DRN-4031350

The complaint

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

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

What happened

Mr G approached Grove in 2014 to discuss his pension and to see if releasing funds from it could help ease his current financial position.

Grove gathered information about Mr G's pension entitlement under his former employer's DB scheme which he was a deferred member of. It obtained a transfer value analysis report. Grove completed a fact-find with Mr G and an assessment of his risk appetite, which it said was medium. Amongst other things it noted that Mr G was aged 55, single and had no dependents. He was employed in the private sector but hoped to find work in the public sector as he had previously, which was where he'd joined the DB scheme. Mr G intended to retire at age 66 and believed he would need a minimum income of £800 a month in retirement. He owned his own home, valued at £220,000 secured with an interest only mortgage of £71,000. He had credit card debts of £3,700 and a loan of £4,300. He was paying those debts back at a cost of £240 a month. He had regular outgoings of £1,378 a month which exceeded his income of £1,300 a month.

Mr G's DB scheme had a cash equivalent transfer value ('CETV') of £39,410. At the scheme's normal retirement age of 65 it would pay him either:

- a pension of £3,322 and a lump sum of £5,173, or
- a reduced pension of £2,412 and a lump sum of £16,086

Grove calculated the growth rates required to match these benefits from an alternative pension (the critical yields) were 12.82% and 11.29% respectively.

In March 2014 Grove sent Mr G its suitability report setting out its analysis and recommendations. Amongst other things it said Mr G's principal objective was to raise tax free cash (TFC) to allow him to pay off his unsecured debts which would enable him to start repaying the capital on his mortgage. It said Mr G had changed job, which had reduced his income, and since then his expenses had been greater than his income causing debts to build up.

Grove said the critical yields were high and not achievable if Mr G transferred his DB scheme funds to a personal pension. It added that he should be in no doubt that a transfer didn't represent good value and his overall pension provision would suffer as a result. It said that transferring was a very expensive way of raising funds and that if Mr G lived to age 84 he would have lost around £19,500.

Grove said it had discussed the risks and potential losses with Mr G but he was prepared to accept those. He said he had a back-up plan in that, if he found a job in the public sector again, he could contribute to the relevant pension scheme for the next ten years.

Grove recommended that Mr G should transfer his DB scheme funds to a named personal pension. Its fee for its advice and arranging a transfer was £2,955. It would also charge him 1% of the fund value for ongoing financial advice. The personal pension provider would charge him 0.5% of the fund value for administering the pension each year.

Mr G accepted Grove's advice and it arranged the transfer. By the time the transfer was completed Mr G's CETV had increased to around £41,600 from which he received TFC of around £10,400.

In 2022 Mr G complained to Grove about the suitability of the transfer advice. Amongst other things he said Grove:

- Hadn't told him about the advantages and disadvantages of transferring from a DB scheme.
- Didn't highlight that his personal pension would need to perform particularly well to match the scheme benefits.
- Didn't provide adequate warning of the risks involved with a transfer.
- Didn't explore other options to meet Mr G's objectives.
- Gave the impression that Mr G could be better off by transferring.
- Shouldn't have recommended transferring to allow Mr G to access TFC.
- Didn't act in line with the regulator's guidance.
- Didn't identify a sufficient basis upon which to recommend a transfer.
- Didn't consider Mr G's capacity for loss.

Grove didn't uphold Mr G's complaint. It said its advice was correct and Mr G was fully aware of the risks involved in transferring.

Mr G brought his complaint to our Service. Grove objected to us looking at it. It said Mr G had said in his complaint letter that he'd told Grove during its fact-find that one of his objectives was the "*better performance*" of his pension. Grove said that, since transferring, his pension was worth less than the original CETV amount. And, in some years particularly in 2016, his pension had suffered losses. So, Mr G should have known, more than three years before he complained, that he was not getting *better performance* from his pension and as such he was out of time to complain.

One of our Investigators looked into Mr G's complaint. He said he didn't think Mr G had brought his complaint too late and went on to consider its merits. Having done so he recommended that the complaint should be upheld. He said he didn't think Grove's advice was suitable for Mr G. The Investigator said Grove should pay compensation for any losses Mr G suffered because of its unsuitable advice.

Grove didn't agree with our Investigator's assessment. It continued to argue that the complaint was out of time. It also disagreed that its advice was unsuitable.

The investigator wasn't persuaded to change his 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.

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

Is this a complaint we have the authority to look at?

We don't have a free hand to consider each and every complaint we receive. Our rules as set out in the FCA Handbook, are commonly referred to as DISP. DISP 2.8.2R says that where a business doesn't consent (as Grove hasn't here), I can't consider a complaint made more than six years after the events complained of, or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint.

The events Mr G complains about, the advice to transfer his DB pension funds, took place in 2014. Mr G didn't complain until 2022. That is clearly outside of the six years allowed to bring a complaint to this Service. And Grove has argued that Mr G should have been aware of his grounds for complaint sooner. So, I have to consider whether he brought his complaint within three years of when he ought reasonably to have been aware he had cause for complaint.

Grove has focused on a comment in Mr G's complaint where he said that one of his objectives when seeking advice was the "*better performance*" of his pension. Grove said that, after accepting its advice, paying fees and taking TFC Mr G's pension fund instantly reduced in value by around £14,000. Then, at other times, the personal pension provider has produced statements which showed that his pension fund had suffered losses. And, by 2018, the fund value was still less than his original CETV amount. So, Grove argues that Mr G should have been aware more than three years before he complained that his pension had not had "*better performance*" and as such, Grove believes Mr G brought his complaint out of time.

I'm not persuaded by Grove's arguments. First, Mr G had numerous points of complaint. But in essence the thrust of his complaint is that Grove shouldn't have advised him to transfer out of his DB scheme. He's raised some individual points, as detailed above, in support of that complaint. But the issue of better performance aside, which I deal with below, there's no evidence that Mr G ought reasonably to have known that Grove's advice wasn't suitable for him until he contacted his professional representatives. It was them who told him he might have been misadvised. And it was only then that he learned he had cause for complaint. He then complained promptly and within the three year window for doing so.

Grove has focused on one issue, about Mr G's wish for *better performance* of his pension. But aside from Mr G's complaint there's no evidence he told it during the advice process that his objective was for the transferred pension to perform better than his DB scheme. Indeed, prior to completing the fact-find Grove had sent Mr G some information about transferring from a DB scheme and the risks and disadvantages involved with it. Grove discussed these risks with Mr G and asked him for his thoughts. Mr G told Grove he was aware his pension would be "*a lot lower*" if he transferred. So, I don't think it's the case that, when he approached Grove for advice, Mr G's key objective was better performance. Therefore, I don't think he had reason to complain about that sooner as it hadn't ever been a goal of his and as such wasn't something he expected to happen.

It's not clear why Mr G referred to telling Grove he wanted his pension to perform better by transferring when there's no evidence of this at the time. And it's notable that Mr G raised his complaint around eight years after Grove had given its advice. So it's possible that his memory has faded and been coloured by the passing of time. But, in any event, as I've said above, that wasn't the focus of Mr G's complaint; instead the focus was that the advice to transfer out of his DB scheme was unsuitable for him. And as there's no evidence he ought reasonably to have been aware of that more than three years before he complained, I'm satisfied he made his complaint in time. That means this is a complaint we have the authority to consider. So, I've gone on to consider the merits of Mr G's complaint below.

Was Grove's advice suitable for Mr G?

While looking at the merits of Mr G's 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 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Grove should have only recommended a transfer if it could clearly demonstrate that it was in Mr G's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. But, that's not to say I agree with all of Mr G's points of complaint.

Contrary to Mr G's complaint, Grove did go to some lengths to spell out some of the risks inherent with a transfer of this nature. In particular it made it clear that he was likely to be worse off in retirement by transferring. But identifying risks and bringing disadvantages of a course of action to a consumer's attention, is not the same as clearly explaining why transferring was not in Mr G's best interests.

Grove's suitability report is clear that Mr G would be worse off in retirement by transferring the DB funds to a personal pension. Grove noted the critical yields were not achievable and it said that Mr G would likely be around £19,500 worse off by transferring. And Mr G had told Grove he understood that to be the case. As all parties are agreed that Mr G was likely to be worse off in retirement by transferring, I don't intend to rehearse the reasons for that.

Grove's said the transfer was suitable for Mr G because of the difficult financial position he was in. That is his regular outgoings were greater than his income and this had caused him to run up debts. And transferring would allow him to pay off those debts and so have some disposable income each month.

At the time Grove produced its suitability report Mr G's CETV stood at £39,410 from which he could have taken TFC of £9,853. That sum would allow Mr G to clear his unsecured debts which in turn would free up around £240 a month that he was currently paying to service those debts. So, I can understand why transferring his funds to release TFC and remove that debt burden was an attractive prospect for Mr G. But that doesn't mean that giving up his safeguarded pension benefits in order to achieve that was in his best interests. There were other ways he could have removed or reduced his debt burden.

Before speaking with Mr G Grove sent him some information which included other ways to manage his debts, those included:

- Making further borrowing from a mortgage provider.
- Moving credit card balances to a lower interest rate, or a 0% deal.
- Consolidating debts into a single loan.

Grove did raise the possibility of consolidating Mr G's unsecured debts into a single loan in its suitability report. Mr G dismissed this as he didn't want to take on further borrowing. But there's no evidence on file at the time, that Grove explored the other options with him. When completing the fact-find Mr G wasn't certain what his credit card repayment interest rate was but it seems unlikely it was a favourable rate of 0%, as I think that's something he would have been aware of. In fact Mr G commented that – across both his loan and the credit card – he estimated he was paying interest of around £100 a month. And if that was accurate then around 40% of his total monthly debt payments was interest. So, it's likely that his credit card payments attracted relatively high interest. In those circumstances he could have benefited from a switch to a 0% balance transfer credit card. But there's no evidence Grove explored this other than sending Mr G some information. I think it should have discussed it with Mr G too and documented that discussion.

Similarly Mr G could have considered remortgaging his home and consolidating his debts that way. And, given that mortgage repayments are typically at much lower levels than unsecured debts like loans and credit cards, this is likely to have made his payments far more affordable. In its response to our Investigator's assessment Grove's suggested that this was unlikely to have been an option for Mr G. It told us Mr G would have struggled to find a lender willing to offer him a mortgage. It said it confirmed this with a mortgage broker at the time. But, it's provided no evidence on file of advice from a mortgage broker and there's nothing within its suitability report or fact-find to show it considered this possibility. And given the relatively low loan to value ratio (Mr G would have only needed to borrow around 32% of his home's value) and the fact he was in full time employment, it's not clear why Mr G couldn't have swapped to a repayment mortgage at that time.

That said, a repayment mortgage would still have involved Mr G making considerable repayments of a debt, which was clearly something he didn't want to do at that time. But it's notable that Grove had recorded that Mr G was considering downsizing in the future. And once he'd done so, and was mortgage and debt free, he should be able to live on a fairly modest income once he'd retired. In other words, Mr G was plainly aware that by downsizing he could clear his mortgage and other debts and would reduce his income needs while doing so. In fact, this is something that Mr G has since done. So, given that Mr G was in a situation where he was overspending each month, and accruing debts as a result, Grove would have been better placed to have a frank discussion with Mr G about the advantages of downsizing sooner. That way he could have cleared his debts, had a reduced expenditure and still retained all of the benefits from his DB pension scheme. But it doesn't appear that Grove put that to Mr G.

I'm aware that Grove isn't a credit or mortgage broker, nor is its role to give debt management advice. But the starting point for consideration of a DB transfer is that it will be unsuitable. So, in order to act in a client's best interests, it needs to consider the alternatives available to transferring out of a DB scheme. And, if Grove wasn't in a position to provide the expert advice itself it should have referred or encouraged Mr G to seek that advice before recommending a transfer from his scheme.

Another option for Mr G would have been to take his pension benefits from his DB scheme early. Grove's said that the scheme wouldn't allow early retirement. But it hasn't provided any evidence, beyond its comments, to support that statement. Mr G was already 55 and, as far as I'm aware, his scheme would have allowed early retirement at that age. Both Mr G's former employer and the DB scheme itself provide information on websites which show that early retirement from the scheme would have been possible at age 55, although at reduced rates.

From the information available online it appears that Mr G could have taken his scheme benefits straightaway and received a TFC lump sum, which would have been reduced by 21.1% and a yearly pension reduced by 37.7%. That would have allowed Mr G to comfortably pay off his unsecured debt and give him an extra income. That income would have increased each year in line with inflation and would have continued to be payable until Mr G's death. But there's little evidence that Grove explored this possibility with him. Instead, on Grove's recommendation, Mr G gave up the possibility of a guaranteed income for life in order to pay off debts. I don't think that was in his best interests.

Summary

I don't doubt that the option of receiving a TFC lump sum that would allow Mr G to clear his debts would have been very attractive to him at the time. He was clearly overspending each month and had no savings to cover an emergency situation or to pay for any ad hoc expenses or for lifestyle choices like holidays. But Grove wasn't there to just transact what Mr G might have thought he wanted. The adviser's role was to really understand what Mr G needed and recommend what was in his best interests.

Ultimately, I don't think the advice Grove gave to Mr G was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, he was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr G shouldn't have been advised to transfer out of the DB scheme, giving up the guarantees that came with that, in order to repay debts when there were other options available to him.

So, I think Grove should have advised Mr G to remain in his DB scheme.

Of course, I have to consider whether Mr G would've gone ahead anyway, against Grove's advice. Grove argues that this is the case. It said that in its experience consumers with a pressing need for cash, like Mr G, will wish to release money from their pensions even when its recommendation is not to transfer. I accept that this is Grove's experience. But, Grove's advice to Mr G was that he should transfer out of his DB scheme. In other words Grove's expert recommendation was that he'd be in a better position by doing that than staying in his DB scheme. But, as I've said above, Grove didn't present all of the alternative options to Mr G. And I think that, if it had been clearer about those, Mr G would not have chosen to give up his guaranteed benefits for a short term gain.

Mr G was an inexperienced investor and other than his state pension, and the hope that he might again pay into another pension scheme at some unidentified point in the future, he had no other pension provision. So, if Grove had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice and remained in the scheme.

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

Putting things right

A fair and reasonable outcome would be for Grove to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr G would have most likely remained in the DB scheme if Grove had given suitable advice.

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.

For clarity, Mr G 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, 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 PS22/13 and 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 G's acceptance of the decision.

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

- always calculate and offer Mr G redress as a cash lump sum payment,
- explain to Mr G 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 G receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr G accepts Grove's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr G 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 G's end of year tax position.

Redress paid to Mr G 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 any 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 G'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 G 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 G the balance.

If Mr G 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 G can accept my decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 June 2023.

Joe Scott
Ombudsman