

## The complaint

Miss M complains that George Square Financial Management Ltd ('GSFM') gave her unsuitable advice to transfer her defined-benefit ('DB') pension to a personal pension plan ('PPP'). And alleges that she will be worse off in her retirement as a result.

Miss M's complaint was made on her behalf by a legal representative, but for ease of reading I will simply refer to Miss M in this decision.

## What happened

GSFM were approached on Miss M's behalf around May 2016 to discuss her pension and retirement needs. The person acting on Miss M's behalf expressed concerns about Miss M's vulnerability as she suspected that she had been seeking advice about how to take benefits from her pension.

GSFM completed a fact-find to gather information about Miss M's circumstances and objectives. GSFM also carried out an assessment of Miss M's attitude to risk, which it deemed to be 'medium'.

On 7 June 2016, GSFM provided Miss M with a suitability report. It advised her to transfer her pension benefits into a PPP and invest the proceeds. The suitability report said the reasons for this recommendation was to meet her objective of being able to leave her pension benefits to her sister as she had no dependants.

In February 2023 Miss M complained to GSFM about the suitability of the transfer advice because:

- GSFM didn't give proper consideration to Miss M's vulnerability
- There was no suitable reason to justify transferring her DB pension
- Miss M has been left with no means of funding her retirement

GSFM didn't uphold Miss M's complaint. It said that it had considered her circumstances and understood her vulnerability. It said that its recommendation allowed her to meet her objectives and was therefore suitable. It said she understood the benefits that she was giving up.

Miss M referred her complaint to our service. An investigator looked into the circumstances and contacted GSFM who explained that it thought we might not be able to help resolve the complaint because it may not have been made in time. So our investigator considered that issue. And was of the opinion that the complaint had been made within the three years Miss M was allowed from the earliest point that Miss M ought reasonably to have known she had cause to complain. Our investigator also went on to consider and give an opinion on the merits of the complaint. She explained that she thought Miss M's complaint should be upheld because:

- The transfer wasn't likely to be financially viable, meaning it would most likely leave Miss M with benefits of a lower overall value.

- The importance of death benefits was most likely over-played and wouldn't justify sacrificing a guaranteed income in retirement
- No consideration appeared to be given to Miss M's income needs in retirement

GSFM disagreed and have asked for an ombudsman's decision, although has provided no additional comment or evidence in response to our investigators view. This case was passed to me for a 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.

Having done so, I have reached the same decision as our investigator for similar reasons. I can see that GSFM haven't agreed that the complaint was made in time for us to be able to help. So I will start by giving my decision on that, which is the same as the answer our investigator has already given. I will then go on to give my decision on the merits of this case.

#### *My decision on jurisdiction*

Before our service is able to consider the merits of a case we first need to decide that it's something we're allowed to help with. And whether or not we're allowed to help with a dispute – our jurisdiction – is set out in the Dispute Resolution (DISP) part of the Financial Conduct Authority's handbook.

Amongst the things that we have to consider, which is of specific relevance here, is whether a complaint was made in time for us to be able to help. Consumers do not have an indefinite amount of time after an event to raise a complaint. The relevant rule for this is DISP 2.8.2R. It tells us that consumers have a right to complain about an event within six years (the 'six-year rule'). Or, if complaining later than that, we can still consider a complaint that is made within three years of the point that the consumer was aware, or had reasonable cause to become aware, that she had a cause for complaint (the 'three-year rule').

The event complained about is the advice that Miss M was given by GSFM in June 2016. So Miss M only had until June 2022 to complain for us to be able to investigate her complaint under the 'six-year rule'. She complained to GSFM in February 2023. So her complaint was made too late under this part of DISP 2.8.2R.

I also have to consider here whether the 'three-year rule' allows us to help with this complaint. In this instance I've looked at the advice that Miss M received. Which I don't think would have led her to believe that she would receive benefits of a specific value or in a specific way at retirement. And it didn't give her advice about how to take her benefits in retirement as she was aged 52 at the time, so not of an age to be able to take her benefits.

I don't think she would have had cause to consider the advice was unsuitable when it was given, otherwise I don't think she would have accepted it. So I've considered what incident or information after the advice may have caused her to think something was wrong.

I don't think anything in her PPP statements would have caused her to think that things weren't progressing in the way she'd been advised. Which she'd trusted to have been in her best interests. Her PPP provider has confirmed that she took all of her benefits in a single lump sum payment in April 2021 though. This would have left her with no remaining pension fund. So no death benefits and no income in retirement. I've seen nothing earlier than that date that I would consider ought to have caused Miss M to be concerned about what she'd

lost following GSFM's advice. So, given that Miss M's complaint was made within three years of the point she crystallised her pension benefits, even if that event gave her cause to think the transfer hadn't been in her interests, the 'three-year rule' would still give our service the jurisdiction to consider this complaint.

For these reasons my decision is that Miss M's case is one our service can help with.

#### *My decision on the merits of Miss M'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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS') which are published by the Financial Conduct Authority in its Handbook. 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 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 GSFM's actions here.

- PRIN 2.1 - Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.
- PRIN 2.1 - Principle 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 interest's 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 defined benefit pension transfer.

The regulator, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme should be that it is unsuitable. So, GSFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Miss M's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests. I've decided this for the following reasons:

#### *Financial viability*

GSFM carried out a transfer value analysis report (as required by the regulator) showing how much Miss M'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 businesses weren'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.

Miss M was 52 at the time of the advice and her DB pension had a normal retirement age of 60. The critical yield required to match Miss M's benefits (on a single life basis) at age 60 was 12.3% if she took a full pension and 9.2% if she took tax-free cash and a reduced pension. Whilst these returns wouldn't replicate her DB pension, which provided spouse benefits, Miss M was single and may have considered giving up spouse benefits for better single life benefits. This compares with the discount rate of 3.9% per year for eight 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, Miss M's 'medium' attitude to risk and also the term to retirement. There would be little point in Miss M giving up the guarantees available to them through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 9.2%, I think Miss M was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. Which was the conclusion that GSFM reached and explained to Miss M.

GSFM has provided drawdown models which it says shows Miss M's pension fund would likely be exhausted by age 78 if she instead took an equivalent level of income from her pension fund by drawdown. Which was short of her average life expectancy.

I conclude that this transfer wasn't financially viable for Miss M. By which I mean that she was likely to end up financially disadvantaged by it. But GSFM didn't recommend this transfer based on a likelihood of improving the level of income available. It told Miss M that the only way to achieve her objective was to transfer her DB pension to a PPP even though that would not match the benefits of her DB scheme. I understand that there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

### *Flexibility and income needs*

Miss M was not yet of an age to be able to take benefits from her DB pension or a PPP. She was unemployed and unable to work. She received benefits as a result and was in supported accommodation. Her DB pension appeared to be her only pension other than her state pension.

It appears from the limited information that GSFM ascertained about her expenditure that it wasn't likely to be in Miss M's interests to take any income from this pension whilst she was receiving the benefits she was. At some point though, that could change and this pension would provide very valuable additional income to her state pension.

Other than listing the various ways in which Miss M could take benefits from her PPP, GSFM didn't really consider her income needs in retirement. I don't think, on a balance of probability, that Miss M required flexibility in retirement. This is because, based on the evidence I've seen, I don't think she had a genuine need to access her benefits before her scheme retirement age, or that the format of the existing benefits weren't already suitable.

### *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 was likely an attractive feature to Miss M. And I accept that it

was likely a driver to her obtaining financial advice. But whilst I appreciate death benefits are important to consumers, and Miss M 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 Miss M about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think GSFM explored to what extent Miss M was prepared to accept a lower retirement income in exchange for being able to name her sister as the beneficiary of death benefits.

Overall, I don't think different death benefits available through a transfer to a PPP justified the likely decrease of retirement benefits for Miss M. I say that because there is no evidence that Miss M's sister was financially dependant on her. GSFM did not explore this at all, or the likelihood of Miss M pre-deceasing her sister. It simply accepted that Miss M wanted this without exploring whether it was actually in her financial best interests.

### *Summary*

I don't doubt that the potential to pass her pension as a lump sum to her sister through a personal pension would have sounded attractive to Miss M. But GSFM wasn't there to just transact what Miss M might have thought she wanted. The adviser's role was to really understand what Miss M needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Miss M was suitable. She was giving up a guaranteed, risk-free, and increasing income. By transferring, Miss M was very likely to obtain lower retirement benefits and in my view, there was no other particular reasons which would justify a transfer and outweigh this. Miss M shouldn't have been advised to transfer purely to leave a lump sum death benefit to a non-financially dependent family member. Especially given the likelihood that Miss M's fund could be exhausted in taking benefits, potentially leaving no death benefits anyway.

So, I think GSFM should've advised Miss M to remain in her DB scheme.

Of course, I have to consider whether Miss M would've gone ahead anyway, against GSFM's advice.

I've considered this carefully, but I'm not persuaded that Miss M would've insisted on transferring out of the DB scheme, against GSFM's advice. I say this because Miss M was an inexperienced investor with a medium attitude to risk and this pension accounted for the whole of Miss M's retirement provision. So, if GSFM had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

I'm not persuaded that Miss M's concerns about her death benefits were so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise she was paying for, didn't think it was suitable for her or in her best interests. So, I don't think Miss M would have insisted on transferring out of the DB scheme.

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

GSFM 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, compensation should be based on the scheme's normal retirement age of 60, as per the usual assumptions in the FCA's guidance. I've considered the fact that Miss M took a lump sum benefit from her PPP in 2021. But, if she'd been given more suitable advice, that option wouldn't have been available to her. GSFM understood Miss M was a vulnerable consumer and placed her in a position where the unsuitable advice she was given meant she ended up with this option. Which potentially compounded the already disadvantaged position GSFM had put Miss M in.

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 Miss M'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, GSFM should:

- calculate and offer Miss M redress as a cash lump sum payment,
- explain to Miss M before starting the redress calculation that:
  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Miss M receives could be augmented to a personal pension rather than receiving it all as a cash lump sum,
- if Miss M accepts GSFM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Miss M 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 Miss M's end of year tax position.

Redress paid to Miss M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, GSFM 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 Miss M's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £190,000, 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 £190,000, I may recommend that the business pays the balance. Note that this limit is higher than our investigator quoted in her view. This is not a matter of determination for me but is a matter of fact based on DISP 3.7.4R. It is dependent upon the date of the act (June 2016 in this case) and the date this complaint was referred to out service (which was 24 May 2023).

If payment of compensation is not made within 90 days of GSFM receiving Miss M's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If GSFM deducts income tax from the interest, it should tell Miss M how much has been taken off. GSFM should give Miss M a tax deduction certificate in respect of interest if GSFM asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

### **My final decision**

Determination and money award: I uphold this complaint and require George Square Financial Management Ltd to pay Miss M the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that George Square Financial Management Ltd pays Miss M the balance.

If Miss M accepts this decision, the money award becomes binding on George Square Financial Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Miss M can accept my decision and go to court to ask for the balance. Miss M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 November 2023.

Gary Lane  
**Ombudsman**