

## **The complaint**

Mrs F complains about the advice she received from Grove Pension Solutions Limited ('GPS') which led her to transfer the benefits from her defined benefit ('DB') occupational pension scheme to a personal pension.

## **What happened**

Mrs F made an enquiry with GPS in March 2015 about accessing one of her pensions. GPS sent Mrs F some information about the service it provided and requested a cash equivalent transfer value ('CETV') of the pension she wished to discuss. It then arranged to speak with Mrs F and sent her an online questionnaire to complete ahead of the call.

GPS spoke to Mrs F on 31 March 2015 to gather information about her circumstances and objectives. Amongst other things this recorded that Mrs F was 55, married and employed full-time. She owned her home with her husband but this was subject to a small mortgage due to be repaid in around five years. Mrs F had some other debts totalling just under £4,000 and no savings. The adviser noted Mr and Mrs F spent what they earned each month.

GPS recorded that Mrs F was a deferred member of her former employer's DB scheme, which had a CETV of just under £52,000. She had deferred benefits in another DB scheme and was a current member of her employer's defined-contribution ('DC') scheme but no further details were provided. The fact-find recorded that Mrs F wanted to repay some debts and carry out repairs on her home. In particular, Mrs F said she needed to make repairs to her roof and the associated damp problem, which had caused damage. Mrs F said the estimated cost of repairs was £5,000. The adviser noted Mrs F said the damp problem was getting worse and the overall cost of fixing the problem was increasing, so Mrs F considered it essential to get this fixed as soon as possible. The adviser also recorded that Mrs F wanted to take a holiday abroad and build up an emergency fund to give them more financial stability.

GPS had a phone conversation with Mrs F on 15 April 2015 in which it explained it would not be recommending that she transfer her DB pension. It then followed this up with an email explaining the reasons why it didn't consider it to be in her best interests, with the emphasis on her losing guaranteed benefits and it not being a cost-effective way of achieving her objectives. Mrs F replied to the email on the same day saying that she still wished to go ahead and asked GPS to arrange it for her.

GPS phoned Mrs F on 20 April 2015 to check her understanding of things. As Mrs F confirmed that she wanted to proceed, GPS discussed how it would facilitate the transfer.

On 22 April 2015, GPS sent Mrs F a Pension Report which set out its advice. GPS reiterated the advice not to transfer out of the DB scheme and the reasons why, but noted that because Mrs F wished to proceed, it recommended a personal pension to which she could transfer her benefits. It recommended an investment strategy in line with her attitude to risk, which it had assessed as 'medium'.

Mrs F accepted the investment recommendation and her application for the personal pension was submitted on 24 April 2015.

In 2020 Mrs F asked a claims management company ('CMC') to review the advice she received from GPS. The CMC subsequently referred a complaint to GPS in February 2021, saying the advice Mrs F received was unsuitable for her. It said she was likely to be worse off in retirement as a result; she'd lost guaranteed benefits and was paying high fees. The CMC said it appeared Mrs F had been treated as an 'insistent client' but there was no evidence showing that Mrs F understood she was being treated this way.

GPS didn't uphold Mrs F's complaint. In summary it said Mrs F was given clear advice not to transfer her pension with detailed reasons why she would be worse off if she did so. But as she wished to proceed, it processed the transfer so she could meet her objectives. It said Mrs F responded to a feedback survey following the advice in which she said she was very happy with the service and in particular the time the adviser took to explain everything to her.

Mrs F's CMC subsequently referred the complaint to the Financial Ombudsman Service.

An Investigator upheld the complaint. He didn't think GPS's advice was clear or detailed enough for Mrs F to make an informed choice about proceeding with the transfer against GPS's recommendation. GPS didn't agree and the complaint was referred to an Ombudsman. The Ombudsman also upheld the complaint and awarded compensation. However, GPS initiated the judicial review process and by consent, the final decision was set aside.

The complaint was passed to me to review afresh and both sides were given the opportunity to make further representations.

GPS provided further information, including evidence it said had not been previously submitted. It also made the following representations, which I've summarised as follows:

- Mrs F's complaint should be dismissed without consideration of the merits because the referral to the Ombudsman was made 'out-of-time'.
  - GPS sent Mrs F its final response letter ('FRL'), giving Mrs F six months to refer her complaint to the Financial Ombudsman Service, on 8 April 2021 but Mrs F's CMC did not refer the complaint to us until 11 October 2021, which was after the six-month deadline.
  - It noted earlier emails had been sent to the Financial Ombudsman Service by the CMC but they didn't have Mrs F's instruction to refer the complaint to us and the complaint form wasn't signed. So, these earlier emails didn't constitute a referral.
- Mrs F's complaint should not be upheld because:
  - the complaint has been 'concocted' by the CMC and 'is false in every material particular' – it is no more than a fishing exercise;
  - the CMC's approach constitutes a material regulatory breach as the allegations do not correlate to Mrs F's actual circumstances;
  - Mrs F understood what she was doing and was the driver of the transaction – she approached GPS specifically to release money from her pension;
  - GPS did not make it easy for Mrs F to proceed as an insistent customer and it is clear from the various emails, phone notes and the suitability report that she would have proceeded as she did regardless of how GPS handled her request.

Mrs F's representative said it had asked Mrs F to provide valuations of her other pensions but she hadn't got back to them. The representative maintained Grove's insistent client

process was inadequate and Mrs F wasn't given sufficient information before she made her decision to transfer. It said the information provided to her over the phone and over email wasn't detailed enough. It added that Mrs F's instructions to proceed against the advice were not detailed and GPS didn't check her understanding or push back enough.

I issued a provisional decision on 29 February 2024, explaining why I wasn't minded to uphold Mrs F's complaint. I thought Mrs F had made her complaint in time, but didn't think it should be upheld. I said GPS's advice not to transfer out of the DB scheme was suitable and that GPS had made that clear to Mrs F. And overall, I was satisfied Mrs F had made an informed decision to proceed against the advice she was given. But even if I thought there were some flaws in GPS's advice process, ultimately I thought Mrs F would've proceeded to transfer out of her DB scheme regardless of the advice she received.

Mrs F's representative disagreed. It said:

- GPS failed to provide clear and full advice to Mrs F until 22 April 2015, after she'd decided to proceed with the transfer.
- GPS's advice process was designed in a manner which led Mrs F down an insistent client path without full advice.
- It hasn't been able to locate a copy of Mrs F's email of 15 April 2015 but in any event GPS should've asked Mrs F to confirm in writing her understanding of what she was giving up by transferring out of the DB scheme.
- Sending Mrs F generic information about DB transfers does not satisfy the requirement to start with the assumption that a DB transfer won't usually be suitable.
- GPS had a duty to keep evidence relating to DB pension transfers indefinitely – it had breached this by failing to record and keep the telephone calls with Mrs F.
- The severity of the failings in the advice process can't be ignored – GPS failed to consider the alternative ways of Mrs F raising the money she needed, for example, by accessing her DC scheme.
- My provisional decision was not consistent with other decisions made by the Financial Ombudsman Service involving customers with similar circumstances.

GPS responded, saying it largely agreed with my provisional decision that Mrs F's complaint should not be upheld, although it maintained the complaint was time-barred. It said:

- Mrs F did not consent to her representative referring the complaint to the Financial Ombudsman Service until 11 October 2021.
- The complaint, therefore, hadn't been referred to us by the 'complainant' within six months of the final response letter dated 8 April 2021, as required under the rules.
- Mrs F's representative didn't have a 'general authority' to refer the complaint to the Financial Ombudsman Service on her behalf. GPS referred to rules in the Regulator's handbook relating to CMC conduct.

GPS also didn't accept there were any shortcomings in the advice process. It said it clearly documented that Mrs F was a part-time worker who had a short period of membership in her DC scheme, so her accumulated DC pension fund at that point was negligible.

As both parties have now provided their response to my provisional decision, I'm proceeding with my final decision on the matter.

## What I've decided – and why

### Jurisdiction

As GPS continues to dispute that Mrs F's complaint was made in time, I've reconsidered whether this is a complaint that falls within our jurisdiction.

The Financial Ombudsman Service can't consider every complaint that's brought to us. There are rules that we must follow when dealing with complaints which determine what we can and can't look into. These are set by the Financial Conduct Authority ('FCA'). These rules are called the Dispute Resolution ('DISP') rules and are set out in the FCA's handbook, which can be found on their website.

DISP 2.8.2R says:

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

- 1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication...*

*unless...*

- 5) the respondent has consented to the Ombudsman considering the complaint..."*

GPS provided Mrs F with its FRL on 8 April 2021, meaning she had until 8 October 2021 to refer the complaint to the Financial Ombudsman Service. GPS says that the complaint wasn't referred to us until 11 October 2021, which was more than six months after GPS's FRL. As GPS hasn't consented to our Service considering the merits of Mrs F's complaint, I need to determine whether the complaint was made in time.

GPS acknowledges that the CMC contacted the Financial Ombudsman Service about Mrs F's complaint before October 2021, but says this didn't constitute a referral as the complaint form wasn't signed by Mrs F and Mrs F hadn't consented to the CMC referring the complaint to the Financial Ombudsman Service.

I've looked at the contact the CMC made with the Financial Ombudsman Service. And I can see that it first sent an email to us on 21 June 2021, which was acknowledged as having been received. The email stated it had attached a new complaint for Mrs F and attached to the email was an unsigned copy of our complaint form, and a 39-page package of documents which included the complaint it had made to GPS on Mrs F's behalf in February 2021. The CMC stated it hadn't received a copy of GPS's FRL and neither had Mrs F. And the CMC would send a signed copy of the complaint form and the FRL as soon as it was received.

A further email was received on 14 July 2021, in which the CMC stated that it still hadn't received the FRL but wanted assurance that Mrs F's complaint had been logged as having been referred to us on 21 June 2021. It said it would provide Mrs F's signed complaint form as soon as possible.

It should be recognised that any reference to 'refer' or 'referral' in DISP 2.8.2R is not a defined term. So, it's fair to interpret this as the ordinary meaning of the word, which I think would have the effect of passing the matter on to us to investigate. So, in order for a referral to be valid, I think the contact would need to meet the following requirements:

- explain who the complaint is from;
- explain which business the complaint is about;
- explain what the complaint is about; and
- that they want us to investigate.

And having considered the contact from Mrs F's CMC in June and July 2021, I'm satisfied Mrs F's complaint was referred to the Financial Ombudsman Service within six months of GPS sending her its FRL.

I say this because the CMC attached a complaint form, setting out that Mrs F was complaining about GPS. The complaint form said we should refer to the additional information provided, and this included the complaint that had been made to GPS, which alleged the advice Mrs F received from GPS was negligent and that she had suffered a loss as a result. I appreciate that the complaint form wasn't signed. But I don't think that a signature is required in order for a referral to be made. We accept referrals in writing, over the phone or via email. Although we will require authority from a consumer before moving the case to investigation, such as a signed complaint form, we do not require a signed document in order to be satisfied a 'referral' has been made.

GPS seems to suggest that the CMC referred the complaint to us prematurely, as it hadn't received Mrs F's instruction to refer the complaint to us. But Mrs F had appointed the CMC to act on her behalf in connection with the complaint against GPS, and having referred the complaint to GPS and not having received the FRL, I think it was reasonable for the CMC to refer the complaint to the Financial Ombudsman Service, to ensure that Mrs F's referral was made in time. That's particularly the case given eight weeks had passed since the complaint was made to GPS, and as far as the CMC was aware, GPS had not responded within that time period. So, by that point, the CMC was free to ask the Financial Ombudsman Service to investigate Mrs F's complaint.

I've considered what GPS has said about DISP 2.8.2R requiring the 'complainant', i.e. Mrs F, to refer the complaint to us. But, 'complainant' is not a defined term within DISP 2.8.2R. The term '*eligible complainant*' is a defined term within DISP 2.7, which deals with the types of complainants that are eligible to complain to the Financial Ombudsman Service. And I note DISP 2.7.2R states:

*"A complaint may be brought on behalf of an eligible complainant (or a deceased person who would have been an eligible complainant) by a person authorised by the eligible complainant or authorised by law."*

There's no dispute that Mrs F is an eligible complainant. And I remain satisfied that the CMC was authorised to bring the complaint to our Service on Mrs F's behalf – indeed, there is no suggestion from Mrs F that the CMC acted without her authority when it referred the complaint to the Financial Ombudsman Service. And I maintain that we do not require a signed complaint form in order for the complaint to be referred to us.

GPS has highlighted regulations within the Claims Management: Conduct of Business Sourcebook. But I don't think those regulations are relevant to my consideration of whether Mrs F's complaint was referred to us in time.

Overall, I still think Mrs F's complaint was made in time, so I've gone on to reconsider the merits of it.

## The merits of the complaint

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.

### *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 GPS'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.

There had previously been rules in place relating to insistent clients when the Personal Investment Authority ('PIA') was the Regulator and the PIA Adopted Rules applied. And the Conduct of Business ('COB') rules had also contained rules about how firms should treat insistent clients. These specific requirements were not replicated in the Conduct of Business Sourcebook ('COBS') rules which came into force in 2007. Although, COBS 19.1.9 does say that:

*"If a firm proposes to advise a retail client not to proceed with a pension transfer or pension opt-out, it should give that advice in writing."*

Nevertheless, at the time the advice was given in 2015, I think it was good industry practice for firms to ensure that customers who wanted to go ahead with a transaction against an adviser's recommendation should have it documented that the customer was acting against the advice they were given, and that they wanted to proceed in any event. And I think that GPS understood the same, as I will go on to explain below.

And as I've said above, the COBS rules in the Regulator's Handbook required GPS to act honestly, fairly and professionally in accordance with the best interests of its client and to provide information that was clear, fair and not misleading. So, I think the key considerations here are:

- whether GPS's recommendation was suitable;
- whether the information GPS gave Mrs F was clear, fair, and not misleading;

- whether Mrs F understood the consequences of going against the recommendation and wanted to proceed in any event.

Having carefully reconsidered all of the evidence provided by both parties, I've decided to not uphold the complaint. I'll explain why.

#### *Mrs F's initial contact with GPS and the starting consideration*

The Regulator, the FCA, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GPS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs F's best interests.

And having reviewed the evidence provided here, I think GPS started with this assumption. I say this because before speaking with Mrs F, it provided her with information about DB pension schemes and the risks of transferring out of them. On 27 March 2015, GPS wrote to Mrs F confirming the date of her appointment and enclosed two documents; 'Defined Benefit Pension Schemes – an Explanation' and 'Risk Warning Document'.

The 'Defined Benefit Pension Schemes – an Explanation' document said:

*"The type of company pension scheme you have is known as a Defined Benefit or Final Salary scheme.*

*These types of scheme are universally considered to be the best sort of pension you can have - you should therefore only consider releasing benefits early as a matter of last resort.*

*One of the reasons why they're considered to be such good pension schemes is because there isn't any investment risk borne by you, the member; all the investment risk is the liability of your former employer.*

*Because of this pension release is only suitable for a limited number of people and circumstances. Although we are not necessarily saying it's not suitable for you it is important you make sure you are in possession of all the facts before making any final decisions - we always recommend you take your time and do not act in haste...*

*...When you were working for your old company it was likely that you paid a fixed percentage of your income into the pension scheme; your former employer also contributed into the pension although the amount they paid varied from year to year - in most cases it was significantly more than the amount you paid.*

*Being in the pension scheme meant you got the promise of a pension when you retired, which was dependant on how many years you worked for that employer and what your final salary was...*

*... Whatever the cost is for your old employer to pay you that pension, they must find the money. If there is a stock market crash or some other event that means the value of the pension fund reduces, it's not your problem. You'll receive the pension you're promised at retirement and your old employer must pay it.*

*If you're thinking of releasing some money from this pension early, and if your former employer won't let you take it direct from them now, then chances are you'll have to transfer your pension fund into some kind of personal arrangement and release money that way.*

*By doing this you would then miss out on all the increases you might have otherwise got had you left this pension where it was in the first place and chances are you'll end up with significantly less than you'd have otherwise got at retirement."*

The 'Risk Warning Document' also said:

*"You should be aware that if you are taking your benefits early it would only be suitable for a very limited number of people and circumstances and it will almost certainly reduce your pension income in retirement."*

Both documents used plain English and explained why DB schemes were valuable, what would be lost upon transferring out of a DB scheme and that doing so should only be done as a last resort. Both documents also highlighted that transferring out would only be suitable for a limited number of people. I would've expected Mrs F to have read these documents and as such, I think she ought to have understood, before speaking with GPS, that accessing her DB scheme early, or transferring out of it completely, might not be suitable for her and would have a negative impact on her retirement.

I've taken account of what the CMC has said about the generic nature of this information, but I still think Mrs F would've understood from the information provided that generally, transferring out of a DB scheme wasn't suitable for most people.

#### *Suitability of advice*

GPS completed its fact-find with Mrs F over the phone on 31 March 2015. It noted that Mrs F wanted to release money from her DB pension in order to repay some debts and to make repairs to her roof and the associated damp problem, which had caused damage. Mrs F had estimated the cost of repairs as £5,000 and GPS noted Mrs F said the damp problem was getting worse and the overall cost of fixing the problem was increasing, so Mrs F considered it essential to get this fixed as soon as possible. GPS also recorded that Mrs F wanted to take a holiday abroad and build up an emergency fund to give her and her husband more financial stability. GPS noted that Mrs F required a total amount of £9,000 to clear her debts and repair the roof and associated damp problems.

Based on the objectives Mrs F described, GPS advised Mrs F not to transfer out of her DB scheme. I understand that GPS's initial recommendation was delivered to her over the phone. Unfortunately, the recording of this call isn't available. Mrs F's CMC suggests that this is a failing contrary to regulations which requires evidence of advice given to customers to transfer out of a DB scheme to be retained indefinitely. But there is no requirement for calls to be recorded, and GPS explains it didn't start recording calls until several years later.

In any event, at the time of the advice, the requirement under COBS 19.1.9 was for GPS to provide its advice not to transfer out of the DB scheme in writing. And I can see that immediately after this call, GPS sent Mrs F a summary of the advice by email, in which the adviser emphasised his recommendation not to transfer out of the DB scheme. So, I think GPS met the requirement of COBS 19.1.9 to provide the advice not to transfer out of the DB scheme in writing.

I note that the CMC believes Mrs F should have received 'full' advice at this stage. By this, I think it means that GPS should have provided Mrs F with a full suitability report setting out the advice not to transfer. But ultimately the requirement here was for GPS to provide Mrs F with suitable advice, which was clear, fair and not misleading. And I don't think the absence of a full suitability report at this stage means that Mrs F didn't receive suitable advice from GPS before she made her decision to proceed with the transfer. The important consideration

here is whether the advice Mrs F received was suitable and whether she was able to make an informed decision based on the information provided to her.

So, I've considered the advice Mrs F received. And overall, I think it is clear from the information and evidence available about Mrs F's circumstances and objectives at the time of the advice that a transfer out of Mrs F's DB pension scheme wasn't suitable for her or in her best interests. I think this was a fair and reasonable conclusion for GPS to make. And I think the initial recommendation, as set out in the email of 15 April 2015, was clear and Mrs F would've understood the basis for the recommendation.

I appreciate that, in light of there being no recording of the call, Mrs F could say that the GPS adviser gave her different information on the phone and that during the call, he advised her to transfer out of the DB scheme. But I don't think that's likely given the content of GPS's email.

The email explained what benefits Mrs F could achieve if she remained in her DB scheme and accessed them at her normal retirement age of 60. It said that those benefits were guaranteed and increased annually, and would be lost if she transferred her pension now. GPS explained that the investment return she would need to achieve if she invested the pension in order to match the scheme benefits (known as the 'critical yield') at age 60 was 11.25%. It said she was likely to lose a significant amount of money by transferring and it would be a very expensive way to raise the funds she said she needed. GPS also gave an illustration in monetary terms of how much less she would achieve by transferring her pension and how much she could stand to lose in income if she lived to age 87. So, I think Mrs F should've understood that she would be significantly worse off in retirement if she transferred out of her DB scheme and she would lose guaranteed, increasing income.

GPS's email further stated that Mrs F didn't need to access her pension because she was already managing the repayments on her debts. But if she still felt she needed the money, she could afford to borrow it. GPS gave a worked example based on her borrowing £9,000 to repay her debts and cover the cost of her home repairs. It demonstrated that this would cost her £182 per month (based on an interest rate of 9% over five years). It explained that although the cost of the loan would be around £2,200 over the five-year term, this was significantly less than the £13,000 it thought she was likely to lose by transferring her pension. So, I think GPS clearly set out how Mrs F could achieve her objectives without risking her guaranteed pension.

The email ended by stating:

*"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.*

*If you have any questions please do not hesitate to contact me."*

So, GPS did not undermine the recommendation not to transfer by offering to process the transfer against the advice. And if Mrs F had been advised to transfer over the phone, I think that she would've questioned the content of the email she received given it was emphatic in recommending that Mrs F shouldn't transfer out of the DB scheme. And overall, I think Mrs F should've clearly understood the advice she was being given, why that was and what she would be giving up if she transferred out of her DB scheme. But it's evident that Mrs F responded to the email, very soon after receiving it, saying that she wanted to take her pension now as she was wanting to go on holiday with her husband. She said if the adviser could sort this for her she'd be very grateful.

The CMC says that GPS should've asked Mrs F to confirm her understanding of what was being given up in writing, instead of accepting her instruction to proceed. But that wasn't a requirement at the time of the advice and it isn't a requirement under COBS now, although it could be said to be good practice. But in any event, several days later, the adviser phoned Mrs F to check that she still wanted to go ahead. Again, there is no recording of the call, but GPS's phone note said:

*"Spoke to the client following her insistent e-mail to ensure that she understands that she is going against our advice and talked her through my e-mail with the reasons for not proceeding. She understood this but re-iterated her e-mail and confirmed she wanted to proceed against my advice. We then discussed my recommendation to facilitate her pension transfer."*

So, I think there's evidence to demonstrate that GPS checked Mrs F's understanding of things before proceeding. This was followed up with an email from the adviser saying he would arrange for the necessary paperwork to be sent.

GPS's formal advice report was sent to Mrs F on 22 April 2015. The covering letter said Mrs F should sign and return the forms provided. It also said at the bottom of the letter in bold:

***"PS – We are unable to proceed until you have returned everything requested: therefore the sooner you do this, the quicker you will get your money."***

I've thought about whether this statement could've influenced Mrs F to proceed against the advice she'd received. But I'm satisfied by the time Mrs F received the letter, she had received clear and suitable advice not to transfer out of her DB scheme and decided independently to proceed against the advice.

Furthermore, the first thing GPS did in the formal advice report was to reiterate that the recommendation was that Mrs F should not release her DB pension early. And that the report was based on her instruction and her decision not to take GPS's advice. It then said:

*"One of the main differences with an old company pension and transferring into a personal arrangement is the old scheme was promising you a pension in retirement and they have to provide this, whatever the cost – there is no investment risk borne by you whatsoever. By transferring, the money remaining invested would have the risk borne by you instead."*

*This is a very valuable benefit of a Defined Benefit company pension scheme and a significant loss that **MUST** be taken into account when considering early pension release via a transfer. You have to be sure this loss is a risk you are prepared to accept."*

*You have read and understand the risk warning document. We discussed the risk of having less income in retirement. You said 'I am not concerned with the pension because I forgot that I had it so any losses are acceptable. I can survive on the other pension arrangement I have.'*

*As to the importance of achieving your objectives knowing that releasing money from your pension now would reduce eventual retirement income, you said you are worried about the damp problem getting worse and the overall cost of fixing the problem [is] increasing so it is essential that you get this fixed as soon as possible. You also said 'it has been a very long time since we went on holiday and this would help me and my husband relax, especially as he has just had an operation.'"*

The report then went on to discuss the investment returns needed to match the benefits due from Mrs F's DB scheme, saying these would not be achievable. GPS added:

*"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."*

It further added:

*"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.'"*

So, I think that on receipt of the report, Mrs F would've again understood that GPS recommended that she did not transfer out of her DB scheme, and that she would be worse off if she continued with the transfer. And I think Mrs F proceeded against the advice, in full knowledge of what she was giving up, and that she had other ways of achieving her objectives without sacrificing her guaranteed pension.

*Was Mrs F an insistent client – was it fair for GPS to treat her as such?*

Despite what I've said above, I don't think the advice GPS gave Mrs F was flawless. And I've considered whether Mrs F would've accepted the advice she was initially given, and not proceeded with the transfer, had GPS done everything I'd have expected it to in the circumstances.

As an initial observation, I think the starting point would've been to look at whether Mrs F could've taken benefits from her DB scheme immediately, thereby retaining the guaranteed increasing pension, albeit a lower pension than the pension Mrs F would be entitled to at her normal retirement age. I can see that GPS requested an early retirement quote from the DB scheme trustee. However, it was told that because of the level of the Guaranteed Minimum Pension, Mrs F didn't have the option of taking her benefits immediately. So, it's clear that Mrs F's immediate need for cash couldn't have been achieved by her taking her DB scheme benefits at the time.

However, I can see that the DB scheme trustee told GPS that payment of benefits could be possible from April 2016. And it set out that this could give Mrs F a tax-free lump sum of £2,575 plus an annual pension of £2,630. I can't see that this was clearly communicated to Mrs F during the advice process, but even if it had been, I don't think this would've influenced Mrs F's decision. Mrs F was clear that she needed £9,000 for debts and repairs and wanted an extra sum to go on holiday – she was able to achieve this by transferring and taking her full tax-free lump sum entitlement of around £13,000. So, I don't think she'd have been prepared to wait a year to access her DB scheme, particularly given the tax-free lump sum wouldn't have been sufficient to either clear her debts or carry out the repairs. As such, even if GPS had explained Mrs F could take her benefits from April 2016 instead, I still think she would've decided to proceed with the transfer out of her DB scheme.

In addition to the above, according to the fact-find Mrs F had two other pensions; a DB scheme with her current employer that she had been a member of for six years and a DC scheme with the same employer that she'd been a member of for three years. Although GPS did provide Mrs F with an alternative way of meeting her objectives by way of taking out a

loan, I think it should've also considered what benefits Mrs F could've taken from these pensions instead.

GPS says it clearly documented that Mrs F's accumulated DC pension fund was negligible because of her pay and short period of membership. It appears that Mrs F was unable to tell GPS how much these pensions were worth at the time it completed the fact-find. But I still think GPS ought to have pressed Mrs F on this point and obtained the values of all of her pensions before finalising its advice, particularly as it ought to have done some degree of cash flow analysis so that it understood how Mrs F would meet her income needs in retirement.

I've asked Mrs F to provide details of these pensions, including their equivalent values around the time of the advice. But Mrs F hasn't provided this information so I've been unable to consider to what extent GPS's advice would've been impacted by this. But, like GPS, I recognise that Mrs F had only been a member of her DC scheme for three years and based on her salary it seems unlikely the value of the pension would've been high enough to provide enough tax-free cash to meet her needs. So, even if GPS had insisted on the details of this pension being provided, I think it's unlikely to have made a difference to the overall advice. On balance, I think GPS still would've recommended that Mrs F remain in her DB scheme and finance the restructuring of her debt and pay for the repairs to her home by taking out a loan as this was cost-effective and didn't risk her retirement.

I also think it's unlikely, having recommended Mrs F not to transfer out of her DB scheme with her former employer, that GPS would've recommended she transfer the other DB scheme to meet her needs instead for the same reasons.

In terms of the income analysis GPS carried out, I think this was somewhat lacking. While GPS asked Mrs F how much income she thought she'd need in retirement, it didn't know how much income her current pension provisions would provide and what the impact of her transferring out of this DB scheme would have on that income. But ultimately, I still don't think this would've made a difference. GPS was very clear with Mrs F that she would receive less income in retirement as a result of transferring the pension. And it gave her monetary examples of how much worse off she could be, per month, as well as over her lifetime. But I think Mrs F's mind was made up and she was satisfied this was a pension she didn't need.

I can't say exactly to what extent this belief could've been misguided, because I don't know how much pension income Mrs F could expect in retirement, taking account of her remaining provisions with her current employer and her state pension. But it does appear Mrs F expected her needs in retirement to be quite modest. Although GPS noted in the fact-find that Mr F had no pension provisions of his own, it noted that both were expecting to retire at age 66, at which point their mortgage would be fully repaid. The adviser recorded that Mrs F expected them to need a minimum of £1,000 per month in today's terms and they were each expecting their full state pension. So, on the face of it, it seems that need could've been met by Mr and Mrs F's state pensions, plus Mrs F's other entitlement, which she would be continuing to build over the next 10 years. So, I don't think a full and proper income analysis would've made a difference to Mrs F's decision to proceed against the advice.

I've also considered the process GPS employed overall. And I think it's significant that Mrs F approached GPS herself with a specific plan in mind. I accept that GPS's role is to interrogate Mrs F's objectives and not simply facilitate them, but I think it did that and gave clear and suitable advice against transferring out of her DB scheme.

Mrs F's CMC says GPS's process was designed in a manner so as to lead her down the insistent client path, but I don't agree. The email Mrs F received on 15 April 2015 was clear and unequivocal that she should not transfer out of her DB scheme as she would be worse

off in retirement. And GPS did not undermine this by offering to process the transfer against the advice. I accept it's possible GPS could've introduced the idea of proceeding against the advice during the phone calls it had with Mrs F on 31 March and 15 April 2015. But I don't think the documentary evidence supports this and I'm satisfied GPS made checks at appropriate points to ensure Mrs F understood the advice and that if she proceeded with the transfer it would be contrary to the advice she'd been given. I also think GPS gave clear information about the risks of transferring and the consequences of doing so on her future retirement. So, I don't think that Mrs F could've misinterpreted the advice she was given.

I'm also satisfied Mrs F was given time to consider her options between each stage, and could've sought further guidance or decided against proceeding with the transfer at any point.

As a final point, I note Mrs F returned a satisfaction survey to GPS following the advice. She made a particular comment that the adviser had taken the time to explain everything to her and repeated things when she didn't understand. Mrs F also confirmed that she fully understood the advice and things had been explained in plain English. I appreciate that Mrs F may have since reflected on the decision to transfer and questioned the advice she received. But I think she understood the advice she was given and was likely happy with it at the time.

Overall, while I accept there were some shortcomings in GPS's process relating to exploring her DB and DC schemes, I think GPS gave Mrs F clear and suitable advice not to transfer out of her DB scheme. And I think Mrs F made an informed decision to proceed against the advice she received. So, I'm not upholding the complaint.

### **My final decision**

For the reasons set out above, I'm not upholding Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 23 April 2024.

Hannah Wise  
**Ombudsman**