

The complaint

Miss H complains about the advice given by Grove Pension Solutions Limited (Grove) to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

Miss H approached Grove in 2017 to discuss her pension and retirement needs. I understand Miss H completed an online questionnaire and then she and Grove spoke on the telephone. Grove completed a fact-find to gather information about Miss H's circumstances and objectives as part of this process. Some of the information gathered about her circumstances was:

- She was 56 years old and she was living with her partner. They had no dependents.
- She was retired due to ill-health and had an income of £3,900 a year from a pension in payment.
- Miss H had some health problems, I won't detail these here as they are known to both parties to the complaint.
- Miss H and her partners total household income was £767 a month. They were recorded as spending slightly over this again each month.
- They jointly owned a property valued at £200,000, it had a modest mortgage that had six years left to run.
- They had had no savings or investments.

Miss H had two periods of DB scheme entitlement within the same scheme. These are as follows:

- Period one relates to service up to April 1995. It had a normal retirement age of 60 and it provided a pension commencement lump sum (PCLS) of £10,399.20 and annual pension of £3,466.40 a year. A cash equivalent transfer value (CETV) for this was £76,456.41.
- Period two relates to service after this and up to November 2000. The benefits at age 60 were a PCLS of £2,255.24 and an annual pension of £751.75 a year. The CETV for this pension was £16,493.28.

Miss H also had a Free Standing Additional Voluntary Contribution (FSAVC) account with a value of £1,648.58.

Grove also carried out an assessment of Miss H's attitude to risk, which it said was 'cautious / medium'.

In January 2018 Grove advised Miss H to transfer her DB scheme pension benefits, and her existing FSAVC, into a personal pension. She invested the proceeds with Royal London

equally in its Defensive Managed and Managed Funds. The suitability report said the reasons for this recommendation were:

- She intended to take a retirement income at age 67 and she wanted a minimum income of £800 a month.
- She needed a medical procedure, but this could not be completed on the NHS in a reasonable time. So, she wanted to get this done privately at a cost of £10,000
- Miss H wanted to obtain the maximum tax-free cash sum available for her medical procedure and use the balance to clear some of her mortgage and reduce their outgoings.

Miss H complained in May 2021 to Grove about the suitability of the transfer advice. Her representative said the advice was negligent and had she had lost money due to it. It had more risk than was suitable for her as she had no investment experience, a cautious attitude to risk and a low capacity for loss. She could not afford to risk her pension.

Grove didn't uphold Miss H's complaint. It said the advice was correct and the appropriate level of care and consideration was taken. The documentation reflects the discussions that took place at the time of sale.

Miss H referred her complaint to our service. An investigator upheld the complaint and recommended that Grove pay compensation. He said that the transfer was not financially viable as Miss H would not be able to receive the investment returns needed. And there was no urgency, or pressing need, for her to take her benefits. He didn't think that her need for a medical procedure was enough of a reason to give up her DB scheme benefits. Miss H had not used the pension money for this medical procedure.

Grove disagreed, saying:

- The transfer was suitable for Miss H as she needed the medical procedure to improve her life, and she also wanted to repay some debt. She had no other means of doing this.
- It was explained to Miss H that the transfer would significantly reduce her retirement income and that this was an 'expensive' way to raise funds. Miss H understood this, but she agreed to go ahead as she wanted the money.
- The investigator said that some alternatives were not discussed with Mrs H, but Grove gave advice on what Mrs H said were her objectives.

The investigator wasn't persuaded to change their opinion, so the complaint was referred 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.

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 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 largely the same reasons 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 the transfer was in Miss H's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The critical yield required to match Miss H's pension benefits at age 60 for the first period of DB scheme membership was 26.39%. If she took the maximum tax-free cash and a reduced pension this fell to 22.04%. Similar amounts for the second period were 28.34% and 24.25%.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and is 2.8% per year for three years to the scheme retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Miss H's attitude to risk and also the term to retirement. I think Miss H was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with that attitude to risk.

And I accept that the point-of-sale documentation does say this. Amongst other things it tells Miss H that this is a very expensive way to raise money and that this decision could cost her

around £47,000 by age 87. So, the advice was given on the basis that the DB transfer would materially reduce Miss H's retirement income.

So, as a starting point this indicates that a transfer out of the DB scheme wasn't in Miss H's best interests. But financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits.

Grove has said the transfer was made on the basis that Mrs H had a real need for the tax-free cash in the short term. I've considered this below.

Flexibility and income needs

The advice was given on the basis that Miss H needed the tax-free cash that the DB scheme transfer, and the transfer of the FSAVC, would release. And I don't doubt that Miss H wanted to undertake a medical procedure at the time and that this would have real advantages to her. But what I'm not persuaded about is that she was able to do this immediately or that other means of funding it were fully explored.

It's worth re-emphasising that the transfer of the DB scheme benefits would have significant financial consequences for Miss H. She was likely to be worse off in retirement. Added to this she and her partner was currently unable to work and it's fair to say 'money was tight' for them. And this was her main pension provision above the state pension. So, this was a very important decision that would have far reaching consequences for her.

I don't think it's certain that Miss H needed the funds immediately. It's not clear that she could have the medical procedure in the near future. And it's also not clear if she had a firm plan to do this. And it's likely she would need the pension income from the DB scheme, which would be significantly reduced. So, if there wasn't a reasonable prospect of her having the procedure in the very near future then she shouldn't have transferred.

And I don't think that all of the options Miss H may have had to do this were properly explored. In this situation I would have expected a number of other things to be looked at in detail. For example, Miss H may have been able to borrow in some form, or take her scheme benefits earlier due to her situation. I appreciate that Grove now says that these were considered but the point of sale documentation doesn't show this was done in any detail.

And Miss H's normal retirement date from the scheme was only three years away. Even if she didn't want to borrow over the longer term she maybe could have done this over a shorter period and used the DB scheme's PCLS to repay it. Again, this doesn't seem to have been looked at, other than superficially.

So, overall, I'm not persuaded that Miss H required flexibility in retirement. This is because based on the evidence I've seen, I don't think she had a genuine need to access her tax-free cash earlier than the normal scheme retirement age and leave her funds invested until a later date.

I also can't see evidence that Miss H had a strong need for variable income throughout her retirement. This doesn't seem to have been discussed. In fact Miss H's actual retirement needs don't seem to have been addressed in any detail. I haven't seen any consideration of her likely income or expenditure. It's not clear to me how Grove could have properly advised her about her retirement options without doing this.

Death benefits

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. It was noted on the suitability letter that Miss H would like any lump sum to go to her partner. And information about the differences between how dependent benefits worked for both the DB scheme and the personal pension was provided in this letter.

I appreciate death benefits are important to consumers, and Miss H might have thought it was a good idea to transfer her DB scheme to a personal pension because of this. The lump sum death benefits on offer through a personal pension might have been an attractive feature to Miss H.

But, the priority here was to advise Miss H about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Grove explored to what extent Miss H was prepared to accept a lower retirement income in exchange for higher death benefits.

And as far as I know, her partner wasn't dependent on her, and death benefits weren't a material part of the advice. The reference to this seemed to be a want rather than a need. So I don't think transferring the pension to improve the death benefits was in Miss H's best interests.

Suitability of investments

Grove recommended that Miss H invest in two managed funds. Miss H has said that these had more risk than she wanted to take. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Miss H, it follows that I don't need to consider the suitability of the investment recommendation. This is because Miss H should have been advised to remain in the DB scheme and so the investments in the managed funds wouldn't have arisen if suitable advice had been given.

Transfer of the FSAVC

I have also considered the suitability of this recommendation to transfer the FSAVC. As our investigator said there was no reason to transfer this as Miss H could have taken the benefits from this plan or left it as it was. And so, she didn't need to incur the costs of the transfer. Because of this, it wasn't in her best interests to make this transfer.

Summary

I don't doubt that the ability to access some cash straight away would have sounded like an attractive feature to Miss H. But Grove wasn't there to just transact what Miss H might have thought she wanted. The adviser's role was to really understand what Miss H needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Miss H was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Miss H was very likely to obtain lower retirement benefits and in my view, there were no other pressing reasons which would justify a transfer and outweigh this. Miss H shouldn't have been advised to transfer out of the scheme just to access the cash, even if it was to be used to pay for this medical procedure. Whilst this wasn't entirely relevant to the advice given it's worth noting that Miss H didn't use the tax-free cash she released for this reason. I'm not persuaded this was worth giving up the guarantees associated with her DB scheme.

So, I think Grove should've advised Miss H to remain in her DB scheme.

Of course, I have to consider whether Miss H would've gone ahead anyway, against Grove's advice.

I've considered this carefully, but I'm not persuaded that Miss H would've insisted on transferring out of the DB scheme, against Grove's advice. I say this because Miss H was an inexperienced investor with a lower attitude to risk and this pension accounted for the majority of Miss H's retirement provision. So, if Grove had provided her with clear advice against transferring out of the DB scheme, explaining in more detail why it wasn't in her best interests, and what her alternatives were, I think she would've accepted that advice.

I'm not persuaded that Miss H's aim to access her tax-free cash was so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise she had sought out and was paying for, didn't think it was suitable for her or in her best interests. If Grove had explored how Miss H could meet her objectives without risking her guaranteed pension, I think that would've carried significant weight. And, I don't think Miss H would have insisted on transferring out of the DB scheme.

In light of the above, I think Grove should compensate Miss H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#). The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has 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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Miss H whether she preferred any redress to be calculated now in line with current guidance or to wait for the any new guidance/rules to be published. She's said she would like to wait for the outcome of the consultation before her complaint is settled. I consider it's fair that Grove waits for the outcome of the consultation to settle this complaint.

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

The basic objective of the proposed amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and its proposed updates to the DB transfer redress methodology, I'm satisfied that the proposed changes will, if ultimately implemented, still reflect a fair way to compensate Miss H.

I therefore don't consider it necessary for me to wait for any new guidance/rules to come into effect to determine this complaint.

Grove must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, Miss H had retired at the time and she would have been able to take the benefits from the DB scheme at her age 60. So, compensation should be based on her normal scheme retirement age of age 60, as per the usual assumptions in the FCA's guidance.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid into Miss H'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 Miss H 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 her 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 Miss H within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Grove has received notification of Miss H's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes Grove to pay Miss H.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Grove Pension Solutions Limited to pay Miss H 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 Miss H 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 Miss H any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Grove Pension Solutions Limited pays Miss H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Miss H.

If Miss H accepts this decision, the money award becomes binding on Grove Pension Solutions Limited.

My recommendation would not be binding. Further, it's unlikely that Miss H can accept my decision and go to court to ask for the balance. Miss H 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 Miss H to accept or reject my decision before 23 December 2022.

Andy Burlinson
Ombudsman