DRN-3907574

The complaint

Mr L complains that Grove Pension Solutions Limited wrongly advised him to transfer his defined benefit pension to a personal pension and about the affect this had on this lifetime allowance.

What happened

In May 2020 Mr L met a financial adviser (who I will call B) to get some advice about his retirement. He had a defined benefit (DB) pension from his employer, which would provide a pension based on his salary and length of service. Mr L wanted advice on where to invest the proposed £200,000 tax free cash he would receive from his pension and advice on his Lifetime Allowance ("LTA").

B raised the option of transferring his pension and referred Mr L to Grove for further advice about his options as it wasn't able to advise him about transferring a DB pension.

Grove completed a fact find document with Mr L and then gave its recommendations in August 2020. The documents recorded that:

- Mr L was aged 60 and married. His wife was 58. They were both retired.
- Mr & Mrs L owned their own home which was worth £875,000 with no mortgage.
- They had some health issues but these didn't impact on daily life.
- Mr & Mrs L had £87,000 in savings and no debts.
- Their monthly expenditure was £3,890.

Mr L's retirement needs and objectives were noted as:

- To look at options and the best way to access his DB pension.
- For Mrs L to benefit from the full value of the pension after Mr L's death.
- To have flexibility and control over the way benefits were paid.

Mr L's DB pension had a transfer value of £1,683,257. He also had another personal pension which was already in drawdown and had a current fund value of £11,500.

Mrs L had a DB pension, which had a transfer value of £565,000 and was projected to pay £16,000 per year at age 60. She also had another DB pension from a previous employment projected to pay £6,000 per year from age 65, and a money purchase scheme which was already in drawdown with a current fund value of £56,000.

On retirement at age 60 Mr L's DB pension would provide an income of about £47,000 per year. Alternatively, he could opt to take tax free cash of £236,335 and a reduced income of £35,450.

Mr L's attitude to risk was noted as "medium", which was described as follows: "*I would prefer to invest in a broad spread of sectors….I accept the likelihood of capital loss, especially during periods of market volatility, particularly since roughly half of my fund would be invested in the stock market*."

Mr L was recorded as having some investment knowledge and understanding.

A Defined Benefit Pension Transfer Value Comparator (TVC) had been undertaken. This showed the cost of replacing the scheme benefits would be £2,040,000, compared to a transfer value of £1,683,257.

Grove recommended that Mr L transfer the DB pension to a personal pension and invest in various funds, and told him he could apply for fixed protection 2016 (a form of protection that would provide a larger LTA). Grove also recommended that Mr L take £3,916.66 gross per month, with 25% tax-free and 75% taxable, and said this would equate to £3,537.49 net.

Grove provided details of the charges he would have to pay. Grove would take an initial fee of £14,166.29, while B would receive a fixed fee of £7,500 and 1% per year for ongoing servicing. He was also given details of the fund charges and administration costs.

Mr L crystalised £1,065,000 of his pension and accessed a lump sum of £266,000. He had obtained fixed protection 2016. But he then found he wasn't in fact eligible for this protection, so when he attempted to take the tax free cash this left him with a higher LTA tax charge than he would have had otherwise.

Mr L complained to Grove. In its response to the complaint Grove sad it hadn't done anything wrong, and had never said Mr L was eligible for fixed protection – only that he could apply for it.

When Mr L referred his complaint to this service our investigator thought it should be upheld. The investigator said a fair outcome would be to try and put Mr L in the position he would have been in, if he hadn't been advised to transfer. He said without that advice it was likely Mr L would have taken his full tax free cash and reduced pension under his DB scheme at age 60. He asked Grove to

- do a redress calculation in line with the pension review guidance, as updated by the Financial Conduct Authority in its 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' and if this showed there was a loss, make a payment to cover that loss; and
- calculate the LTA charge that would have been payable by Mr L if he had stayed in the DB scheme and taken the full tax free cash, compared with the LTA charge he would have to pay if he crystallises £1,250,000 from his current pension, to see what additional tax charge Mr L would incur.

The investigator also said Grove should pay compensation of £300 to Mr L for the distress and inconvenience caused to him.

Finally, the investigator noted that the FCA is consulting on possible changes to the FG17/9 guidance and said Mr L should have the option of waiting for the compensation to be calculated in line with any new rules and guidance that might come into force.

Grove said it didn't agree with the investigator and requested an ombudsman's decision, but didn't provide any further comments.

Mr L accepted the outcome but made a number of comments about the proposed remedy. Amongst other things, he said:

- Grove received a fee of over £14,000 for the pension transfer – none of this fee would have been payable if he had not transferred his pension, so it should be refunded.
- In order to regain the benefits the DB pension provided he would need to buy an annuity that mirrors the income and terms that would have been provided. Grove will calculate the cost of providing such an annuity using the calculations set out in FP17/9. Grove will need to recognise that not all of the funds in the pension are

available to buy an annuity – an LTA charge will be payable on the uncrystallised portion. So the net value will need to be used to see whether there's a shortfall or surplus.

- Adjustments will need to be made to the net pension value. If the annuity cost is greater than the adjusted net pension value a redress payment will be due to make up the shortfall.
- It won't be possible to add any redress payments back into the pension, so the payments will need to be made to him personally and would be subject to an overall deduction of 15% to reflect a notional deduction of income tax.
- His remaining LTA at his retirement date was £914,388. The value of his DB pension for LTA purposes was £946,329 – an excess of £31,941. He was keen to avoid paying any unnecessary tax and concluded that if he restricted his tax free withdrawal to £200,000 the total received (including £37,000 from his other pension) would be below 25% of his LTA and so would avoid paying tax at the 55% rate.
- The investigator's view indicates that Grove should calculate what the LTA charge would have been if he'd had stayed in the DB scheme and taken the full tax free cash – and that charge should be calculated on a gross LTA of £1.25m, otherwise it would generate a charge that wouldn't have arisen in reality.
- He had already crystallised 14.79% of his LTA when he drew down his other pension so his remaining LTA under FP2016 would have only been £1,065,125. The actual LTA tax cost was calculated against this figure and so any adjustment would also need to be calculated against the same figure. If Grove uses the full £1.25m figure he will receive a benefit that he couldn't have received.
- He has already crystallised his full remaining LTA of £914,388 (based on the current allowance of £1.073m). Any future increases to the allowance will be of no benefit.
- He was prepared to accept an LTA of £1.25m but that was on the basis of the advice he would be better of transferring his DB pension. If hadn't transferred the pension he wouldn't have any LTA tax liabilities to deal with. If, on the day he receives any redress payment, he's unable to discharge the tax liability and buy an annuity that provides a comparable pension to the one he would have received, he will be worse off as he won't be able to put himself back in the position he would have been in, if the pension transfer had not happened. This doesn't feel fair.
- If he crystallises the remaining uncrystallised pension now and Grove pays the resulting tax bill, it's possible he will end up in a better position if the newly crystallised funds grow in value, which would then be LTA free. But any calculation will always be an imperfect solution. The main components of the calculation seem to be the current cost of a comparable annuity and the current value of the pension fund. Both of these figures will change on a daily basis, so whatever figure the calculations produce, the figure will change within a few days which may or may not be to either party's benefit. The proposal appears to impose a real financial cost to him in order to avoid a potential betterment risk in future, which does not seem fair.
- At the time of the transfer his remaining LTA was £914,388, which would have given rise to tax free cash of £228,597. With the benefit of FP2016 he was led to believe his remaining LTA would increase to £1,065,125, which would have increased the tax free cash available to £266,281. Having originally crystallised his pension based on those figures, it turned out he had crystallised more than he was entitled to. The position has now been corrected resulting in additional costs to him.
- If the annuity cost is greater than the adjusted net pension value referred to above the 'direct cost' can be offset against any payment due, which will prevent this sum being paid twice.
- If the annuity cost is less than the adjusted net pension value the additional costs should still be payable – these are real costs he's suffered and he shouldn't be disadvantaged due to annuity costs having fallen since the errors were made.
- The final payment due will need to be paid to him directly as it's not possible to add

this to the pension.

The investigator considered all the points Mr L raised but explained that they didn't lead him to change his view. He also said he didn't think there should be any further refund of fees back to the pension as the charges would be considered when completing the loss assessment under FG 17/9.

As no agreement was reached, the complaint was passed to me to decide. I issued a provisional view saying I also intended to uphold the complaint but my proposed remedy was a little different. I set out my reasoning as follows:

When giving advice on a transfer from a DB pension, the relevant guidance says an adviser should start by assuming that a transfer will not be suitable. A firm should only consider a transfer to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer is in the client's best interests.

So the starting point is that there's a presumption against transferring and to justify the advice to transfer, Grove would need to clearly demonstrate it was in Mr L's best interests. I've considered the reasons given for recommending the transfer in order to consider whether Grove has demonstrated this.

The transfer value comparator (TVC) showed the cost to replace the DB scheme benefits would be £2,040,000, meaning it would cost considerably more to get the same benefits by transferring.

Grove advised Mr L that he could be £181,000 better off but the effect of an LTA charge wasn't taken into account for this calculation, so it didn't consider the potential tax charge. Overall, the transfer value wasn't generous compared to the benefits Mr L was giving up; it was likely the benefits he would receive were of less value and so a transfer didn't make sense for him financially. Mr L had very little need to risk giving up the pension available to him through his DB scheme and it was highly unlikely he'd be able to match the benefits offered by his DB scheme from the personal pension.

So I've considered whether the other reasons for transferring were enough to justify it – essentially that it would give him more flexibility and control, in particular in relation to providing death benefits for his wife.

Grove said Mr L wanted more flexibility and control over how to take his benefits. But the evidence didn't show he needed this or that this would outweigh the benefits of the DB scheme, taking into account he already had some flexibility, and the ability to take tax free cash together with his other pension provision and savings. And he would also be taking on all the investment risk.

I appreciate death benefits are important and Mr L may have thought it was a good idea to transfer his DB scheme to a personal pension because of this. But the fact that someone has shown an interest in something doesn't necessarily mean it is suitable for them. The priority was to advise Mr L about what was best for his retirement – the main purpose of a pension is to provide income in retirement. I don't think Grove explored to what extent he was willing to accept a lower retirement income in exchange for higher death benefits. I also think the existing benefits in the DB scheme were downplayed.

Any wishes Mr L had relating to death benefits and leaving them as a lump sum for his wife should not have outweighed his need to benefit from his pension; providing more flexible death benefits should have been weighed against the guaranteed benefits he would be giving up.

Mr L said that when he first contacted B, transferring his pension hadn't occurred to him; he wanted advice on where to invest the proposed £200,000 tax free cash from his DB pension and advice on his LTA, and the decision to transfer or not came down to which option would be cheapest and have the lowest LTA charge.

Grove did provide the potential tax charge but told Mr L he could apply for protection and gave him a link to the government website for more information. But the website didn't enable Mr L to check whether he was eligible – it doesn't provide the eligibility criteria. I can't see a good reason for the adviser to tell Mr L he could apply if they knew he wasn't eligible and it's reasonable to assume Mr L would have been led to believe he was eligible. Grove should have explained to him that he wasn't eligible.

Although Mr L sought advice on the LTA from B, it wasn't reasonable for Grove not to include this as part of the transfer advice when it was a fundamental aspect of it. By not taking into account the charge Grove failed to give Mr L everything he needed to make an informed decision.

The flexibility, control and potential for lump sum death benefits provided by a personal pension would have sounded attractive. But Grove's role wasn't just to transact what Mr L might have thought he wanted. Its role was to really understand what Mr L needed and recommend what was in his best interests. Ultimately, I don't think the advice was suitable. Mr L was giving up a guaranteed, risk-free and increasing income when he didn't need to. In my view there were no particular reasons to justify a transfer. And it led to the potential for a much higher tax charge. Mr L could have met his retirement needs either by staying with his existing DB pension or transferring, but the safest route would have been to keep his existing benefits and save any excess income into tax efficient savings. Instead, he transferred his pension and in doing so incurred a substantial tax charge that could have been avoided.

If Mr L had known the true position regarding his tax liability it's unlikely he would have gone ahead with the transfer. He didn't need to transfer his DB pension to meet his retirement needs and could have met his desired standard of living without doing that. The evidence doesn't show that the transfer was clearly in his best interests and it left him open to risks that he didn't need to take.

If Grove had provided clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think Mr L would have accepted that advice – particularly as he hadn't originally thought about transferring and this only came up after he sought advice.

Taking all of this into account I agree Grove should compensate Mr L in accordance with the 17/9 guidance.

By transferring his pension Mr L would face additional tax charges. It's fair and reasonable that this additional loss is covered as it won't be included in the usual DB transfer redress guidance. It's impossible to say how much extra Mr L will have to pay by transferring out of the DB scheme. It's complex and will depend on many factors including when Mr L will die, how he will use his pensions and what returns he will achieve in his personal pension. No award will be perfect and Mr L's actual LTA charges might be higher or lower in future.

Mr L has made detailed comments in reply to the investigator's view, including various scenarios that might happen and how these might affect the compensation he should receive, together with different ways of calculating the loss. I have only summarised his comments but have considered them all carefully. As I've explained, it's impossible to cover *every situation that might arise or predict what his exact losses might be. However, I think it's reasonable to make an award now and bring finality to this complaint and certainty for the benefit of both parties.*

Mr L crystalised £1,065,000 of his pension. I understand the remaining sum of around £620,000 remains uncrystallised. I've taken this into account when considering how to put things right, as set out below.

I said a fair and reasonable outcome would be for Grove to put Mr L, as far as possible, into the position he would now be in but for the unsuitable advice. I considered he would have remained in the occupational scheme. So my provisional decision was that Grove should undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. I set out in detail the directions I intended to make in relation to that.

I said Grove should also pay compensation for future LTA charges. Again, I set out in detail how that should be dealt with

I also said that if both parties preferred, Grove could give an undertaking to Mr L to pay any LTA charges he incurs in future (not taking into account further contributions or new pension arrangements). I invited the parties' comments on this.

Finally, I agreed that a payment of £300 was fair for the distress and inconvenience caused to Mr L.

Replies to the provisional decision

Mr L has accepted the provisional decision, which he says provides a fair way to remedy his complaint. With regard to the suggestion that Grove might give an undertaking to pay any future LTA costs, he would prefer to settle the matter now.

Grove does not accept the findings in the provisional decision or the proposed remedy. It has made detailed comments. I won't set them all out in full but they include:

- Mr L's complaint was initially that it gave incorrect advice on his eligibility for LTA protection. He also said he knew of the significant tax charge and there appeared to be protection against that. It denied this, as Mr L had acted entirely against the recommendation provided and sought advice from B.
- A lot of weight has been given to meeting a client's interests in not losing a guaranteed income, even where not dependent on that income. Not enough weight is given to what Mr L determined was more important to him - which is not taking income directly from the pension scheme. Mr L had a full understanding and made an informed decision on what was in his own best interests.
- He said he wanted to make a decision on whether a cash transfer would be a better choice – the potential for an enhanced pension, more flexibility and enhanced spouse's pension were all attractive but need to be set against increased risk and the additional work involved in managing an investment portfolio.
- His objectives were not vaguely-defined wishes but were grounded in his actual circumstances.
- The only thing that should be considered is that he was led to believe he would qualify for LTA protection. The additional tax charge Mr L is subject to is £37,864. And that has arisen due to failings by B.
- The right measure for assessing the fairness of the transfer value and the likely benefits would be what was relevant to Mr L – one where any cost to get the same

benefits was calculated on higher rates of return than a risk-free rate.

- The advice was suitable as Mr L was able to meet his objectives of flexibility and not relying on a fixed and unnecessary income. His wife had her own guaranteed income and with the state pension then coming into play, that further reduced the need to make withdrawals from his transferred pension.
- If it had advised Mr L that his best interests were to receive a guaranteed income and not – as he had determined – to achieve his objectives, Mr L would have gone ahead anyway. He was entirely aware of what he was doing. And he was told about the LTA liability and was aware there was an LTA charge to pay in future.
- Even if the complaint is upheld, the proposed remedy is not appropriate. The Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers doesn't need to be considered since he can be put in the same position he would have been in if he hadn't transferred – by buying an annuity. He would in fact be better off as he's been withdrawing income for the last two years and his pension pot is still able to buy an annuity that's better than what he would have received from his pension scheme.
- It's wrong that the redress sets out two different approaches to assessing loss from one single event.
- If the aim is not to put Mr L in the same position he would have been in, if he hadn't transferred – which can be done by buying an annuity for him – then the calculation should be either:
    - a prospective loss assessment calculating the value of the scheme benefits using a net 4% discount rate to age 75, with the cost of securing benefits then increased to account for the cost of the LTA charge; or
    - a loss assessment based on the scheme benefits having become payable from age 60, with the capital cost of securing the ongoing scheme pension increased to account for the LTA charge incurred in securing those benefits.

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.

Although I've only summarised some of the key points Grove has made, I have considered all of its additional comments carefully and they don't lead me to change my provisional view. The comments are detailed but the key points include that Mr L knew what he was doing and was able to make a fully informed decision; he wanted all the benefits that the new pension arrangements would bring and was aware of what he was giving up; and the provisional decision doesn't give enough weight to what Mr L determined was more important to him. Grove also says Mr L came to it looking for advice on a transfer.

However, this needs to be seen in the context that Mr L had not initially set out to transfer his pension – he had approached B for advice on how to invest the tax-free cash that he intended to take from his DB pension and on the LTA allowance. It was only after B raised the issue of a transfer that he was referred to Grove for advice on this. So rather than Mr L being someone who set out to get advice on a transfer and knew what his objectives in relation to this were, I'm satisfied that his initial intention had been to take his benefits from his DB pension.

I appreciate that after discussing a possible transfer with Grove, he did ultimately follow its advice to go ahead with this. But I've explained why I don't think that advice was suitable and Grove's further comments don't change my view on this. I don't agree that he would have proceeded even if Grove had advised him not to. As I've said, he wasn't considering a transfer until it was suggested to him. Although he did then set out some objectives in relation to flexibility and death benefits, he also made it clear that LTA was very important.

Grove did refer to this and he was aware there would be a charge. But he wasn't advised properly about this. Grove can't pass all the responsibility for that onto B; if it was advising him to transfer it needed to ensure he had all the information necessary to make an informed decision, and he didn't. For the reasons set out previously, I'm satisfied he only went ahead because he was led to believe he would have protection but that wasn't correct.

I've weighed up Grove's comments about the advantages of a transfer. But the starting point is there's a presumption against transferring. And the onus is on Grove to show that it was in Mr L's best interests, and that the benefits of a transfer outweighed the risks. I don't think it has demonstrated this and I remain of the view that if Mr L had known the correct position it's unlikely he would have gone ahead with the transfer.

For these reasons, and the reasons in my provisional decision set out above, the complaint should be upheld.

Grove says even if the complaint is upheld the remedy isn't appropriate. Grove argues that Mr L should purchase an annuity. It's evident Mr L will benefit from flexibility by virtue of the position he's now in, but that has only arisen because of the unsuitable advice. And ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. I see no reason to depart from this in the circumstances of this complaint.

I accept that there are two elements to the redress, calculated in different ways. But that's because there are two separate issues. The usual pension review redress calculation won't take into account the potential tax liability that Mr L faces. So that needs to be considered separately. While they may arise out of the same events, the two elements of the remedy are addressing different issues. The key point is what's needed to put things right, not what caused the problem.

I appreciate what Grove says about the different calculations but as I've said, they are dealing with different issues. They inevitably include making some assumptions about what might happen. I set out the reasoning in the provisional decision and see no reason to change this.

Mr L has said he would prefer not to seek an undertaking from Grove to pay any tax liability in future. Given the amount of time until he reaches 75 I think it's fair and reasonable to provide a remedy that gives certainty to both parties now and it remains my view that the proposed remedy is fair in the circumstances of the case.

Putting things right

A fair and reasonable outcome would be for Grove to put Mr L, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. Grove must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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

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

If the redress calculation demonstrates a loss, compensation should be paid. It's unlikely a payment into the pension will be possible due to protection or allowance implications, so it should be paid directly to Mr L as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

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

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

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

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.
A policy statement was published on 28 November 2022 which set out the new rules and guidance. 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 L whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr L.
If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Grove to carry out a calculation in line with the updated rules and/or guidance in any event.

Grove must also pay compensation for future LTA charges. Mr L has commented on how this should be calculated and whether the allowance figure should be £1.25m. Essentially what's needed is a comparison of the tax Mr L would have paid if he'd stayed in the DB pension with the tax he has paid, or will pay, as a result of transferring his pension. Uncrystallised benefits will be tested against the LTA at age 75. I think it's reasonable to assume that the uncrystallised amount of £620,000 (plus growth on it until age 75) will be tested against Mr L's lifetime allowance at age 75. The LTA might be higher than it is now or lower. In the more recent past, it increased on a regular basis, but it's currently frozen until 2026. For the purpose of this calculation it should be assumed that the whole amount will be subject to LTA.

I have considered the regulator's medium projection rate of 5% and the recommended plan's charges of around 1%. I think applying an assumed net growth rate of 4% to the sum of £620,000 from the time Mr L crystalised his benefits in 2020 until he turns 75 is reasonable. This will give Grove the amount that is likely to be subject to an LTA charge. The charges will be 25% of this sum and represent Mr L's loss. So this is the amount he should be compensated for, together with any tax he has already paid as a result of transferring. But the amount being paid to Mr L now can be reinvested and achieve growth until 75. So, the loss amount can be discounted with the same 4% rate for the time between Mr L's 75th birthday and the date of settlement.

LTA charges would also apply to any pension amount exceeding the crystalised funds at age 75. However, given the recommendation for Mr L to take tax-free cash and regular income from his plan, I don't think it's likely, even with growth, that his plan value will exceed the originally crystalised amount.

For clarity this means:

- Grove must apply an assumed net growth rate of 4% to the sum of £620,000 from the time Mr L crystalised his benefits in 2020 until he turns 75. This will give the amount that is likely to be subject to an LTA charge.
- The charges will be 25% of this sum.
- If this amount, together with any tax Mr L has already paid as a result of transferring his pension, is higher than the tax he would have paid if he had not transferred, that sum represents Mr L's loss and is the amount Mr L should be compensated for.
- However, it needs to be considered that the amount being paid to Mr L now can be reinvested and achieve growth until he reaches 75. So, the loss amount can be discounted with the same 4% rate for the time between Mr L's 75th birthday and the date of settlement.
- Usually I would ask Grove to pay compensation into the pension. However, as there will already be LTA implications, further payment into a pension would add to this. So all compensation should be paid directly to Mr L 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.

Finally, I agree that a payment of £300 is fair for the distress and inconvenience caused to Mr L. I appreciate he considers a higher payment would be fair but I think it's a reasonable amount to reflect the upset caused to him on finding that the advice had not been appropriate and would lead to a higher tax charge.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr L within 90 days of the date Grove receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my decision to the date of settlement for any time in excess of 90 days that it takes Grove to pay Mr L (subject to the allowance for any delay due to data gathering for a SERPS adjustment).

Where I uphold a complaint, I can award fair compensation of up to £355,000, 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 £355,000, 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 L the compensation amount as set out in the steps above, up to a maximum of £355,000.
Where the compensation amount does not exceed £355,000, I additionally require Grove Pension Solutions Limited to pay Mr L any interest on that amount in full, as set out above.

Where the compensation amount exceeds £355,000, I only require Grove Pension Solutions Limited to pay Mr L any interest as set out above on the sum of £355,000.

Recommendation

If the compensation amount exceeds £355,000, I recommend that Grove Pension Solutions Limited pays Mr L the balance. I additionally recommend that any interest calculated as set out above on this balance be paid to Mr L.

This recommendation is not part of my determination or award and would not be binding on Grove Pension Solutions Limited. Further, it's unlikely Mr L could accept my decision and go to court to ask for the balance. Mr L may want to consider getting independent legal advice before deciding whether to accept any decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 February 2023.

Peter Whiteley
Ombudsman