

## The complaint

Mr M has complained about the advice he received from Grove Pension Solutions Limited ('Grove') to transfer his occupational defined benefit ('DB') pension to a personal arrangement with Royal London.

Mr M has stated that this advice was unsuitable and has caused financial loss.

## What happened

In 2016 Mr M sought advice regarding his deferred DB scheme.

In January 2016 Mr M signed Grove's initial enquiry form. This form recorded what Mr M wanted to try and achieve from the enquiry. Mr M selected the option covering receipt of the available tax-free cash and the option of taking the whole fund as a lump sum.

Grove subsequently completed a fact-find which recorded Mr M's personal circumstances at that time. This confirmed that Mr M:

- Was 54 years old, with no dependents. Mr M was noted as being in poor health with his doctor advising that his life expectancy had been seriously reduced.
- Had retired 5 years earlier due to ill health.
- Lived in rented accommodation which was paid for by the local authority and was in receipt of universal credit benefits of £514 per month with no disposable income and no savings or investments.
- Had utility arrears of around £1,000.

The fact-find also confirmed that Mr M had two deferred DB schemes. One was being considered for transfer and one which was to be retained.

Mr M wanted to access a sum of around £6,000. £2,000 was to be used to redecorate his rented accommodation, £2,500 to pay for a family holiday, and the remainder to be held by Mr M for emergencies.

Mr M also selected a "medium" attitude to risk ('ATR').

Grove's advice was detailed in their suitability letter dated 23 May 2016.

This confirmed Mr M's circumstances as detailed above and went on to explain that a transfer value analysis had been completed. This calculated the critical yield (the amount the transferred funds would have to grow each year to purchase benefits equal to those provided by the DB scheme) was 7.41%. The letter stated that this was "*not very high*" and "*may be achievable*".

The letter also explained that Mr M should be aware that his "*overall pension provision will*

*suffer as a result of this transaction”.*

The new pension provider was confirmed as being Royal London with the transferred funds being split between two funds. As Mr M had explained that he would need to withdraw a further £6,000 within the next 12 months to pay for his daughter's wedding, this amount was to be placed into a deposit type fund with the remainder to be invested into the Royal London Managed Fund.

Mr M signed the relevant documentation on 27 May 2016 and the transfer proceeded as per the advice.

The £6,000 partial withdrawal of tax-free cash recommended by Grove was paid to Mr M on 11 July 2016.

A further payment of £5,790 requested by Mr M was paid on 26 July 2016 with the full remaining balance of the entire pension transfer value withdrawn by Mr M on 15 August 2016.

In March 2023 Mr M, via his representative, registered a complaint with Grove about the 2016 pension transfer advice.

This was forwarded to this service in May 2023.

Grove issued a response stating that they did not agree with the complaint points made. In addition, Grove explained that they believed the complaint had been made too late.

Our investigator looked into things and concluded that the complaint had been made in time and was one which could be considered further. In assessing the advice given to Mr M the investigator stated that whilst there were concerns over the suitability of the advice, the chain of events showed it was more likely that not that Mr M would have transferred his DB pension anyway. As such, it was not reasonable to hold Grove accountable for his losses.

In response Mr M stated that he disagreed with the findings issued, stating that it was Grove's responsibility to provide suitable advice and given this had been deemed unsuitable, Grove were responsible for his losses.

Our investigator was not minded to change their findings and as such the case has been passed to me for 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 have firstly considered whether this complaint is one which this service can consider. The rules by which the Financial Ombudsman Service operates are known as the DISP Rules.

DISP 2.8.2R says:

*“The ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint; unless the complainant referred the complaint to the respondent or to the ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received."*

It is clear that the advice being complained about occurred more than six years before the complaint was registered, and as such I have focussed on point 2(b) – when Mr M became aware, or ought reasonably to have become aware, he had cause for complaint.

Within their submissions to this service Grove have stated that Mr M withdrew the entirety of the pension funds in August 2016 and as such should reasonably have been aware at that time that the pension would no longer provide any benefits in retirement.

That, however, is not the test I must apply. The fact Mr M would (or should have been) aware that the pension would no longer provide any benefits in retirement once he had withdrawn all the funds in 2016 does not mean he would have been aware the advice was unsuitable.

As stated by the investigator, the total withdrawal of the funds was not advised by Grove with Mr M taking this action on his own, as such it cannot be concluded Mr M would have connected the exhaustion of the pension fund with the Grove advice.

I cannot see any other event which would have caused Mr M to have concerns over the advice until he was informed of this by his representative. As such, I have reached the same conclusion as our investigator – this complaint is one which this service can consider.

I have therefore gone on to consider the complaint made by Mr M.

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 have reached 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 Grove's actions here.

Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.

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 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 not to uphold the complaint for largely the same reasons given by our 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 Mr M's best interests.

### *Financial viability*

A transfer value analysis report is required by the regulator when DB pensions are being transferred as it shows how much the transferred fund would need to grow by each year to provide the same benefits as the DB scheme. This required growth rate is called the critical yield with this being used as a measure of the likelihood of the transfer providing increased benefits for the policyholder in retirement.

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.

The investment return (critical yield) required to match the occupational pension at retirement was quoted as 7.41% per year. This compares with the discount rate of 4.2% per year for 10 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, Mr M's attitude to risk and the term to retirement. I think Mr M 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 his attitude to risk.

The suitability letter produced by Grove is contradictory when it comes to the transfer value analysis, stating that the critical yield is low and achievable, but then also stating that the transfer is likely to lead to Mr M's pension provision suffering.

This contradiction means I cannot be certain that Mr M was fully aware of the financial impact of Grove's advice on his pension provision.

There can however be non-financial reasons why a scheme member may choose to transfer their DB pension, even if it does cause financial losses over the longer term.

### *Access*

The primary reason for transferring in this case centres around Mr M's need to access larger lump-sums from his pension, earlier than the DB scheme would allow.

The fact-find documents what these were to be used for and did cover that alternative sources of capital were not available to Mr M – leaving this pension as the only available source of the amount of cash Mr M was looking for.

As stated by our investigator, valuable lifelong guarantees were lost upon transfer and there must be robust reasons documenting why access to short-term cash has been prioritised. Decoration of Mr M's home and a family holiday are not considered sufficiently strong reasons for giving up the guarantees lost upon transfer, especially when the value of the guarantees themselves has not been made clear.

I have considered that the fact-find confirmed Mr M was in ill health and such guarantees may be less valuable to someone with a much-reduced life expectancy. However, information on this is limited with the advice file only confirming Mr M had high cholesterol, with there being no separate information from Mr M's doctor explaining the impact of this on Mr M's life expectancy.

Overall, I do not consider there to have been a consistent and clear explanation of the value of the benefits lost upon transfer, with the reasons for transfer being inadequate to justify the guarantees lost.

However, before I can uphold the complaint and give any redress instructions to Grove, I must also consider if Grove's advice is the overall cause of Mr M's losses.

*Would Mr M have transferred anyway?*

The regulations in place in 2016 required Mr M to receive financial advice before he could transfer his DB pension. However, the advice did not need to support a transfer in order for Mr M to request one. The regulations accept that the funds were Mr M's, and as such he retained the right to insist on a transfer, even if Grove recommended the DB scheme be retained.

I therefore must consider whether Mr M would have rejected any advice by Grove which recommended he keep the DB scheme.

Here, I have again reached the same conclusion as our investigator and decided that the evidence supports the conclusion that it is more likely than not that Mr M would have transferred his DB scheme regardless of any advice from Grove to retain it.

This conclusion is based on the content of the initial enquiry form completed by Mr M which shows he was already considering accessing the entirety of the DB pension, without any encouragement from Grove.

In addition, the fact Mr M essentially rejected Grove's advice to retain and invest the remainder of the transferred funds, once the initial payment of £6,000 had been made, supports the conclusion he would have rejected any advice to retain the DB scheme and would have transferred the DB pension anyway.

I fully appreciate that Grove had a duty to provide Mr M with suitable advice, and that in this case the advice should have been to retain the DB scheme. However, it does not automatically follow that Grove's actions caused Mr M's losses.

I have concluded that even if Grove had given suitable advice, Mr M would still have transferred (as was his right) and still encashed the entirety of the pension fund in the way he ultimately did. As such, Grove is not responsible for Mr M's losses, and I cannot therefore uphold this complaint.

**My final decision**

In line with the rationale above I am not upholding this complaint against Grove Pension Solutions Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 June 2024.

John Rogowski  
**Ombudsman**