

## **The complaint**

Mr M complains about the advice given by Grove Pension Solutions Limited 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.

## **What happened**

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December (and was later extended to 22 December 2017).

Mr M approached Grove in December 2017 to discuss his pension and retirement needs. Grove completed a fact-find over the telephone to gather information about Mr M's circumstances and objectives. This showed that he was 47, married and with one dependent child. Both he and his wife were employed. They owned their own home which was subject to a mortgage, and they had some savings. It was noted that Mr M wanted to retire at the age of 60. Grove also carried out an assessment of Mr M's attitude to risk, which it said was 'cautious'.

In respect of Mr M's pension arrangements, he had received a cash equivalent transfer value ('CETV') from the BSPS in July 2017 (I understand this would have been updated in September 2017). This showed that he had around 29 years' service. He was entitled to an annual pension of about £16,000 at the date of leaving the scheme. The CETV was about £394,700. Mr M had also joined his employers new defined contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%.

In January 2018, Grove advised Mr M to transfer his pension benefits into a personal pension and invest the proceeds in line with his attitude to risk. The suitability report said the reasons for this recommendation were that he wanted to retire early and wanted some flexibility in his pension arrangements to do this. He wanted control of his pension and he did not want it to go into the PPF.

Mr M complained in September 2022 to Grove about the suitability of the transfer advice. As far as I can see Grove didn't initially consider Mr M's complaint and it didn't provide a final response. Following this Mr M referred his complaint to the Financial Ombudsman Service.

Grove then reviewed Mr M's complaint and decided to uphold it. It calculated compensation based on the regulator's current compensation method at the time, FG 17/9. It said that Mr M should receive a compensation payment of £12,215.41, or a payment into his personal pension of £14,371.07. It also offered to pay Mr M £300 for the distress the poor advice caused him.

However after this time Grove contacted Mr M, and his representative, to say that as the case was now with the Financial Ombudsman Service then it would like it to be reviewed and it withdrew its offer. Grove also indicated that the loss calculation hadn't been performed correctly, but it didn't provide any detail about why this was.

An Investigator upheld the complaint and recommended that Grove pay compensation. He was satisfied that the advice wasn't suitable for Mr M. He thought that if Mr M had been given correct advice, then he would have opted to join the BSPS2 and compensation should be based on this. And that an up to date and correct loss assessment should now be performed. And any compensation this showed should be paid to Mr M, alongside £300 for the distress the poor advice has caused him.

Grove responded saying that it agreed with what the Investigator said, and it would now provide an updated calculation.

And not long after this the Financial Conduct Authority ('FCA'), the industry regulator, began to provide access to a BSPS-specific redress calculator that it had developed. Both parties to the complaint have been informed that I'm likely to award compensation based on this.

Grove completed a calculation using the new BSPS-specific redress calculator and it provided the details to both the Financial Ombudsman Service and Mr M and his representatives. It was noted that the calculation did not use the correct fund value for Mr M's personal pension, the fund value used was higher, albeit by a small amount, than it should have been. This calculation showed that Mr M hadn't suffered a loss due to the advice. Grove paid Mr M the £300 our investigator recommended for the distress and inconvenience the advice had caused Mr M (by cheque).

Our Investigator then recommended that Grove complete a new calculation, as at the current quarterly assumption dates, using a correct personal pension value. Grove didn't agree with this, it said that using the correct personal pension value would likely lead to a no loss outcome because the correct value was lower by around £1,000 but the calculation showed that the value of Mr M's DB scheme was over £6,000 less than the personal pension.

Grove ran a loss calculation at the current time, October 2023, as at April 2023, with the April 2023 personal pension value. This also showed that Mr M hadn't suffered a loss. However, this also isn't correct as the FCA's guidance is clear that a loss assessment should be performed using the most recent assumptions and data. In this case, this would have been a calculation as at the 1 October 2023, and using a fund value of the same date.

So our Investigator still thought that it was reasonable that Grove provide a correct calculation to show whether or not Mr M had suffered a loss due to the unsuitable advice Grove had provided.

Mr M's representative has also said that it has faced problems in communicating with Grove and so it would like the certainty of outcome that a final decision would provide.

Because of the factors above I'm now issuing my 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 Businesses ('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.

Grove has informed us that it accepted the Investigator's view. And it's agreed that the advice wasn't suitable for Mr M. And for the avoidance of doubt, I agree with all parties to the complaint that it wasn't in Mr M's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme. As the suitability of the advice is not in dispute any longer, I will focus in this decision on the redress.

The aim is to put Mr M back in the financial position he would have been in at retirement had he remained in the DB scheme. Grove has carried out a calculation using a BSPS-specific calculator provided by the FCA which is what I would expect them to do in the circumstances.

But this calculation wasn't entirely accurate, this is because it didn't use the correct fund value for Mr M's personal pension. And whilst I accept what Grove has said in that a correct calculation may not show that Mr M has suffered a loss, I don't agree that this is a certainty. So, the complaint has come to me unresolved, and I need to say in my decision what Grove should do to put things right.

I can't issue a final decision on the basis that it has been confirmed that Mr M hasn't suffered a loss when there isn't a correct calculation to support this. So, my decision is essentially that Grove should perform a loss assessment correctly and pay any compensation this shows that Mr M should receive.

And I would urge all the parties to the complaint to co-operate, so this is done as soon as possible to give Mr M a resolution to this issue. Looking at the loss assessments already done I think Grove has all of the information it needs to complete this other than the value of Mr M's personal pension as at the quarter date when the loss assessment is done. At this present time this is 1 October 2023. I would ask that Mr M's representative obtains this as soon as possible and provides it either to Grove, or to the Financial Ombudsman, to pass on to Grove.

Our Investigator recommended that Grove also pay Mr M £300 for the distress caused by the unsuitable advice. Mr M said that finding out that he may be worse off in retirement has caused him stress and anxiety. I don't doubt that Mr M has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair. I understand this has already been paid to Mr M by cheque. But it would be useful if Mr M could confirm he has cashed this.

## Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would most likely have remained in the occupational pension scheme and opted to join the BPS2 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>.

Grove should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr M and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Grove based the inputs into the calculator on.

For clarity, Mr M 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

This calculation should be carried out using the most recent financial assumptions in line with 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 M's acceptance of my final decision.

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

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
  - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Grove's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr 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, 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 Mr 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.

Grove should pay Mr M £300 for the distress and inconvenience the poor advice caused him. If Mr M has already received this (by encashing the cheque) then it doesn't need to make a second payment.

### **My final decision**

I uphold this complaint and require Grove Pension Solutions Limited to pay Mr M the compensation amount as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 January 2024.

Andy Burlinson  
**Ombudsman**