DRN-3686490

The complaint

Mr H has complained that Grove Pension Solutions Limited gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (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 H's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

The scheme Trustees initiated an exercise referred to as 'Time to Choose' in October 2017 in which members were offered the option of joining the new 'BSPS2' scheme or remaining in the existing BSPS which would subsequently move to the PPF. Those members with more than 12 months before their normal retirement age also retained their statutory right to transfer out of the scheme altogether.

On 21 November 2017, Mr H completed a Grove fact find and attitude to risk questionnaire, as he recalls, with his current financial adviser. The personal details collected about his circumstances can be summarised as:

- He was 26 years old, single and in good health,
- He was living with his parents.
- He was employed full time with Tata Steel and had been for six years.
- He was earning £38,000 a year or £2,200 net a month. No monthly expenditure was recorded.
- He owned a buy-to-let property valued at £80,000 with a remaining mortgage of £50,000 due to be repaid in under 9 years.
- He had £44,000 in deposit based savings.
- He'd joined his workplace defined contribution scheme contributing 6% and the employer a further 10% of his salary.
- He had a death in service benefit of around £120,000.
- He said he may wish to retire gradually from age 55 and anticipated needing £15,000 a year in retirement.
- There was no specific need to access a lump sum before retirement.

As part of the same exercise, Mr H was presented with a list of 23 generic objectives and asked to pick from these. The sheet said:

'There are many reasons that you may have for considering a transfer. Please answer all of the following statements with 'Yes' if this is potentially an issue, 'No' if it is not or 'N/A' if you don't believe it to be applicable, adding any further reasons or comments in the Notes box.'

Those he selected N/A for included:

- I wish to break all ties with my former employer as I have concerns about their viability
- The guarantee provided by the PPF is valuable to me
  and
- I am not concerned about the guarantee provided by the PPF

My H didn't answer 'No' to any statements and those he answered 'Yes' to were:

- Improve retirement benefits
- Have pension in a different format than the scheme provides
- Improve death benefits before retirement
- Improve death benefits after retirement
- Has concerns about old company scheme which is in deficit
- Maximise tax free cash at retirement
- Consolidate pension benefits
- Have greater control of investment strategy
- Have control of pension benefits
- Have flexibility of taking benefits from age 55 onwards
- Do not want a pension annuity
- Have control of income in retirement
- Want to retire early
- Want to retire later
- Want to phase in retirement

More specifically, from the notes made of Mr H' objectives, his motivations could be summarised as:

- Control over pension due to a concern about reduction to future benefits in either the PPF or the BSPS 2.
- Wished to move benefits away from employer control.
- Wouldn't rely on this income in retirement, due to rental income and state pension.

Grove wrote to Mr H on 2 January 2018 with its client agreement, noting the referral from his existing adviser. The following day an illustration of the recommended plan was produced, assuming investment in the cash fund. A Transfer Value Analysis (TVAS) report was also produced based on Mr H's existing BSPS benefits at his normal retirement age.

On 30 January 2018, Grove wrote to Mr H with a suitability report detailing its personal recommendation for him to transfer his BSPS benefits to a collective retirement account with Old Mutual Wealth. The initial adviser fee of £1,500 was confirmed, as was the ongoing fee to be paid to his current adviser of 1% a year. The product charge was to be 0.5% and the average weighted fund charges a further 0.69%. Mr H signed and returned this on 5 February 2018, accepting the recommendation.

Mr H complained to Grove about the advice he'd been given in November 2021. Grove responded in December 2021, declining to uphold the complaint. It did, however, offer to pay Mr H £10,000 as a gesture of goodwill in full and final settlement of his complaint.

Dissatisfied with the response, Mr H referred the matter to this service.

Having considered the complaint, our investigator thought that it should be upheld. She said the following in summary:

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- Mr H's main motivation behind the transfer seemed to have been flexibility and control over his pension funds. But Mr H was entitled to an impartial review of his options and management of his concerns over the scheme and his employer. And this would have involved a separation of the emotive concerns he was having at the time and his true retirement objectives.

- There were some contradictory answers in Mr H's choice of the generic objectives, but they could be broadly grouped into: flexibility to retire from age 55 in a different way from taking the scheme benefits; maximising tax free cash; improving death benefits; and controlling his pension investment strategy.

- In terms of improving the retirement benefits, the illustration for the recipient plan was based upon cash investment with the notion that the investment decisions would be taken over by Mr H's existing adviser. But this gave Mr H no meaningful indication of what his benefits might be in retirement.

- The advice had been given after the regulator had given instructions in final guidance FG17/9 as to how businesses could calculate future "discount rates" for complaints about transfers which were being upheld. Prior to that, this service was publishing information with which businesses could calculate future "discount" rates.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rate was 4.4% pa for the period both up to Mr H's normal retirement date (65) and to age 55.

- Pension illustration growth rates set by the regulator were 2%, 5% and 8% for low, medium and higher projected returns.

- This compared to respective required critical yields to match the BSPS benefits at 65 of 6.96%, and to match those in the PPF, it was 5.97%.

- Taking these figures into account, even on the basis that the BSPS 2 revaluation rates wouldn't have been as favourable as those within the BSPS, the critical yields weren't reasonably achievable, and there was no reasonable prospect of Mr H improving upon the scheme benefits.

- The TVAS report also estimated that, by drawing an increasing income equivalent to that available from the BSPS, the fund at the medium rate of return would run out by age 86.

- In terms of the flexibility argument and requirement for tax free cash, Mr H was at the time 26 and so had over 30 years until he would be able to access his benefits. It was therefore difficult to reasonably assess what his income needs were likely to be. It was therefore difficult to justify the transfer on the basis of unknown future flexibility requirements, especially when Mr H would be relinquishing valuable guaranteed benefits which would be revalued in the intervening years in a virtually risk free (to him) environment.

- Mr H couldn't have retired before age 58 by the time he had reached retirement age, but he didn't in any case have any clear plans to retire early. And again, any such plans could change quite significantly in the intervening years, and so it would have been more prudent to reassess this closer to the time.

- The defined benefits would constitute a relatively small part of Mr H's likely overall pension provision, with over 30 years' defined contributions throughout the remainder of his working life. These by their definition would have offered Mr H any flexibility he required in income.

- There was also no clearly defined reason as to why Mr H would have needed the higher tax free cash entitlement which would have been associated with the transfer to the PPP. And the risk of losing the guarantees was disproportionate compared to the potential of increasing a tax free lump sum which was projected to be in the region of £3,900.

- Although the death benefits would have been formatted in a different way, with any remaining pension fund paid as a lump sum, Mr H's circumstances may well have changed given his young age, which would have meant that the spouse's and
- dependants' benefits became of higher value. And to add further context to the importance of death benefits at that time, the individual nominated at that time as being Mr H's beneficiary was his mother, which was a reasonable indicator that he envisaged that the situation may change in the future.

- Further, Mr H had no health issues which would mean that death benefits would have been of concern at that point, and he'd indicated that death benefits weren't a priority for him at that time. He also had death in service benefits and the return of his defined contributions if he wished to leave a lump sum to his mother. And the financial needs of Mr H should have been given prominence over any legacy for family members.

- In terms of the control over his pension investment strategy, Mr H had indicated that he has some experience of investments, and had self-selected both the medium and adventurous options for his attitude to risk.

- COBS 9.2.3 provided guidance on the information required about Mr H's knowledge and experience, which included:

  "1) the types of service, transaction and designated investment with which the client is familiar;

  2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

  3) the level of education, profession or relevant former profession of the client."

- Mr H's experience and knowledge hadn't been sufficiently explored to the required extent. It was likely that he understood the principle of risk/reward, but his participation in the defined contribution scheme wouldn't have constituted much experience by that point. Nor did his ownership of the buy to let property imbue him with knowledge of complex pension matters.

- And so his lack of knowledge and experience didn't sit comfortably with his recorded higher than average attitude to risk. And other than the state pension which wouldn't have been payable until his late 60s, the defined benefits were his only source of guaranteed income. So any generic and unsubstantiated need for control of these pension funds was significantly outweighed by the loss of the guaranteed benefits.

- Although the suitability report said that the investment advice would be given by Mr H's existing adviser, the FCA required that the ultimate investment of the funds be considered as part of the transfer. Grove did envisage that this would be closely aligned with the particular portfolio offered by the PPP provider, which was broadly consistent with a moderate to adventurous investor.

- Mr H had complained about investment performance, but as the responsibility for investment decisions after the transfer had fallen to Mr H's existing adviser, Grove couldn't be held responsible for any departures from the anticipated investment strategy.

- It may not have been straightforward to challenge any preconceptions held by Mr H about the scheme and his employer, but Grove had the responsibility and opportunity to do so and advise him that transferring wouldn't be in his best interests.

- Mr H may have acknowledged the risks associated with the transfer, but his concerns should have been properly managed and assuaged, rather than simply echoed. It wasn't evident that the safeguards in place to protect Mr H's pension funds were discussed.

- Risk warnings may have been provided, but the provision of these wouldn't mean that unsuitable advice had been rendered suitable.

- Mr H hadn't been placed in a properly informed position to be able to take personal responsibility for his decision to transfer.

- Taking account of Mr H's circumstances, including his attitude to risk, lack of firm objectives and the guarantees which he could have retained, Grove should have advised against the transfer. And had it done so, Mr H would likely have accepted that advice.

The investigator recommended that Grove undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr H would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr H's pension plan, but if this wasn't possible, it should be paid directly to Mr H, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

Mr H accepted the investigator's findings. Grove didn't initially provide a response, and so the investigator informed both parties that the matter would be referred to an ombudsman for review.

The investigator then informed Grove that he'd enquired of Mr H as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

Grove did then reply. And whilst not commenting specifically on the merits of the investigator's findings, it said the following in summary:

- The consensus between the FCA and this service was that, assuming a transfer wasn't appropriate, the only compliant advice would have been to assist the client in choosing between the BSPS 2 or the PPF.
- The early retirement reduction factors between the BSPS 2 and the PPF were almost identical, assuming retirement at age 55.
- It anticipated that Mr H would have needed to take the tax free cash to fund his early retirement – and every client it had assisted since 2007 had taken their tax free cash.
- The commutation rate for tax free cash was significantly better under the PPF.
- Mr H had said that he preferred a retirement age of 55 and also that he had would have a couple of properties and the state pension, and so he wouldn't just be relying on these pension funds in retirement.
- The viability of early retirement, given his likely assets by age 55, had been clearly set out to Mr H. And Mr H had also confirmed that, given his additional pension contributions over the next 40 or so years, and the state pension, transferring was a risk he thought he could afford to take.
- And so the logical conclusion, and with the benefit of hindsight, was that, if Mr H didn't transfer, the advice at the time would have been to opt for the PPF. As such, any redress calculation should be undertaken on that basis.

The investigator replied to say that she had already set out her reasons for the recommended redress basis, but she confirmed that Grove's position on this would be added to the file for the ombudsman's consideration.

The investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, she said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require Grove to use the FCA's BSPS-specific calculator to determine any redress due to Mr H.

The investigator said that, if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr H's complaint, they should let her know by 5 June 2023.

Grove then wrote to both the investigator and Mr H saying that, given the length of time that the mater had been outstanding, it would abide by the investigator's findings and would be undertaking the BSPS-specific redress calculation using the most recent quarter date. It also said that it would pay any additional ex gratia payment recommended by the investigator.

The complaint has now been referred to me for review. I note that we haven't as yet been informed that the redress calculation has been undertaken.

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 noted that Grove has confirmed that it will abide by the investigator's conclusions, but I would confirm that I agree with the conclusions reached by the investigator, and for broadly the same reasons. And my comments would be as follows.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time Grove advised Mr H were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Grove, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, Grove needed to gather the necessary information for it to be confident that its advice met Mr H's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of Grove's advice to Mr H in the context of the above requirements and guidance.

The financial case to transfer

Grove obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr H's objectives from a financial perspective.

The suitability report was issued after the FCA's revised guidance which was released in October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

Given what was known about the proposed BSPS 2 and Mr H's own projected benefits, I think it ought to have been possible to produce critical yields for that proposed successor scheme as well as the BSPSP and PPF. But in the absence of those, I think that assuming critical yields somewhere between those for the BSPS and the PPF wouldn't be unreasonable in estimating those which might be required for the BSPS 2.

But as noted by the investigator, the critical yields would still have been higher than the growth rate which would reasonably have been projected for an investor such as Mr H. And I also agree that it's more likely than not that the critical yields were in fact unachievable, year on year, for the number of years that Mr H had until he reached either early or normal retirement age.

And as a reminder, these growth rates were required to just match the scheme benefits.

From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr H's best interests. As such, my view is that the transfer couldn't be justified from a financial perspective, especially given the valuable guarantees which Mr H would be relinquishing.

But the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that Grove did provide warnings on the guarantees which would be relinquished, but as Grove will be aware, and as noted by the investigator, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. Grove needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr H.

As I've said above, Grove's reasoning for the recommended transfer, despite the likely inability of the transferred benefits to match those which would have been produced by the scheme, was that Mr H required flexibility of income due to his particular circumstances, objectives, and concerns about his employer and the pension scheme.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge, as did the investigator, that Mr H may have understood the principle of risk/reward which would be associated with the transfer, and that there may have been discussions around such concepts with colleagues who were going through the same process.

But I have the same concerns as the investigator regarding the self-selected "adventurous" categorisation for Mr H's attitude to risk, given his lack of investment experience. Mr H had some capacity for loss, having joined the replacement defined contribution scheme, and so would likely have accrued the bulk of his retirement provision through money purchase benefits. But this would have made a relatively small amount of defined benefits more important in terms of having some guarantees of income. Through transferring, Mr H was effectively putting a lot of his eggs in one "money purchase basket". Any reduction in the benefits payable from the OPS would therefore have had an impact on his financial security in retirement.

But I also don't think Mr H in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr H would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to satisfy changing income needs.

But other than concerns around the employer and associated scheme, which I'll address further below, it's unclear as to why Mr H would have wanted or needed such flexibility at the cost of valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind his (likely) average attitude to risk and apparent lack of any similar historical investment which might otherwise reasonably indicate a preparedness to take risks with all of his pension income.

I've also thought about whether Mr H could meet his objectives of retiring early whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF. And in my consideration of this, I acknowledge that there was no facility for Mr H to take tax free cash from the BSPS 2 or PPF without also starting to take an income.

But as noted above, by age 65, Mr H would have accrued around 40 years' worth of defined contributions in the replacement scheme, or 30 years by age 55. Given the likely value of this separate pot of money on the basis of the employer and employee contribution rates, this could be used to plug any gaps between him starting to take flexible benefits and his OPS/state pension benefits beginning. It's possible that he could have relied on the proceeds of his defined contributions plan for flexible access to pension benefits, from whatever age after 58, and then taken guaranteed benefits from either the BSPS 2 or the PPF as and when needed.

I've also noted what Grove has said about Mr H being best advised to join the PPF rather than the BSPS 2 on the basis of the enhanced tax free cash offered by the former, and that he would have likely needed to access this to retire early. But I disagree. I don't think Mr H would have needed to access the relatively small amount of tax free cash from his defined benefits before 65, given the likely size of his defined contributions pot by that time.

Alternatively if, on the basis of an income requirement which outstripped the value of his defined contributions over the years left to age 65 (on the assumption that Mr H did in fact wish to retire early in 30 years' time) – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr H could then have begun to take the scheme benefits early if needed.

On the matter of Mr H's concerns about the scheme and his employer, as with others in his position, I think it's fair to say that Mr H would have been concerned about the future of the BSPS and his associated benefits. But as set out by the investigator, Mr H's concerns around this should have been managed appropriately. I appreciate 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, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr H distrusted it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the point of the "Time to Choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative. There were still conditions which still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications were to the contrary.

The prospect of Mr H's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees.

And so I think that, had Mr H's concerns been better managed, the seeming driver for having control over his pension benefits would also have diminished.

Mr H's plans, including retirement, may in any case have changed significantly in the 30 to 40 intervening years between then and him reaching retirement age. Any flexibility requirements could have been addressed nearer to, or at, that point – and Mr H would have been able to transfer out of the BSPS 2 if needed.

As set out above, I also think that Mr H could have achieved a degree of flexibility with his pension benefits without needing to transfer at all. And even if he ultimately decided that flexi access drawdown was his preferred option – and again, this could have been established closer to his actual retirement age – Mr H or his adviser could then assess at that point whether the transfer represented good value.

And so on the basis of what I've said above, and as with the investigator, it follows that I don't think the mooted early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr H to transfer his deferred benefits.

Death benefits

It's fair to say that, if Mr H remained single, the lump sum death benefits offered by the transfer would likely be more beneficial to Mr H's extended family.

But I don't think this could reasonably be a justification for transferring Mr H's benefits. Firstly, he had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

The second is that accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for extended family members. The recommendation needed to be given in the context of Mr H's best interests.

And unless the financial needs of the individual concerned are given prominence over the extended family, this cannot be said to be acting in that individual's best interests. The desire to leave a legacy cannot reasonably have subjugated Mr H's own personal requirement to benefit from his accrued pension benefits. The wish to leave any such legacy should have been properly weighed against the guaranteed benefits Mr H was relinquishing, and Grove should have advised him that his own financial benefit took priority here.

There was also no suggestion as to why a lump sum would have been important to Mr H's mother in the event of his death. As with the investigator, I think this was likely a "default" nomination which would quite feasibly change in the course of the next 30 to 40 years, especially if Mr H's relationship or family situation changed over that time.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr H's mother or extended family by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr H personally.

What should Grove have done – and would it have made a difference to Mr H's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr H. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr H to make any decision about his BSPS benefits at this point in time and it was the responsibility of Grove to explain to Mr H why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr H's scheme benefits needing to enter the PPF, which would have ruled out a later transfer. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr H was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr H, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr H's income needs could likely have been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr H to relinquish valuable benefit guarantees – especially at the age of 26.

My further view is that, if properly discussed, Mr H's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would, other than the state pension from his late 60s, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds (and I'd reiterate the point above about the relatively low amount, and associated significance, which he would receive from the defined benefits). Death benefits were also payable from the defined benefit scheme, should Mr H's relationship and family circumstances change in the future, albeit in a different format from those available from the PPP.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. As set out by the investigator, the critical yields were higher than the discount rate and the mid band growth rate set by the regulator.

Taking account of Mr H's circumstances, including his likely attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that Grove should have advised against the transfer.

And I think that, had this happened, Mr H would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that the recommendation to transfer wasn't suitable for Mr H, nor was it in his best interests.

At least two of the key benefits sought by Mr H were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him (or indeed through the PPF).

My view is that, taking account of the critical yields, Mr H's likely attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely, albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as required by COBS 2.1.1R and COBS 19.1.6, Grove would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr H's best interests.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

I've also noted Grove's preparedness to calculate any redress due to Mr H on that basis.

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would most likely have remained in the occupational pension scheme. There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members. And so, with this in mind, and for the reasons set out above about likely not needing to access the relatively small amount of tax free cash from his defined benefits – even if he wished to still retire early in 30 years' time – my view is that Mr H would have opted to join the BSPS 2 if suitable advice had been given.

Grove Pension Solutions Limited 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.

Grove Pension Solutions Limited should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr H and our service upon completion of the calculation.

Given the amount of time left to retirement, I don't think it could be assumed that Mr H would take his defined benefits before age 65, especially with the possibility, as outlined above, of accessing his accrued defined contributions flexibly if required. Compensation should therefore be based on the scheme's normal retirement age, 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 H's acceptance of my final decision.

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

- calculate and offer Mr H redress as a cash lump sum payment,

- explain to Mr H before starting the redress calculation that:

  - its 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 their redress prudently is to use it to augment their defined contribution pension

- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr H accepts Grove Pension Solutions Limited offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Mr H may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr H's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

Determination and money award: I require Grove Pension Solutions Limited to pay Mr H the compensation amount as set out above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I would also recommend that Grove Pension Solutions Limited pays Mr H the balance.

If Mr H accepts this final decision, the award will be binding on Grove Pension Solutions Limited.

My recommendation wouldn't be binding on Grove Pension Solutions Limited. Further, it's unlikely that Mr H could accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept my final decision.

My final decision

My final decision is that I uphold the complaint and direct Grove Pension Solutions Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 October 2023.

Philip Miller
Ombudsman