DRN-3768272

The complaint

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

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 employers' 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'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying 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. Alternatively, members of the BSPS 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 included 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. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr M's scheme benefits had a cash equivalent transfer value ('CETV') of £167,992.50.

Mr M was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. Mr M met with Grove on 22 December 2017 having been referred to them by another adviser.

Grove recorded some information about Mr M's circumstances in a fact-find. It noted that he was 50, married with one non-dependent child. He was employed earning approximately £41,000. His wife was also employed and she earned around £9,000. They had a mortgage on their home of approximately £18,000, which had a remaining term of seven years. They had no other liabilities. Mr M's wife was due around £30,000 from the sale of a property. She also had around £35,000 in ISAs and jointly they had other savings of £14,000.
Mr and Mrs M's combined income was £3,000 a month and their expenditure was £1,800 a month. Grove also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'medium'.

Grove issued a suitability report detailing its recommendation on 15 January 2018. This said Mr M definitely wanted to transfer because he wanted control over his pension and he wanted his wife to have 100% of the fund. It said Mr M wanted to retire from age 60 if it was financially viable, but said that he'd carry on working if it wasn't. It set out a number of general objectives Mr M had confirmed, including improved death benefits, maximise tax-free cash, have control of pension benefits, break all ties with former employer, have flexibility of taking benefits and early retirement.

Grove recommended that Mr M transfer his pension to meet his objectives. It also recommended a pension provider and fund that it said was in line with his attitude to risk. The suitability report also noted that periodic reviews would be provided by Mr M's existing adviser.

Mr M complained to Grove in 2022 about the suitability of the transfer advice. In essence, he didn't think the advice to give up a guaranteed pension income was suitable for him.

Grove didn't uphold Mr M's complaint. It said Mr M approached it in December 2017 because he was concerned his benefits would end up in the BSPS2 of the PPF and he wanted to avoid this. It said Mr M's key objectives were for control and improved death benefits. It said it believed it helped Mr M achieve these things and taking into account what the regulator expected, its advice was suitable. It nevertheless said that, as a gesture of goodwill it was willing to make an offer of compensation of a fixed amount.

Dissatisfied with its response and rejecting Grove's offer, Mr M referred his complaint to us using the services of a representative. He said he maintains the advice was flawed and that by relying on it he has suffered a significant financial loss.

One of our Investigators looked into the complaint and they upheld it. They thought the advice was unsuitable. They said Mr M wasn't likely to improve on the benefits he was already guaranteed by transferring; early retirement at 60 was a 'nice to have' rather than a clearly defined objective; his savings and his workplace pension could've provided him with any flexibility need he might have had; lump sum death benefits was a feature of transferring rather than a real need of Mr M's; and they thought Grove should've appropriately managed his concerns had about the scheme and moving to either the BSPS2 or the PPF.

Grove disagreed. It said it had provided evidence to show the transfer was in Mr M's best interests. But it said, given the Investigator's findings, it believed that compensation should be based on Mr M taking benefits through the PPF rather than the BSPS2 because at Mr M's target retirement age of 60, it said the PPF was more generous - particularly if a cash lump sum was taken.

Grove later indicated that it was prepared to carry out a loss calculation and make an offer of compensation in the interest of concluding matters. But Mr M's representative has confirmed that no offer was forthcoming.

So, because things couldn't be resolved informally, it is necessary for me to issue 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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G 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 Mr M's best interests.

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. My reasons are set out below.

- The transfer value analysis ('TVAS') report, that Grove was required to carry out by the regulator, said that the critical yield - how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.37% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 7.88%. To match the full pension the PPF would've paid from 65 the critical yield was 6.79% and to match the tax-free cash and reduced pension the PPF would've offered, it was 6.41%.

- Despite Grove recording that Mr M's intended retirement age was 60, it did not produce critical yields based on the benefits available to Mr M at this age. Only basing them on the scheme's normal retirement age - a later retirement age than Mr M's target - wasn't relevant to the advice he was seeking and so wasn't helpful to Mr M.

- In addition, the advice was given after the 'time to choose' deadline of 22 December 2017. So it was known at this point that continuing in the BSPS in its existing form wasn't an option for Mr M. So reference to BSPS scheme critical yields was in any event somewhat redundant.

- Grove didn't undertake any analysis of the benefits Mr M would've been due under the BSPS2. I think it should've done. While at the time the analysis was carried out, the only relevant comparison of benefits was technically the PPF (unless Mr M had chosen to opt into the BSPS2 before the deadline), given the timing of its initial interaction with Mr M and the looming 'time to choose' deadline, I think Grove ought to have advised Mr M to opt into the BSPS2 at this point. If only as a precaution before it concluded its formal recommendation. I think it had sufficient information about Mr M's circumstances and objectives at this stage to make a judgement that, on balance, this would be more favourable to Mr M than the PPF. Mr M's plans for retirement were not concrete at this time, so I don't think the reduction in benefits he would've faced by entering the PPF would've been offset by the more favourable terms for very early retirement. And by opting into the BSPS2, he would've retained the ability to transfer out in the future if Grove's advice was to retain his DB benefits.

- In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- So, given Mr M's recorded 'medium' attitude to risk, the discount rate of 4.2% for 14 years to retirement (age 65) and the regulator's middle projection rate, I think Mr M was always likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. And given the shorter term to a retirement age of 60, I think it's likely the critical yields, had they been provided, would've been higher than those at age 65. So I think he was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early.

- For this reason alone, I don't think it was in Mr M's best interests to transfer to a personal pension arrangement.

- Mr M's key objective recorded by Grove, and it appears the main reason it recommend the transfer, was because he wanted to leave 100% of his pension pot to his wife upon his death and to his son when she died. But the priority here was to advise Mr M about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr M drew in his lifetime. And so may not have provided the legacy that Mr M may have thought it would.

- Mr M was contributing to his workplace pension, which would've provided lump sum death benefits. But if Mr M had wanted to leave a legacy for his family, Grove could've explored life insurance as an alternative. It recorded that he had significant disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence Grove did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr M. I don't think that insurance was properly explored as an alternative. And ultimately Grove should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr M's remaining objectives were recorded as being general objectives rather than specific to him and part of an overall retirement plan. For example, Mr M said he wanted to retire early at 60. But he also said that if he got to 60 and it wasn't financially viable to retire he'd carry on working. I'm sure Mr M liked the idea of retiring early. But he already had this option available to him – he didn't have to transfer to achieve things.

- Mr M wanted flexibility to take his benefits from age 55. And while he couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to vary his income throughout retirement, no apparent need for a lump sum and defer taking an income and no need for a cash lump sum larger than his DB scheme would provide. Mr M might have been attracted to the flexibility a personal pension provided – but I think this was simply a feature or consequence of transferring to a personal pension rather than a genuine objective of Mr M's.

- In any event, Mr M already had flexibility. He was contributing to his workplace pension scheme – a defined-contribution ('DC') scheme which did provide flexibility in how and when he could access his benefits. Given the 16% contribution being made to this, I think Mr M's DB scheme income, his savings and this pension could've given him the flexibility to retire early - *if* that's what he ultimately decided. So I don't think transferring to obtain flexibility was in his best interests.

- Mr M said that he wanted a retirement income of £20,000 a year. But Grove made no attempt to carry out a detailed income and expenditure in retirement analysis to interrogate this figure or determine whether it was realistic. In any event, I don't think Mr M had thought through his retirement plans to fully understand what his income need in retirement was. Even if this figure was realistic, Grove doesn't appear to have demonstrated to Mr M that he could sustainably meet his £20,000 income need from age 60 by transferring to a personal pension.

- I think in the circumstances Mr M stood a better chance of meeting his needs by remaining in his DB scheme. It provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. It provided a solid foundation upon which his DC pension, joint savings, which were likely to be added to in the period to retirement and his wife's pension could supplement to likely meet their overall household income need – at least until their state pensions became payable. I think this was a more appropriate way for Mr M to meet his future retirement income needs rather than risking his guaranteed benefits to attempt do so.

- Grove recorded that Mr M wanted greater control over his pension and how it was invested. But I think his desire for control was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been given on the basis his existing adviser would provide ongoing investment reviews. So, I don't think that this was a genuine objective for Mr M – it was again simply a consequence of transferring away from his DB scheme.

- Mr M may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. It also appears he had concerns about the new BSPS2. But it was Grove's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. And if things had happened as they should have, Grove should've advised Mr M to opt-into the BSPS2 as a precaution while it completed its advice. I think this would've addressed some of Mr M's concerns. But even if the BSPS2 didn't go ahead, the

PPF still provided Mr M with guaranteed income and the option of accessing tax-free cash. Mr M was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interest to give up his DB benefits and transfer them to a personal pension at this time. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme – he had little or no investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr M received from Grove was unsuitable for him.

I've thought about Mr M's representative's point regarding the 15% deduction from any redress payable, to take into account the tax he would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr M back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr M for the impact of the unsuitable advice he received.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr M. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish Grove – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr M. Taking everything into account, including Mr M's age and what he's said about the anxiety caused worrying about whether he'll be significantly worse off in retirement as a result of the advice he received, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for Grove to put Mr M**,** as far as possible, into the position he would now be in but for the unsuitable advice. As I set out above, given the timing of the interaction with Mr M and the looming 'time to choose' deadline of 22 December 2017, I think Grove ought to have advised Mr M to opt into the BSPS2 as a precaution before it concluded its formal recommendation. And if things had happened as they should have, I think Grove's subsequent recommendation in January 2018 would've most likely confirmed this as being suitable advice. So it is the benefits available to Mr M under the BSPS2, which should be used for comparison purposes.

Grove 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 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 M and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Grove based the inputs into the calculator on.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 M'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 should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - their 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 DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Grove's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of their redress augmented, and

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

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Grove 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 M'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.

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 £170,000.

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

Grove Pension Solutions Limited should also pay Mr M £300 for the distress and inconvenience this matter has caused.

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

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 28 November 2023.
Paul Featherstone
Ombudsman