

## The complaint

Mrs T complained about advice she was given in 2018 and 2019 regarding the transfer of two defined-benefit (DB) pension schemes, to a self-invested personal pension (SIPP), a type of personal pension plan.

Grove Pension Solutions Limited is responsible for answering this complaint. To keep things simple, I'll therefore refer mainly to "GPSL".

GPSL initially recommended that Mrs T *shouldn't* transfer her two DB pensions. But it then processed the transfer to the SIPP on an 'insistent client' basis, a term used in the financial industry where a client wishes to proceed against the recommendation made by their adviser.

Mrs T now says she was badly advised by GPSL and the process it followed was wrong; she now thinks transferring has caused her a financial loss for which she should be compensated.

## What happened

It seems Mrs T was referred to GPSL from another independent financial adviser (IFA) with whom she had an existing relationship. I've assumed that her existing IFA did not have the regulatory permissions to advise on DB pension transfers and so she was introduced to GPSL, which did.

A GPSL 'fact-find' exercise then took place in late August 2018, and information gathered about Mrs T was broadly as follows:

- Mrs T was 50 years and 5 months old, married to Mr T and residing in a property they both owned, valued at approximately £500,000<sup>1</sup>. A £200,000 mortgage was outstanding on the property, but the remaining term wasn't collected at the time of the advice.
- Their joint net income was around £4,300 per month and essential outgoings were £2,800. They had no demonstrable savings.
- Mrs T had several pensions. The two relating to this complaint were DB pensions I'll refer to as "Pension S" and "Pension N". The cash equivalent transfer values of these two pensions were £17,416 and £74,290 respectively.
- Mrs T's other pensions were three defined contribution (DC)<sup>2</sup> schemes with around £90,000 in total invested.
- Mrs T's health was described as poor as she'd recently suffered from a number of

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<sup>1</sup> Taken from GPSL 'Fact-find' document.

<sup>2</sup> A DC pension builds up a pot of money that can be used to provide retirement income. Unlike DB schemes, the income one might get depends on factors including the amount paid in and the investment performance.

life-threatening conditions and had lost movement in parts of her body which I'm given to understand were viewed at the time as permanent.

In October 2018, GPSL advised Mrs T *not* to transfer away from her DB pensions. However, she wrote back to GPSL in November to say that due to her health situation, she felt that transferring her two DB schemes to a personal pension plan was something she felt suited her recently changed and difficult circumstances. She explained that this was because, if she died, the full value of both these funds could be passed to her beneficiary, whereas the DB schemes were somewhat limited in this regard.

GPSL later responded to Mrs T by calling her to reiterate that its advice was *not* to transfer, and it also backed this up in writing. However, after insisting that she still wanted to transfer away, GPSL issued a second suitability report, in January 2019, once again reminding her of its initial advice being *not* to transfer, but in the circumstances providing advice on where to move the funds to because she was insisting that the transfer should go ahead. GPSL recommended transferring to a SIPP and says it further recommended investing the money in a moderate risk fund.

In November 2023, Mrs T complained to GPSL through a claims management company. She said she wasn't correctly advised, and she now thought that she may have lost out as a result of transferring away from her DB schemes. In response, GPSL didn't agree that it had done anything wrong. It said it had first advised Mrs T not to transfer away and that the transfer only happened when Mrs T became an insistent client. GPSL says that only when Mrs T insisted, did it then go on to proceed with the transfer process and also make a second recommendation about where the remaining transferred pension funds should be invested. GPSL didn't uphold her complaint.

In April 2024, Mrs T referred her case to the Financial Ombudsman Service. One of our investigators looked into the complaint and said that the DB pension transfer element shouldn't be upheld. The investigator thought that Mrs T had become very insistent that she wanted to go ahead with the transfers of the two DB schemes even though she'd been recommended not to do this several times, but her desire to transfer appeared to have been influenced by her recent and serious health conditions. The investigator therefore concluded that Mrs T had been properly made aware that transferring these two DB schemes was directly against the advice GPSL had provided. On this basis, the investigator recommended that this shouldn't be a complaint we should uphold.

However, the investigator used their remit to look into the transfer of Mrs T's DC funds, which were also transferred to the new SIPP. But they didn't think the ultimate management of these funds using a discretionary fund manager (DFM) was right for Mrs T and so thought this element of the transaction should be compensated for.

Mrs T's representative at first fully agreed with what the investigator said. This means that it agreed that Mrs T's complaint about the two DB scheme transfers should not be upheld, and that the complaint about the DC transfer element should. However, Mrs T's representative later retracted this agreement. GPSL still didn't think that it had done anything wrong.

As the matter hadn't been resolved informally it was passed to me to make an ombudsman's decision. I issued a provisional decision (PD) about this complaint on 19 March 2025 agreeing with our investigator that the complaint about "Pension S" and "Pension N" should not be upheld. I comprehensively set out that Mrs T had insisted on transferring these two DB pension schemes even though she'd been advised several times, both in writing and over the telephone, not to transfer. I concluded that in the difficult circumstances Mrs T had found herself in at the time, she'd been adequately treated as an insistent client by GPSL.

Put another way, I said that in my view Mrs T had used the insistent client process to effectively override the GPSL adviser's original recommendation.

I further concluded in my PD that the transfer of her existing DC funds to another DC scheme wasn't something I felt was wrong either.

I then gave the parties two weeks to come back to me with any further evidence or information.

### **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 also 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 Business (PRIN) and the Conduct of Business Sourcebook (COBS). 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 GPSL'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.

I have further considered that the regulator, the Financial Conduct Authority (FCA), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GPSL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs T's best interests.

I have considered also, the regulatory landscape with regard to insistent clients. At the time when Mrs T dealt with GPSL there were specific rules in place. Since 2018, COBS 9.5A included additional guidance on insistent clients. It sets out three key steps for advisers to take.

1. *Where a firm proceeds to execute a transaction for an insistent client which is not in accordance with the personal recommendation given by the firm, the firm should communicate to the insistent client, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent client so that the client is able to understand, the information set out in (2).*

2. *The information which the firm should communicate to the insistent client is:*
  - a) *that the firm has not recommended the transaction and that it will not be in accordance with the firm's personal recommendation;*
  - b) *the reasons why the transaction will not be in accordance with the firm's personal recommendation;*
  - c) *the risks of the transaction proposed by the insistent client; and*
  - d) *the reasons why the firm did not recommend that transaction to the client.*

*Acknowledgement from the insistent client - COBS 9.5A.4*

1. *The firm should obtain from the insistent client an acknowledgement that:*
  - i. *the transaction is not in accordance with the firm's personal recommendation;*  
*and*
  - ii. *the transaction is being carried out at the request of the client.*
2. *Where possible, the acknowledgment should be in the client's own words.*

*Who is an insistent client?*

COBS 9.5A2 also states that a client should be considered an insistent client where:

- (1) the firm has given the client a personal recommendation;*
- (2) the client decides to enter into a transaction which is different from that recommended by the firm in the personal recommendation; and*
- (3) the client wishes the firm to facilitate that transaction*

Further to all these matters, in assessing this case I've also been mindful of the additional information the regulator had obtained from its research and analysis on insistent client cases. This included a thematic review of so-called insistent client occurrences, results of which were published in an FCA industry release in 2016. Concerns that were exposed in the review included cases where:

- There was an inadequate assessment by firms of the other options (other than transferring) that would meet the client's objectives.
- Excessive numbers of insistent clients appearing to result from the adviser's advice not being sufficiently clear.
- An identified risk of clients' preferred course of action not having been clearly enough explained.
- The exercise was merely a 'papering exercise', for example the adviser had processed the case on an insistent client basis, but this clearly did not reflect what had happened in practice.
- The client was advised not to transfer out of the DB scheme (although the client insisted) but then recommended a product that was not suitable.

Further specific examples of concerns were later released to the industry by the FCA. These examples included the improper use of templated paragraphs about insistent clients within suitability reports or recommendations.

I have once again considered everything in this complaint with great care, including the responses I've received to my PD. And I still think that the evidence in this case is very persuasive that from the outset, Mrs T wanted to transfer her two DB pensions – and would have done so whatever GPSL did. I also don't think there's any evidence on which to uphold any complaint about the transfer of her DC scheme to another DC scheme either.

I'm therefore not upholding Mrs T's complaint. This is my final decision.

### Introductory issues

I'd like to place on record again my sincere sympathies for the difficult times I can see Mrs T has endured with her health.

However, I will repeat what I said in my PD that I don't think it's entirely certain that this complaint was ever really about Mrs T's DC pensions. Having looked carefully again at all the original complaint documents we have, it seems to me that Mrs T's representatives originally brought a complaint only about the two DB schemes and it hasn't mentioned the DC element at all in its response to my PD.

In my experience, a complaint only about the DB elements would be the far more common complaint in these circumstances. Mrs T's representative said, for example, *"We act on behalf of our client in their complaint against you, for the advice you provided in 2019 in connection with the transfer of our client's pension funds from her Final Salary Occupational Schemes into a SIPP for an investment"*. So, to me this continues to imply a complaint only about the two DB transfers. With these matters in mind, I first addressed the specific issues of the two DB transfers.

I've also noted that an important argument put forward by her representative portrays Mrs T as someone without any financial knowledge or experience. I do, of course, accept the vulnerabilities around Mrs T's recent health diagnosis when she was obtaining this advice, but I think it would be inaccurate to portray her as completely lacking in financial or investment experience in the way described. I say this because I've noted that both these DB pensions – and indeed her other DC pensions – relate to many years of experience within major UK banks and other UK financial services companies. At the time of the advice, her most recent experience was as an accounts manager.

When replying to my PD I can see that Mrs T strongly disagrees with this. I've noted her points, and I accept she was not an investment or pensions expert. Nevertheless, I maintain my view that her portrayal as lacking any financial knowledge is implausible.

Of course – and as I made clear in my PD - none of this means that Mrs T's complaint shouldn't receive due consideration. But as I'll explain more about below, I think that when insisting on the two transfers – against GPSL's advice – Mrs T was armed with enough information and knowledge to make an informed decision.

### Financial viability

I would normally begin my analysis of GPSL's advice by explaining the financial viability of transferring. What I mean by this is, what the financial comparisons were between Mrs T's two existing DB schemes - and the personal pension scheme she ultimately transferred to.

However, in this case, GPSL's position in defending this complaint is that transferring wasn't suitable and that it was Mrs T herself that wanted to transfer. I agree with this as the evidence is clear that at the time of the advice the financial viability – and lack thereof – was explained to Mrs T in what I consider to have been plain and clear language.

For example, it seems that after having consulted with Mrs T and collected all the necessary information about her circumstances and finances, GPSL emailed her on 25 October 2018 stating that it wouldn't recommend that she should transfer. Further to this, on 29 October 2018 it completed and sent her a suitability report with the same recommendations set out in much greater detail. GPSL said, *"I am writing to confirm my recommendation not to transfer the pensions at this time. The advice is based on the information we have been provided about you and your pension scheme[s]. The enclosed suitability report details the key considerations in this advice and is a summary of the analysis that we have carried out"*.

In the report itself it told her to, *"leave the pensions [untouched] and re-consider a transfer after your 55th birthday"*. It also explained its analysis which showed Mrs T's two DB pensions, if transferred, probably wouldn't be able to grow enough to make transferring financially worthwhile. It also explained that she could run out of funds in her retirement if she transferred away from these two DB schemes and if looking to buy similar pensions on the open market, she'd have to pay much more just to get the same pension benefits she already had.

I'm not going to go into much more detail about this because I'm satisfied that the information GPSL provided to Mrs T was clear, fair and not misleading. It certainly wasn't recommending that she should transfer away – and it explained in considerable detail why this was. I think it's fair to say that any reasonable read of what GPSL had said within its email, its first suitability report, and thereafter, would have very clearly shown that transferring away, from a financial comparison perspective, simply wasn't worth it; and it was being strongly recommended that Mrs T shouldn't transfer away from her two DB schemes.

#### *The 'insistent client' process used by GPSL*

Overall, I'm satisfied that GPSL did enough to genuinely treat Mrs T as an insistent client.

I can't apportion blame to GPSL in this situation because I think it broadly followed the guidance and rules and it acted fairly.

On 25 October 2018, GPSL told her transferring wasn't something it recommended. It said, *"following our conversation, I am writing to emphasise my recommendation not to transfer your [Pension S] or [Pension N] final salary pensions at this time"*. It then set out a number of reasons why transferring might not be a good idea. On 29 October 2018, GPSL sent Mrs T a suitability report stating clearly that it wasn't recommending a transfer and it included analysis and information to explain why.

But it seems Mrs T then unilaterally contacted GPSL on 15 November 2018 and explained in her own words why she had come to a different view. It's important for me to say that I empathise with the very difficult health situation Mrs T was in at the time, and I can fully understand why transferring away from her two DB schemes was important to her, given her very concerning health conditions. However, the email from Mrs T said, *"due to my current circumstances and the uncertain further changes, I would really like to go ahead and transfer my pensions now"*. In my view, this strongly and clearly demonstrates how Mrs T had considered her health and wanted to take specific action on her pensions, with this issue in mind.

Mrs T persisted with this view even after a further 'phone call, on 22 November 2018, where GPSL re-iterated its recommendation, already set out in writing twice, not to transfer her DB schemes. But Mrs T reassured GPSL that she'd taken around a month to make her decision, considered her health situation again, and had also talked matters through with her husband. Mrs T confirmed again that she still wanted to transfer the two DB schemes.

With this in mind, a second suitability report was produced. But I've noted that Mrs T still had plenty of time to change her mind. This second suitability report wasn't produced until 16 January 2019, and it once again set out that Mrs T would be going against GPSL's original advice – that advice being:

- *“not to release your pensions early”*
- *“you did not wish to take my advice”* and
- *“this is clearly an expensive way to release funds*

On 25 January 2019 (some nine days after the second suitability report) Mrs T signed a declaration confirming she understood the advice and what was taking place.

In my view, Mrs T's representative hasn't made any persuasive arguments as to why her complaint about transferring the two DB schemes should now be upheld. After the issuance of my PD, it said Mrs T's health meant she was vulnerable. It added that the death benefits contained in her DB schemes weren't made clear by GPSL.

However, in my view her representative conflates the suitability of transferring with the insistent client process GPSL followed. There's no argument here that transferring *wasn't* suitable on a number of fronts. This unsuitability included when making direct financial comparisons and it also included the issues involving death benefits found in her existing schemes. But of course, GPSL never suggested that Mrs T should transfer and it's simply not correct to say that death benefits were underplayed when the parties met. I've seen, for example, very clear evidence that the DB schemes' death benefits were comprehensively discussed between the adviser and client in this case. I also think that GPSL broadly followed the FCA insistent client guidance. So overall, despite her difficult health diagnosis, I think the evidence is very persuasive that Mrs T was well-informed and sure about what she was doing. She had been advised several times not to transfer and it was she herself which unilaterally contacted the adviser to specifically say she wanted to disagree. So, I'm afraid if Mrs T didn't understand – which I find extremely unlikely – then she had the opportunity not to have signed the declaration to say that she did.

The rules in place at the time about personal pension plans allowed for the full transfer of all the funds to a beneficiary - tax-free - if the pension holder died. And whilst I really am very sorry to hear of the distressing health events Mrs T had experienced, I can understand that she was probably expecting her life span to be significantly reduced as a result of poor health. In that context, I fully understand her insistence on transferring away from the DB schemes and into a more flexible arrangement.

I therefore don't uphold the complaint that her two DB schemes were transferred outside the rules, or indeed outside Mrs T's understanding. This is because I don't think GPSL did anything wrong and evidence clearly points to transferring on health grounds being something Mrs T preferred, had fully considered and understood.

### The DC schemes

As I mentioned in my PD I think the transfer to the SIPP of Mrs T's DC pension element, and the subsequent involvement of a DFM, was a complex matter in this particular case. I say this because Mrs T evidently already had her own IFA and the recommendation from GPSL about her transferred funds - into the SIPP - was that the monies should at first be held in a modest risk fund pending further recommendations from her original IFA.

Mrs T's representative still makes no persuasive complaint or argument about this element of her pension savings. Nevertheless, for good order, I will say that whilst the use of a DFM could be viewed by some people as expensive, it is still a bona-fide service used by many clients of IFAs who do not want to have day-to-day involvement in investment decisions. Discretionary fund management allows the fund manager to act within agreed parameters without seeking approval for each transaction and those involved in this service no doubt claim that the service is more likely to benefit clients due to the involvement of an experienced investment manager.

I've also looked at the fees and charges relating to the DFM service Mrs T ultimately used. They do not, in my opinion, unreasonably exceed other fees and charges typically incurred throughout that 'industry' and as I've said, I think Mrs T had the capacity and knowledge to make these types of judgment on her own. Ultimately, I don't think it's clear enough that the recommendation to use a DFM service was the sole responsibility of GPSL due to the involvement of Mrs T's own IFA. But even if such a recommendation had alone come from GPSL, on its own I don't think this would have been unreasonable. The questions I'd need to ask myself is whether Mrs T was aware of the fees and charges. I'd also need to determine whether those charges were unreasonable or excessive within that 'industry'. And finally, I'd need to ask whether it was unreasonable that a retail client such as her had absolutely no right or need to use such a service.

The answers to all these questions are, in my view, clear. I think Mrs T circumstances probably dictated that the use of a DFM was merited, but more crucially, I think she probably understood the implications that came with it.

### Summary

As I outlined in my PD, this has been a difficult case to come to a decision on and I do understand that it requires a careful explanation.

Firstly, the financial comparisons here were that Mrs T would likely end up with lower retirement benefits in the longer-term if she transferred away from Pensions S and N. But in my view GPSL made this very clear on a number of occasions. It was Mrs T that decided her priority wasn't the longer-term, mainly because of the difficult health conditions she was suffering from. She wanted to transfer to a type of personal pension plan so she could be assured that the fullest value of her funds would transfer (tax-free) to her beneficiaries in the event of her death. So, because she felt her life expectancy was relatively short, due to severe illness, Mrs T used the insistent client process to effectively override the GPSL adviser's recommendation.

Having looked at all the evidence, I think GPSL very clearly told Mrs T from the outset that it did *not* recommend that she should transfer away from either of these two DB schemes. The evidence also strongly shows that it re-emphasised this recommendation to her several more times - in writing and in verbal communications over the 'phone. Even after finally agreeing to treat her as an insistent client and produce an updated suitability report three months after the first, GPSL told her, *"the transfer option is not good value"*. But Mrs T said she was adamant she wanted to go ahead and transfer these two pensions due to her health fears and what she perceived as a reduced life expectancy.



In my view, GPSL broadly followed the regulator's guidance with respect to the treatment of insistent clients and I've seen nothing showing that Mrs T didn't have the capacity to understand this and / or to make decisions, supported as she clearly was by family members and indeed her own understanding of the process.

I've considered the recommendation to use a DFM. In my view, this point of complaint wasn't made or evidenced by Mrs T's representative when bringing the original complaint. But even if I use my inquisitorial remit to look into this matter, this was a complex situation involving Mrs T's own IFA, whereupon GPSL first recommended the transferred monies to be placed into a moderate fund commensurate with her attitude to risk. In any event, I think that Mrs T's use of a DFM service here was legitimate and probably based on her desire to be not constantly making investment decisions – and a hope that a DFM could positively affect her future prospects for growth. I've seen insufficient evidence that GPSL was wholly responsible for this aspect, and insufficient evidence that use of such a service should be the subject of any compensation for an alleged (and unspecified) loss.

Finally, Mrs T's representative quoted some unconnected pension complaint cases which had been referred to the Financial Ombudsman Service in the past and implied these were identical cases which had been upheld in the consumer's favour. Her representative says these cases mean I should also uphold Mrs T's complaint. However, I disagree. The cases quoted have no direct connection with these matters and all have fundamental differences to Mrs T's situation. As I'm sure Mrs T would want, I've rightly looked carefully at all the facts about *this* case to arrive at a final decision.

I'm very sorry to disappoint Mrs T.

My finding is that she was repeatedly advised not to transfer, and she only did so as an insistent client. This was Mrs T's own money, and she was entitled to do this. But I don't think GPSL did anything wrong for which compensation should be paid.

### **My final decision**

I do not uphold this complaint.

I do not require Grove Pension Solutions Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 30 April 2025.

Michael Campbell  
**Ombudsman**