would have insisted on transferring out of the DB scheme, against Grove's advice if it had clearly explained that the scheme trustees and his employer were not one and the same. And that the future of the pensions scheme was in the process of being taken out of the employer's hands. Further, Mr M was an inexperienced investor with a medium attitude to risk and this pension accounted for the majority of his retirement provision. So, if Grove had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think Grove should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits available to Mr M under the BSPS2 at age 65 that should be used for comparison purposes. That's because I don't think Mr M's desire to retire at age 58 was a concrete plan, it was more of a 'nice to have' that I think he would've likely reconsidered as he got older.

Also, as Grove's unsuitable advice has been a source of distress and inconvenience for Mr M I think it should pay him £300 to address that.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

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 M 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's chosen not to wait for any new guidance to come into effect to settle his complaint.

I'm satisfied that a calculation in line with FG 17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr M.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 M's acceptance of the decision.

Grove may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M'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 M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, Grove should pay the compensation if possible into Mr M'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, Grove should pay it directly to Mr M 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr M within 90 days of the date Grove receives notification of his acceptance of my final decision. Further Grove must add interest 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 M.

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. In those circumstances, 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.

In addition Grove should pay Mr M £300 to compensate him for the distress and inconvenience its unsuitable advice caused him.

My final decision

Determination and money award: I uphold this complaint and require Grove Pension Solutions Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount does not exceed £160,000, I would additionally require Grove Pension Solutions Limited to pay Mr M any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Grove Pension Solutions Limited to pay Mr M any interest as set out above on the sum of £160,000. If Mr M accepts this decision, the money award becomes binding on Grove Pension Solutions Limited.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Grove Pension Solutions Limited pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M. My recommendation would not be binding. Further, it’s unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 9 February 2023.

Joe Scott
Ombudsman