

The complaint

Mrs F 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

Mrs F approached Grove in 2015 to discuss her pension and retirement needs. I understand she was referred to it by a friend.

Grove completed a fact-find to gather information about Mrs F's circumstances and objectives. This showed that:

- She was 55 years old and in good health.
- She was married but had no dependents (other than her partner).
- She and Mr F were currently employed.
- They owned their own home which was subject to a mortgage.
- They had no savings or investments.
- They had a modest amount of credit.

The fact-find recorded that Mrs F had the following pension arrangements:

- A deferred DB pension scheme with a transfer value of about £52,000.
- Six years' service in her present employers DB scheme which was now also deferred.
- Three years' service in her present employers defined contribution (DC) pension. Mrs F was a current, and contributing, member of this scheme.

Grove also carried out an assessment of Mrs F's attitude to risk, which it said was 'medium'.

Following this initial contact Grove sent Mrs F an email dated of 15 April 2015. This advised her not to transfer her DB pension. Grove explained why it thought she should not do this. Mrs F responded and said that she would like to proceed anyway. Grove then said it would arrange this.

On 22 April 2015, Grove sent a suitability letter about the transfer of her DB scheme to a personal pension. It again advised Mrs F not to transfer. The suitability report said the reasons that Mrs F wanted to transfer were that she:

- Wanted to make repairs to her home that would cost £5,000.
- Wanted to repay debts of £4,000. This would reduce her monthly outgoings by £334 per month.
- Wanted to take a holiday abroad.
- Wanted to have the financial security of an emergency fund.

The transfer proceeded in April 2015. Mrs F invested £51,615 into a third party personal pension using a managed fund.

Mrs F complained in 2021 to Grove about the suitability of the transfer advice. She said she thought the transfer was unsuitable for her and it had caused a loss. And whilst some of the documentation did explain that the transfer wasn't in her best interests, she didn't think this was properly explained to her, in a way that she would understand.

Grove didn't provide a final response to Mrs F's complaint, and she referred it to the Financial Ombudsman. An Investigator upheld the complaint and recommended that Grove pay compensation. Our Investigator didn't think it was right to say that Mrs F was likely to be an insistent customer as there were flaws in the process that Grove followed. And he agreed that the DB transfer wasn't likely to be in Mrs F's best interests.

Grove disagreed, saying:

- The information given to Mrs F at the time clearly explained that the transfer was not in her best interests, and why this was. This was communicated to her reasonably.
- Despite the information Mrs F received she specifically asked Grove to arrange the transfer of her pension. Grove explained that she could borrow the funds that she needed, rather than transfer her DB scheme.
- The process Grove followed to treat Mrs F as an insistent customer was robust and met, or exceeded, the FCA's guidelines of the time.
- Even though she responded very quickly to the information report saying she shouldn't transfer, information had been provided to her orally already and so this doesn't indicate that she wasn't aware of the consequences of the transfer.

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 19.1.6G 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 Mrs F's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

Grove carried out a transfer value analysis report (as required by the regulator) showing how much Mrs F's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (the critical yield).

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst Grove wasn't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mrs F was 55 at the time of the advice and wanted to retire at age 60, although the latest she would consider was her age 66. The critical yield required to match Mrs F's benefits at age 60 was 16.25% if she took a full pension and 11.25% if she took tax free cash and a reduced pension. This compares with the discount rate of 5.25% per year for four years to retirement in this case.

For further comparison, 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, Mrs F's attitude to risk and also the term to retirement. I think Mrs F 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 her attitude to risk.

And I do recognise that the written information from the point of sale does make it clear that the transfer is not financially viable. For example, in the Pension (suitability) Report it says that *'You should therefore be in no doubt that this transfer does not represent good value and your overall pension provision will suffer as a result of this transaction.'* And the other written information does say that Grove's advice was that Mrs F shouldn't transfer her DB scheme as it represented poor value.

For this reason alone, a transfer out of the DB scheme wasn't in Mrs F's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Grove has said in this case. There might be other considerations which meant it was reasonable for Grove to facilitate the transfer of this pension, despite providing lower overall benefits. I've considered these below, and if it was fair to treat Mrs F as an insistent customer.

Flexibility and income needs

Essentially, Mrs F wanted to take the benefits from her DB scheme early and she wanted to release some tax free cash to repay debts, make some house repairs and taking a holiday.

But I think it's established that Mrs F would have been better off looking to achieve these aims by staying in the DB scheme and obtaining these funds elsewhere. This is because these weren't things she needed, rather they were things she was interested in doing. Or waiting to the schemes' normal retirement date and taking some cash from the scheme.

Mrs F wanted £12,000 per year in retirement according to the information gathered by Grove. If she took benefits from the DB scheme at age 60, she would be entitled to an annual income of £3,400. She was also entitled to take a tax free cash of £11,000 with a reduced pension of about £2,800.

This could be added to her state retirement provision and her other DB and DC schemes, and it seems reasonable to say this could have met Mrs F's retirement needs as noted in the fact-find.

Again I can accept that Grove, in the suitability report did also explain this. Amongst other things it said that:

'I stressed therefore that this is clearly a very expensive way to raise funds. In fact to give you an idea as to how expensive, I then explained that if you release the pension now and then live to age 84 (in line with life expectancy) you would have lost about £13,300 in total pension payments. Your reaction to the above losses was to say "I could just do with the money now. I have a pension with my current Job so I am not bothered about losing money I have never seen."

And it went on to say

'We also discussed the advantage of borrowing the money in that repayments would be affordable and the amount of interest you would pay would probably be far less than the losses incurred with accessing the pension. ... You said "I do not want to get a loan under any circumstances."

Overall, I'm satisfied Mrs F could have better met her income needs in retirement through the DB scheme. And looking to fund her needs through other means was the right way to go.

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. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mrs F. But whilst I appreciate death benefits are important to consumers, and Mrs F might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here was to advise Mrs F 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 Mrs F was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mrs F was married and so the spouse's pensions provided by the DB scheme would've been useful to her husband if Mrs F predeceased him. I don't think Grove made the value of this benefit clear enough to Mrs F. This was guaranteed and it escalated – it was not dependent

on investment performance, whereas the sum remaining on death in a personal pension was.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mrs F.

Suitability of investments

Grove recommended that Mrs F invest in a third party's pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mrs F, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mrs F should have remained in the DB scheme and so the investments in wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility and the ready access to a lump sum on offer through a personal pension would have sounded like attractive features to Mrs F. But Grove wasn't there to just transact what Mrs F might have thought she wanted. The adviser's role was to really understand what Mrs F needed and recommend what was in her best interests.

Ultimately, I agree that Mrs F transferring her DB scheme into a personal pension wasn't suitable for her. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs F 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. Mrs F shouldn't have transferred out of the scheme to repay debts that were affordable and to fund home improvements or a holiday. These weren't worth giving up the guarantees associated with her DB scheme.

Was Mrs F an insistent customer

Of course, I have to consider whether Mrs F had essentially decided to proceed regardless of the advice that Grove gave to her. Grove argues that this is the case, saying that it clearly advised her not to proceed with the DB transfer, but she chose to do this despite the advice it gave.

Grove's role was to discern what Mrs F's wants and needs were and why she wanted to transfer her pension. Its role wasn't simply to facilitate what Mrs F wanted. It had to act in her best interests. I'm not persuaded that it did this here.

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were Conduct of Business Sourcebook ('COBS') rules in the regulator's Handbook which required Grove to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, COBS required Grove to provide information that was clear, fair and not misleading. So, Grove's recommendation had to be clear, and Mrs F had to have understood the consequences of going against the recommendation.

I think it ought to have been clear to Grove that Mrs F had little knowledge or experience of financial matters based on the information available at the time of the advice. Mrs F had no savings or investments and there was nothing to show she had invested in the past. I think this should've put Grove on notice that it had to be careful if it was to treat Mrs F as an insistent customer.

But I don't think Grove was careful here. It identified Mrs F as an insistent customer very early on in the process, and before full advice was given. It didn't give full advice until after it had agreed to process the transfer for her. I don't see how could properly have assessed her as insistent customer before it completed the advice process. I've looked at this in more detail below.

On 15 April 2015 Grove sent Mrs F an email after their early conversations. This wasn't a suitability report and it said:

'Following our conversation, I am writing to emphasize my recommendation not to release your DB final salary pension/s at this time.'

The email did comment on the value of the benefits Mrs F held in the DB scheme:

'The pension benefits due at age 60 are not dependant on investment returns but guaranteed increases within the scheme which would be lost if your transfer / release the pension now. At retirement age you are due to receive an estimate partial index linked pension of £229 per month plus a lump sum of £11,271'

Grove also briefly explained why the transfer was not financially viable. And it talked about why a loan may be more suitable than transferring her DB pension. It summarised this by saying:

'In view of these risks and the availability of alternatives that would probably be financially better in the long term, as I said my recommendation has to be to leave the pension to age 60.'

Mrs F responded to Groves' email on the same day and said:

"I would like to take my pension now as I am waiting to go to NZ with my husband as this would not be possible, so if you could sort this for me I would be very grateful."

And very shortly after this Grove responded.

'Thank you for your email Mrs F, I will arrange the necessary paperwork to be sent.'

Grove then issued its suitability report. It said it wasn't recommending a transfer and Mrs F's decision to proceed was contrary to their advice. It included its investment recommendation, a key facts document, an illustration, a fund fact sheet and a copy of the fact find.

But I think Mrs F had already decided to transfer, on the very limited information provided before this. And Grove had accepted her decision to do this with no challenge at all. All of the substantial suitability and detailed information about the transfer came after a time when Grove had agreed to facilitate the transfer. And was described as 'paperwork' to Mrs F. It's not unreasonable for Mrs F to think that the transfer had been agreed without her receiving a full explanation about the transfer.

I don't think the process was geared towards Mrs F making an informed, considered assessment of the reasons why she shouldn't be transferring. In this case I feel that would have involved Grove providing the full recommendation to Mrs F, allowing her to consider this on her own and then revert to Grove if she still wished to proceed.

On the contrary, I would go as far as to say that Grove's process was designed to facilitate the transfer, with emphasis placed on the release of funds and how this could be

achieved from the outset. I don't think that providing Mrs F with a means of proceeding against the advice, without establishing why the apparent requirements were truly necessary before the decision was made demonstrates that Grove had her best interests in mind.

While Grove acknowledged the transfer of Mrs F's benefits wasn't suitable, there were failings in the advice process which meant she wasn't fully informed about her position at the time she decided to transfer. And I think it's more likely than not that the provision of full information and better analysis would've influenced her decision making.

Overall, I think this shows that Grove made it altogether far too easy for Mrs F to proceed rather than allowing her time to think about the advice not to go ahead with the transfer. And so, I don't think she truly could make an informed decision about this.

Grove say that their insistent client process follows the FCA's guidance, especially as Mrs F put in her own words why she wanted to proceed with the transfer. But I don't think Mrs F's response adequately demonstrates that she knew and understood the risks involved in the transfer and the benefits she'd be losing by doing so. It would be very difficult for her to understand this at the time she made her decision as I don't think Grove had given her full advice about this. So, I don't think this response alone sufficiently showed Mrs F was an insistent client.

On balance, given these failings, I don't think it would be reasonable for me to conclude the process Grove followed meant that Mrs F can truly be regarded as an insistent client. It didn't act in Mrs F best interests. And it failed to act with due care and skill.

If Grove had followed a more robust process, including giving full reasoned advice which set out in clear monetary terms why she'd be worse off transferring. And then not immediately introduced the option of disregarding this advice I think she would have acted differently; I don't think Mrs F would've insisted on going ahead with the transfer.

In light of the above, I think Grove should compensate Mrs F 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 the Grove to put Mrs F, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs F would have most likely remained in the occupational pension scheme if suitable advice had been given.

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, Mrs F has not yet retired, and she 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 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 Mrs F'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 Mrs F redress as a cash lump sum payment,
- explain to Mrs F 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 Mrs F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs F accepts Grove's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs F for the calculation, even if she 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 Mrs F's end of year tax position.

Redress paid to Mrs F 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 Mrs F'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 £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 Grove pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Grove Pension Solutions Limited to pay Mrs F the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Grove Pension Solutions Limited pays Mrs F the balance.

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

My recommendation would not be binding. Further, it's unlikely that Mrs F can accept my decision and go to court to ask for the balance. Mrs F 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 Mrs F to accept or reject my decision before 28 June 2023.

Andy Burlinson
Ombudsman