

The complaint

Mrs A complains that Grove Pension Solutions Limited (Grove) is responsible for a fall in value of £27,000 to her pension. She says Grove delayed in dealing with her transfer request.

Mrs A is represented by her husband in bringing her complaint. I've referred to what Mr A has said on Mrs A's behalf as if she's made those comments herself.

What happened

I issued a provisional decision on 4 July 2023. I've recapped here what I said about what had happened and my provisional findings.

'Mrs A is an active member of an occupational pension scheme (OPS). She also has deferred benefits in the same OPS arising from a previous period of employment and membership.'

Mrs A was referred to Grove in October 2021 via her independent financial adviser (IFA). Grove wrote to Mrs A on 12 November 2021 saying that Grove would start work on her enquiry on 16 November 2021. Grove sent a welcome pack confirming, amongst other things, timescales. Grove also sought information from the OPS, including a new guaranteed transfer value – Mrs A had obtained one early in July 2021 (£78,196) but it had expired (on 3 September 2021). It showed the date of joining the OPS as 27 March 1989 and the date of leaving as 28 February 1992. The deferred benefits accrued were detailed. The information Grove had seen seemed inconsistent as it included revaluation information from 1997 onwards but it was also stated that Mrs A's membership had ceased in 1992.

Grove chased the information from the OPS on 1 December and again on 10 December 2022. A transfer value of £88,652 guaranteed until 13 March 2022 was issued on 13 December 2021. I think Grove received it on 20 December 2022. The OPS hadn't answered all the queries so Grove chased again.

The email chain I've seen shows several emails were sent on 22 December 2021.

- From the OPS to Grove at 10.41. 'I can confirm that your client is an active member in the scheme and there is a current salary link.'*
- From Grove to the OPS at 13:05. 'Please could you confirm the name of the client for which this is regarding.'*
- From the OPS at 13:09: 'My apologies that the name was omitted from the email. It should relate to [Mrs A] and a query you had sent in on 10 December 2021.'*
- From Grove to the OPS at 13.21: 'Thank you for your reply. Please could I also have an update on my request: Why the pension split as at date of leaving says the benefits accrued between 1997-2003 when the member left in 1992. The revaluation rate for pre 97 benefits.'*

- From the OPS to Grove at 16:20: 'Your client has two records – one deferred relating to an older period of service ending in 1992 and another which began on 1st August 1999 and is still accruing benefits.
Revaluation for benefits as below:
Fixed 5%'

The complaint centres on that last email and whether Grove saw and read it. Mrs A says Grove didn't.

As things stood, Grove informed Mrs A's IFA the next day, on 23 December 2021, that Grove's file for Mrs A was being closed. The IFA replied on 5 January 2022, suggesting there were two periods of service. Mr A confirmed that too, I think on 4 and 14 January 2022. Grove called the OPS on 18 January 2022 and the OPS confirmed the position so Mrs A's file was reopened on 20 January 2022.

Grove provided Abridged Advice on 9 February 2022. Mrs A instructed Grove to proceed to Full Advice on 17 February 2022. A call was arranged for 4 March 2022. The Full Advice report was issued on 7 March 2022, so a week before the guarantee date expired. Grove's advice was that Mrs A should remain in the OPS. Mrs A confirmed she wanted to go ahead contrary to Grove's advice. By then the transfer value had expired.

Upon receipt of Mrs A's insistent request, Grove contacted the OPS to establish the recalculation fee. Grove was told on 31 March 2022 it would be £145 plus VAT. Grove sent that to its finance team for approval and once approved Grove called the OPS on 11 April 2022 and requested an invoice be sent. Grove chased on 19 and 28 April 2022 when the invoice was received. Grove paid it on 3 May 2022 and received a new transfer value on 10 June 2022, guaranteed until 8 September 2022. As it had reduced to £62,426.65 Grove was no longer prepared to facilitate the transfer on an insistent client basis. Grove emailed the OPS on 14 July 2022 asking it to honour the £88,652 transfer value but the OPS refused.

Mrs A complained to Grove. She said there'd been a total lack of urgency and competence. She believed Grove failed to read the last email sent by the OPS on 22 December 2021. If Grove had read it, Grove would've seen her position was that she was currently an active member of the OPS but she had an earlier period of service in respect of which she had deferred benefits. If that email had been acted on the transfer would've gone through before the expiry date – 13 March 2022. Grove's failure to read that email cost her £27,000 – the difference between the original and later transfer values.

Grove didn't uphold the complaint. Grove's position was that, from the information received from the OPS, Grove understood Mrs A was an active member with a salary link. If she transferred, she'd be in effect opting out of the OPS which wasn't something Grove would advise. After Mrs A's IFA and Mrs A's husband had said there were two periods of service that weren't linked and the OPS had confirmed that and that it had made an error, Mrs A's file was reopened.

By then, less than two months of the guarantee period were left. Time was tight but Grove had provided advice that Mrs A should leave her benefits in the OPS. For Grove to potentially consider facilitating a transfer on an insistent client basis, matters would've needed to have moved on rapidly which didn't happen. By the time Mrs A and Grove had sufficient information to consider that, the transfer value had expired. Grove had paid for the transfer value to be recalculated. And had asked the OPS to honour the £88,652 transfer value. Grove had also offered to waive their fee.

Mrs A remained unhappy and referred her complaint to this service. One of our investigators

looked into what had happened but she didn't uphold the complaint. She said Grove had confirmed the email sent by the OPS on 22 December 2021 had been read. Grove had explained that Mrs A's file was closed because the OPS incorrectly told Grove there was an active salary link. The OPS had acknowledged they'd made a mistake by informing Grove there was a salary link. Grove asked the OPS to honour the original transfer value because of the mistake but the OPS refused. Because of the mistake made by the OPS a month was lost so it was always going to be unlikely that Grove would be able to complete matters before the transfer value expired. Grove wasn't responsible for errors by the OPS.

Grove had paid Mrs A's recalculation fee despite it not being Grove's fault the expiry date was missed. And Grove had offered to waive Mrs A's £2,950 fee. Mrs A hadn't suffered any financial loss because no transfer took place and her deferred benefits remain in the OPS.

Mrs A didn't accept the investigator's view. She provided an email account from the OPS setting out how events transpired. Mrs A said it was unclear if Grove had read or even seen the final email from the OPS on 22 December 2021. It seemed an assumption had been made which was wrong. The confirmation phone call on 18 January 2022 should've been made on 22 December 2021.

The investigator considered the further comments but she didn't change her view. She said the complaint would be passed to an ombudsman for further consideration. Both parties made some additional comments.

What I've provisionally 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.

Grove's position is that it wasn't possible to meet the transfer value guarantee deadline because the OPS misinformed Grove that there was a salary link between Mrs A's two periods of service. I accept, had there been, Grove would in effect be considering if Mrs A should opt out of the OPS. I can see why Grove would decline to advise Mrs A to do that.

I've considered if Grove was right to conclude, based on what the OPS had said, that there was a salary link between Mrs A's two periods of service. That's certainly what the first email sent on 22 December 2021 (at 10:41) said. And I think the OPS accepts that the initial information given was misleading. But there were other emails, including the last email (sent by the OPS at 16:20), which is the email Mrs A says Grove failed to read. Although the first email from the OPS did indicate a salary link, I think the last email corrected that – it referred to Mrs A having two records – one deferred (her service having ended in 1992) and the other which had begun on 1 August 1999 and was still accruing benefits.

Despite all Grove has said, I agree with Mrs A that Grove should've realised from that email that Mrs A had two separate periods of service and OPS membership – one deferred and a second, current active membership. I don't know if Grove is suggesting the second email wasn't received. But it was part of the same email chain and so I don't see any reason to suppose Grove didn't get it. If Grove did receive it and read it I think it clarified the position. I note what Grove has said about not needing to go beyond what the OPS had told Grove. And that Grove was entitled to rely on information provided by the OPS. But, even if Grove had initially understood, based on what the OPS had said, that there was a salary link between both periods of membership, Grove needed to take into account any later and updated information which might mean that what Grove had originally been told might not be accurate.

In my view, from the last email sent on 22 December 2021, Grove should've realised the

correct position. At the very least, and if there was any confusion, Grove should've contacted the OPS for confirmation as to the precise position. Either way, I think it should've been clear to Grove on 22 December 2021 that Mrs A would be transferring her deferred benefits in the OPS which weren't linked to her current salary. So there was no need for Grove to withdraw.

Grove says the admitted error by the OPS cost about a month – Grove's file was closed on 22 December 2021 and reopened on 20 January 2022. As I've explained, I don't think it was an error on the part of the OPS. I think Grove's file was closed due to an error or misunderstanding on Grove's part. As to how much time that cost, I bear in mind the proximity to Christmas. Grove's office would be closed from 12pm on Friday 24 December 2021, reopening on Wednesday 29 December 2021 but possibly with limited staff. There were three working days that week until the office was closed again until 4 January 2022. So it's probably fairer to say that the time between Christmas and New Year would've been lost anyway – I don't see much work would've been done on Mrs A's case until Grove's office fully reopened in the New Year. So I'd say that almost three weeks or so were lost. But that was down to Grove, not the OPS, because Grove failed to properly read and understand the last email sent on 22 December 2021 by the OPS.

Time can be tight when dealing with a defined benefit transfer. They are complex, highly regulated and each step has to be checked by the firm's compliance department. Grove did manage Mrs A's expectations about that. Even if there hadn't been any delay, three months may still have been insufficient time to do all that's necessary. Here Grove had less than that. But, and looking at how things actually happened once Grove had reopened Mrs A's file, Grove provided Abridged Advice on 9 February 2022 and Full Advice on 7 March 2022, just under a week before the guarantee expiry date on 13 March 2022. So, if Grove hadn't caused a three week delay, Full Advice could've been given some three weeks earlier.

Mrs A wanted to proceed with a transfer when Grove's advice was against. So she had to be treated as an insistent client. That meant further steps had to be taken and there was insufficient time left to complete those before the transfer value guarantee expired. In actual time only a week was left. But, if there hadn't been a three week delay, that would've left four weeks or so. I think in theory at least that would've been sufficient time for Mrs A to have gone ahead with the transfer and taking into account the extra steps required because she'd have been proceeding on an insistent client basis.

Mrs A's position is that she'd have gone ahead with the transfer and by not being able to do that she's lost out financially – the difference between the £88,652 and the lower transfer value later quoted which I think was some £27,000 less. I understand why Mrs A says that. The difference in transfer values would appear to be a financial loss. But, as Grove wasn't prepared to facilitate the transfer on an insistent client basis for the new lower transfer value, no transfer was completed and Mrs A's deferred benefits remain in the OPS.

On that basis Mrs A hasn't suffered any financial loss – her benefits have been preserved at the same level as previously. Mrs A will still get the benefits from the OPS to which she's entitled in accordance with the rules of the OPS. Any transfer value quoted represents the value of those benefits and the costs of buying equivalent benefits at that particular time. If that cost has decreased (for example because of interest rate movements or because annuity rates have increased) then the transfer value offered will be less. But that won't be a financial loss as such. As Mrs A didn't actually transfer out then she hasn't crystallised any loss as such. And I don't know what any future transfer value might be – it might be higher or lower than the value originally quoted. Defined benefit pension transfer values seem to be generally lower than previously at present and it's impossible to predict whether transfer values will increase this year or beyond.

Further, I'm not sure, even if the three weeks or so hadn't been lost, that it would've been

possible to secure the original transfer value of £88,652 before the guarantee period expired. I said above that in theory it would've been but, although Grove was initially prepared to facilitate the transfer on an insistent client basis, I'm not sure if a provider had been or could've been found who'd have been prepared to take the transfer value. Given the regulator's position – that the starting point when advising about a defined benefit transfer is an assumption that it won't be suitable – many providers are reluctant to accept a defined benefit transfer from an insistent client. So I don't think it's a given that Mrs A would've been able to find a new provider anyway. But I mention that largely in passing as I don't think, as she didn't transfer out of the OPS, that Mrs A has suffered any loss as her benefits are preserved anyway.

Grove paid £145 plus VAT for a transfer value recalculation and offered to waive Grove's fee of £2,950 as a gesture of goodwill. Mrs A pointed to the time it took Grove to obtain a new transfer value. I can see, because Grove paid the fee, getting approval for that took time. Mrs A says it would've been quicker for Grove to ask her to pay the recalculation fee direct to the OPS. I think that's probably the case. But I don't see much turns on this though, as the transfer didn't go ahead anyway. It seems that transfer values were falling and there's nothing to suggest that if a new transfer value had been obtained earlier it would've been of an amount sufficient to enable Grove to facilitate the transfer on an insistent client basis.

I'm not sure if Grove's offer to waive its fee remains open. But if not I don't think Mrs A should have to pay Grove's fees – the advice was deficient and the misunderstanding meant that Mrs A may have lost out on the higher original transfer value – although, as I've said, even if that was the case I don't think that means she's suffered a financial loss. I recognise that ordinarily a fee might be payable even if the advice can't be delivered within the three month window. And regardless of whether the advice is positive in terms of a transfer or not. But here I don't think it would be fair for Mrs A to have to pay a fee for advice which fell short of the standard she was entitled to expect.

And although I'm unable to say that Mrs A has suffered any financial loss, she was caused distress and inconvenience by Grove's poor handling of the matter. So I think Grove should also pay her £750 as compensation for that. I've decided on that figure because although I can't say Mrs A has suffered any financial loss I can see why she says she did and I accept that she'd have been worried about the fall in the transfer values and the possibility she had suffered a significant loss.

To sum up, I uphold the complaint. Grove should waive its fees and in addition pay Mrs A £750 compensation for the distress and inconvenience she's suffered as a result of Grove's poor handling of the matter. For the avoidance of doubt, the transfer recalculation fee of £145 plus VAT which Grove has paid shouldn't be offset – Grove remains responsible for that fee.'

In response to my provisional decision Mrs A said and in summary:

- It was correct that she wasn't out of pocket financially but the point of both her and her husband transferring out of the (same) OPS was the flexibility it would've given them as a couple to draw the income they required and still have substantial cash available at age 70 as shown on the spreadsheet they'd provided.
- A realistic figure for loss would be £45,000 between the two funds (that is the transfer value of about £292,000 paid in respect of Mr A's OPS benefits and the transfer value of circa £88,000 issued for Mrs A on 13 December 2021 (which she was unable to accept before it expired).
- Grove should've acted with more urgency. Instead Mrs A's husband had to do all the chasing and suggest that Grove use the phone rather than just rely on email. Mr A would email each Monday for an update to be told that Grove was due to chase that

week.

- The compensation amounts should be higher to reflect the inconvenience not just for now but also for the future as the flexible plan is now unavailable. Mrs A's and her husband's transfers were linked. A positive recommendation was given to Mr A based on the spreadsheet he'd prepared setting out details of his and Mrs A's financial position and a clear plan showing where the income was going to be coming from up to age 70. The adviser said he'd try to do Mrs A's Full Advice call the following week because the same decision would be made as it was a joint venture which the adviser understood. But the call was made by a different adviser who wasn't prepared to look at the spreadsheet Mr A had prepared. Even though the whole plan relied on both funds being transferred and leaving Mrs A as an active member of the OPS in respect of her current period of service.
- It wasn't the case that Grove had reopened Mrs A's file on 20 January after calling the OPS about the salary link. What happened was that after Grove said the file was closed (on 4 January 2022) Mr A asked Grove to verify that because, as far as he was aware, there was no salary link to the deferred pension in respect of Mrs A's membership which had ended in 1992. Mr A says he continually phoned and asked for this to be resolved but nothing happened. So he called the OPS administrators himself on 17 January 2022 and asked if they could email Grove explaining the situation which they did. They also said they'd already done that on 22 December 2021. Mr A then called Grove to let them know but Grove said they couldn't locate the email so Mr A called the OPS administrators again and they repeated the email. Grove had said they had no record of getting the email on 22 December 2021.

Grove was also unhappy with my provisional decision. It said I'd made a fundamental mistake in blaming Grove and that responsibility rested with the OPS. I've summarised Grove's main points:

- There's no dispute the OPS told Grove there was a salary link (the email timed at 10.41 on 22 December 2021). That could only apply to a deferred period of membership.
- In the email timed at 13:21 Grove asked the OPS to clarify the pension split and the revaluation rate and why the previous information seemed contradictory. In reply (the email timed at 16:20) the OPS said Mrs A had two periods of membership, one of which was active. It didn't say there was no salary link and that an error had been made but simply confirmed what Grove already knew – that there was a period of deferred membership which must by default be the period to which the salary link applied. It wasn't reasonable to say that last email corrected the mistake. The OPS sent exactly the same email in January 2022 after Grove had reopened its file.
- Grove had taken appropriate action. Grove told Mrs A's IFA on 23 December 2021 that Grove's file had been closed and the reason. The IFA called Grove on 7 January 2022 (which is understandable given the Christmas and New Year period). Grove left a message for Mr A the same day but he didn't get back to Grove until 17 January 2022 when Grove gave him contact details for the OPS. Grove had also called the OPS the next day and the OPS confirmed it had made an error. Grove told Mrs A the file was being reopened. There was no reason for Grove to contact the OPS earlier. Grove had acted on information from the OPS and there was nothing to suggest it wasn't accurate.
- In any event I'd concluded that the three week delay would likely have made no difference to the overall outcome as the advice (which entailed an enormous amount of work, the fee for which I'd said should be waived and regardless of the advice being correct) was that Mrs A shouldn't transfer. Once she'd asked Grove to pay the recalculation fee, Grove contacted the OPS and chased several times for an invoice to allow the fee to be paid. There was no delay in requesting the information from the

OPS or payment.

- Grove had offered to waive Mrs A's fee as a gesture of goodwill after acknowledging the error by the OPS and Grove had paid the recalculation fee. In my provisional decision I'd said, despite the three week delay, the original transfer value couldn't have been secured since the advice was not to proceed. I'd said asking Mrs A to pay the recalculation fee might have been quicker but I didn't think much turned on that. Yet I'd decided that fees amounting to £2,950 should be waived and a payment of £750 for inconvenience made.
- Grove quoted what we say on our website about when that sort of level of award might be made. Grove said the effect of my decision was that Mrs A would get compensation of £3,842 for being provided with Full Advice and when I'd accepted that the three week delay (which Grove maintained had been caused by the OPS) had made no difference. That wasn't fair and reasonable. The offer to waive the fees plus pay the £142 recalculation fee is significantly more than sufficient compensation even if Grove had made a mistake (and which Grove hoped I'd now agree they hadn't). Grove also referred to what our website says about awards of over £1,500 and up to around £5,000. Grove said that didn't seem to apply here, bearing in mind I'd accept the delay had made no difference to the original transfer value lapsing.

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.

There's some dispute about the details of what happened. I think Mrs A's position was that Grove didn't see or read the last email from the OPS sent on 22 December 2021 timed at 16:20. As I said in my provisional decision, the last email was part of the email chain that day and I don't see any reason to see why it wouldn't have been received. But, in any event, I think Grove's position is that the email was received and read but it only told Grove what it already knew. And, in the absence of any indication that what Grove had been told earlier was wrong, it didn't change anything.

I've considered carefully all Grove has said about the emails sent on 22 December 2021. And I've thought about the context in which Grove reasonably ought to have viewed them and what Grove should reasonably have deduced from them. Grove has stressed it had been told a salary link existed and that there had to be a period of deferred membership for that to be the case. But I think the term salary link is wide and could simply denote a defined benefit arrangement. So the email timed at 10.41 may just have been referring to Mrs A's current active membership of the OPS and in respect of which there was a salary link.

I maintain that the last email sent by the OPS on 22 December 2021 was an attempt to clarify matters. I'd read that email as saying that there were two, separate, records and which weren't linked. If they had been, the obvious thing would've been to say so in that email and go on to confirm how that link operated. The fact that the OPS sent the same email in January 2022 would tend to suggest that the OPS thought that its email had cleared things up.

At best I think the position remained unclear. I think Grove should've gone back to the OPS and asked it to confirm the precise position. Grove was acting for Mrs A and it was up to Grove to iron out any possible areas of confusion. I don't see any reason to doubt, if Grove had reverted to the OPS and asked a direct question about any salary link between the two records or periods of membership, that the OPS would've confirmed there was no salary link between Mrs A's deferred benefits and her current active membership.

There's also a dispute about the time Grove took to contact the OPS after Grove had been told by Mr A that there wasn't any link. Mr A says he asked Grove to check things out with the OPS on 4 January 2022. But he says Grove didn't chase things up promptly and it was only when he contacted the OPS direct that it confirmed to Grove that Mrs A had two separate periods of membership which weren't linked. I don't think it's going to be possible to ascertain exactly what happened. Information from the OPS won't assist as it seems that either way Mr A and/or Grove didn't get in contact with the OPS until on or about 18 January 2022 – it's what happened in the two weeks or so before then and if Mr A had been trying to get Grove to take some action. But as my view is that Grove should've contacted the OPS on receipt of the last email on 22 December 2021 to clarify things, nothing much turns on this. And I maintain that the three week delay was down to Grove.

As to the impact of that time being lost, I said in my provisional decision that, but for the three week delay, there'd have been sufficient time for Mrs A to have gone ahead with the transfer and taking into account the extra steps required because she'd have been proceeding on an insistent client basis. My reference to that being '*in theory at least*' was a nod to what I said later about the need to find a provider who was prepared to accept a defined benefit transfer from an insistent client. I think my remarks here may have caused some confusion and if so I apologise. But I did say my comments were made in passing as I didn't consider that Mrs A had lost out financially by not transferring as her benefits are preserved in the OPS. To be clear, the award of £750 was made on the basis that, despite any difficulties that might have arisen, Mrs A would've been able to have secured the higher transfer value. Although it's still my view that Mrs A hasn't suffered any financial loss by not transferring.

However a reduced transfer value of £62,426.65 (a 30% reduction) would certainly have felt like a large financial loss and it was a missed opportunity. The award is intended to reflect, amongst other things, the disappointment Mrs A has suffered and the loss of expectation because the transfer didn't go ahead. Mrs A was keen to transfer, even if, because of the reduction in the transfer value, Grove couldn't give advice in favour of a transfer. Mrs A and her husband had made retirement plans based on both of them transferring with the main reason being the flexibility doing so would've afforded them. Although Mrs A hasn't suffered any financial loss her retirement plans have been disrupted.

Against that background I don't agree that an award of £750 is inconsistent with the examples we give on our website. I think here the impact on Mrs A of losing out on the higher transfer value will have been significant and led to considerable uncertainty and anxiety as well as disappointment. It's fair to say the effect is long term given what I've said about Mrs A's retirement plans and the upset caused to her and her husband's preferred retirement strategy.

Grove has also referred to what our website says about where an award of up to £5,000 might be made. Grove has got to that higher figure taking into account the £750 plus Grove's fees of £2,950 and the recalculation fee of £145 plus VAT which Grove offered to waive. But I don't think conflating fees and any distress and inconvenience award is justified. I said in my provisional decision that I didn't think it would be fair for Mrs A to have to pay a fee for advice which fell short of the standard she was entitled to expect. I think I should perhaps have said it was Grove's service which was lacking. But the same principle applies.

I've considered if it's fair for Grove to have to pay the £750 award, given the offer to waive fees. I think whether Grove was going to charge Mrs A for the work Grove did was largely a decision for Grove. Grove has said that its offer was made out of sympathy for Mrs A and because the OPS administrators got things wrong. I don't entirely agree with that and as I've said I think Grove should've done more. I don't see any reason to interfere with Grove's offer to waive Mrs A's fees and which was made before this service's involvement. And I maintain

that a distress and inconvenience payment of £750 is fair and reasonable in the circumstances of this case for the reasons I've explained.

My final decision

I uphold the complaint. Grove Pension Solutions Limited (having waived its fees and the recalculation fee) should pay Mrs A £750 for the distress and inconvenience she's suffered as a result of Grove Pension Solutions Limited's poor handling of the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 6 September 2023.

Lesley Stead
Ombudsman