The complaint

Mr B has complained about the actions of Grove Pension Solutions Limited ("Grove") which advised him on, and facilitated, the transfer of a personal pension in 2015.

What happened

In 2015 Mr B sought advice from Grove. He completed an enquiry form in which he provided some personal details including details of a personal pension he wanted Grove to investigate. He said he was looking to receive a lump sum of £5,000.

A fact-find was completed on 3 November which detailed Mr B's circumstances and objectives. He was 59 years old. He was working but had recently suffered an accident that meant he was off sick. His employer was said to be looking after him (but other documents from the casefile suggest a degree of uncertainty about how long that was going to continue for). Mr B had a credit card debt of £2,500, a personal loan debt of £3,000 and an outstanding mortgage of £35,000. The credit card had a 0% interest rate which was to continue for another two years. Mr B was said to be worried about his debts and was looking to clear them as soon as possible. His personal pension had a transfer value of approximately £35,000 and had a guaranteed minimum pension (GMP) attached to it. Mr B wasn't allowed to take early benefits from the pension although he was allowed to transfer it.

Grove had a telephone conversation with Mr B on 13 November. A recording of the call isn't available but call notes say Grove's advice was discussed. The advice was, in essence, that Mr B should not access his pension. The call notes show Mr B was reluctant to follow this advice because he wanted to take cash from his pension in order to clear his debts. Shortly afterwards, Grove emailed Mr B to "emphasize" its recommendation that Mr B shouldn't touch his pension and to summarise its reasons for this, which were that leaving the pension would allow it to grow tax free, taking a lump sum would reduce Mr B's future retirement income, the policy had a GMP, and because Mr B didn't have a need to access cash from his pension because he was already able to service his debts.

Mr B emailed Grove, thanking it for its advice but asking for its help should he decide to take 25% of his pension. Grove said it would help in this way, providing Mr B explained what he intended to do and why. This was still on the same day as the telephone call – 13 November. Mr B emailed – again the same day – with his reasons for going against Grove's advice. It also looks like there was another telephone call during the day although the time of the call is unclear.

Grove sent Mr B its "Pension Report" (hereafter referred to as its advice report) on 16 November. This summarised its reasons for why Mr B should, in essence, do nothing with his personal pension. It then went on to advise Mr B on what he should do given his rejection of that advice. The advice report recommended Mr B transfer his personal pension to a drawdown plan with another provider, from which he could take his maximum tax-free cash. Grove recommended Mr B invest the remainder of his pension in the new provider's global strategy fund which was a relatively cautious fund with a high fixed interest weighting. The advice report also covered, amongst other things, the risks of a drawdown pension and the implications for Mr B's money purchase annual allowance ("MPAA"). The advice report was sent with a copy of Mr B's fact-find, information on his recommended new pension arrangement and forms to open the recommended pension.

Mr B accepted the advice and signed an application form for his new pension provider on 17 November.

In 2022 Mr B, who is represented by a claims management company, complained to Grove. He was under the misapprehension that he had transferred a defined benefit pension and that the advice to do so was unsuitable because it resulted in him losing valuable guarantees. Grove's response was that Mr B's allegations weren't true and that the advice process had been thorough. Mr B asked us to investigate his complaint. Both parties provided further arguments. Grove said that the transfer had been from a personal pension, that it had advised *against* Mr B taking any action and that Mr B wanted to go against that advice – it had therefore facilitated the transfer on an "insistent client" basis. Mr B said he wasn't aware that Grove had advised him in this way, he wasn't made aware of the guarantees he was giving up, and he hadn't insisted on transferring his pension in order to take cash from it. He said he had no need to do so.

The regulator, the Financial Conduct Authority ("FCA"), sets out the time limits in which someone can complain. Our investigator looked at this first and concluded that Mr B had complained in time. He went on to consider the merits of Mr B's complaint. He didn't think Grove's processes were as good as they should have been. But he didn't think its failings made a difference to Mr B; he thought he would have ended up in broadly the same position even if Grove had acted as it should have done. He didn't uphold the complaint. Grove disagreed with some of our investigator's findings. Mr B asked for an ombudsman to review the case.

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.

<u>Did Mr B complain in time?</u>

Dispute Resolution ("DISP") rule 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; or

(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"

It's the second part of the rules that's relevant here. The "event complained of" happened in 2015. Mr B complained to Grove in 2022. So he is outside the six year time limit, which ended in 2021. Grove says Mr B also complained too late under the three-year part of the rules. It says this for two reasons. First, because it thinks Mr B ought reasonably to have been aware of there being a potential problem with the transfer back in 2015 because he would have been aware at that point that transferring would result in a lower income in retirement – broadly, one of his complaint points – because that's what Grove told him. Second, Grove thinks Mr B ought reasonably to have been aware that transferring might not have been in his best interests in 2018, which is when he started to significantly deplete his pension and the negative implications for his income during retirement should, in Grove's view, have started to become a concern – especially given warnings to that effect by his personal pension provider.

I disagree with Grove on both counts. In relation to its first argument, it would seem somewhat illogical for someone to pay a firm for advice, and to facilitate a transfer, when they know, or suspect, that the advice is unsuitable or the firm is otherwise acting in an improper way. And, realistically, it would be difficult to see how Mr B would have even known what Grove should have done around the time of the transfer. It must therefore follow that Mr B didn't have doubts, and shouldn't reasonably have had doubts, about Grove's actions around this time because he wouldn't have continued to use Grove if he had. The customer feedback form Mr B completed rather proves the point in this respect because when he completed it, shortly after the transfer, he was satisfied with what Grove had done.

In relation to Grove's second argument, I think most people would accept that taking funds from their pension will reduce the amount of income available for the future. Indeed, Mr B has said much the same thing. So this, in itself, isn't enough to make me think Mr B would have thought Grove's actions had unfairly deprived him of retirement income he otherwise would have had. To think that I would need to be satisfied that reducing his pension in this way would have prompted Mr B to think he had given up valuable benefits when he transferred. This *may* then have caused him to question the transfer and the firm that facilitated it. But I haven't seen anything that makes me think Mr B would have been prompted to think along these lines. I'm satisfied Mr B would have thought any reduction in his pension from 2018 onwards was the natural consequence of him taking funds from that pension and not the consequence of losing other, additional, benefits that he had previously been entitled to.

I haven't seen anything else that makes me think Mr B had concerns, or ought to have had concerns, about Grove's actions more than three years before he complained to Grove in 2022. So I'm satisfied that Mr B complained in time and this is a complaint I can consider.

<u>The merits of Mr B's complaint – did Grove act as it should have done?</u>

Firms such as Grove are subject to the FCA Handbook, and under that to the Principles for Businesses and to the Conduct of Business Sourcebook ("COBS"). The following is not a comprehensive list of the relevant rules, regulations and principles. But I consider them to be particularly relevant here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;

- 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);

- COBS 4.2.1R – which states (amongst other things) that a firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

With the above in mind, I think there were failings on Grove's part here.

I say this because Grove relied on just a telephone call to give its advice. The call wasn't recorded. Whilst it's possible that the conversation was detailed and comprehensive, covering all key points, I consider this to be unlikely. I think it's more likely that something important was missed. The call notes suggest as much, with at least two areas where Mr B appears to have been given insufficient information.

The first of these relates to Mr B's GMP. The value of the GMP appears to have been discussed, as was the fact it would be lost on transfer. But there doesn't appear to have been much beyond that – for instance, the kind of scenarios that would have to play out for the GMP underpin to take effect. So Mr B wouldn't have known how valuable the benefit really was. I don't need to labour the point as Grove has given mixed messages on this, saying at the time the GMP was reason enough to *not* transfer but, in response to Mr B's complaint, considering it to have been too low value to have made a difference. More analysis at the time may have clarified the position.

The second area relates to some of the broader repercussions of transferring, such as the impact of withdrawing too much from a drawdown plan and considerations around the MPAA. I haven't seen anything that makes me think these were covered adequately during the telephone call between the parties. Given Mr B couldn't take early benefits from his existing policy, some of these warnings were potentially important because – like the loss of the GMP – they would only have applied had Mr B transferred. So Mr B should, reasonably, have been given a fuller picture of the potential downsides of transferring to have allowed him to fully consider his options.

I therefore consider it likely that Mr B didn't have all the information he would have needed when he initially decided to go against Grove's advice. But even if the telephone call had been comprehensive, I still think a firm, acting with the above Principles and rules in mind, would have sent Mr B a comprehensive written summary of its advice so that he wasn't just relying on his own recollections of the call when deciding what to do. I think this is especially important where the client – as was the case here – appears to have been reluctant to accept the advice which points to a potential lack of understanding on the client's part or problems in the way the advice was being delivered.

I recognise Grove did send an email after the call summarising its advice. But the email was hardly comprehensive – little more than four, short, bullet points which didn't adequately summarise what was discussed during the call (according to the call notes) or what, in my opinion, *should* have been discussed. And when Grove did send its advice report, which covered more thoroughly why Mr B shouldn't touch his pension, Mr B had already made up his mind by that point – so the advice report came too late in that respect. So, however I look at things, it strikes me that Mr B should have been better served by Grove with regards to the information he had when he was making his decision.

It's also striking how Grove smoothed the path to Mr B becoming an insistent client. In the space of just one day, 13 November, Grove advised Mr B during a telephone call, followed up with an email, responded to Mr B's request to go against its advice, had another telephone call with Mr B and decided to accept Mr B as an insistent client. And by the end of the next working day – 16 November – it had already written and dispatched an advice report that included recommendations it hadn't previously considered and provided the application forms to allow Mr B to follow its updated advice. And, for good measure, the covering letter to the advice report repeatedly told Mr B to act quickly and signed off by saying the sooner Mr B responded, the sooner he'd get his money.

From Mr B's perspective, in the space of just four days, he had considered Grove's initial advice, decided to go against that advice, reviewed Grove's advice report which covered both its initial and updated advice, and had signed the necessary forms to open a new pension.

This is a very compressed timetable when one considers going against the advice of a professional adviser – and taking action that has been deemed financially harmful – is a significant, and counterintuitive, step to take. It isn't a step to take lightly or in a rush.

With the above Principles and rules in mind, I think Grove should have done more to check whether Mr B had genuinely understood its advice and why he wanted to ignore it. In Grove's considered view, Mr B's actions were financially harmful so they should, reasonably, have triggered more concern than they did. Instead, Grove appears to have expedited the transfer, and encouraged Mr B to similarly act without pause. And it took comfort from just a telephone call in which Mr B confirmed he wanted to pay off his debts, and the explanations he provided in two, very short, emails – one of which Grove had told Mr B to write and neither of which was especially enlightening:

"Hi [adviser's name] thanks for your recommendations, but if I decided I want to take 25% of my pension, please will you go ahead with it, regards [Mr B]" (13 November 2015)

"…i will pay my loan of [sic], and part of my credit card, I'm only working part time at the moment, I'm not sure how long I will be of [sic] work, it's a massive worry, I don't think I will manage, if I don't do this." (13 November 2015)

I recognise that Grove may well have covered a lot of ground during its conversations with Mr B on 13 November, meaning it didn't need to do more to satisfy itself that the decision Mr B was making was, at least, a considered one. But, for the reasons given above, it's difficult to conclude the calls were as comprehensive as they should have been.

Grove has pointed to the lack of rules on insistent client transactions at the time and the fact that there weren't (and aren't) rules preventing such transactions. But Grove *wasn't* operating in a vacuum here. It had to act in line with the Principles, COBS 2.1.1R and COBS 4.2.1R. It failed to do so for the reasons given above. Similarly, the rules relating to when, and in what form, advice should be given don't mean firms can ignore – as Grove has done – their wider responsibilities to ensure their customers' information needs are met and their best interests are considered.

<u>Would it have made a difference to Mr B had Grove acted differently?</u>

My starting point here is Mr B's view that he wasn't aware he was going against Grove's advice. I've covered some of the flaws in Grove's processes earlier. But, on this point at least, I'm satisfied Mr B would have been aware that Grove was, essentially, recommending no action and that Mr B would have been aware he was going against that recommendation.

I say this because the email Grove sent to Mr B in which it sought to emphasize why he shouldn't take any action with his pension ended with the following statement (which was in bold type):

"In view of these risks and because you are managing to make repayments to your debts comfortably as I said my recommendation has to be to leave the pensions to age 65 / retirement age."

I've quoted Mr B's response previously but it's worth repeating in this context because it demonstrates, in my view, that Mr B knew what he wanted to do was contrary to Grove's advice:

"Hi [adviser's name] thanks for your recommendations, but if I decided I want to take 25% of my pension, please will you go ahead with it, regards [Mr B]"

Grove's response also said that Mr B was proceeding against its advice. So even though Mr B says he didn't know he was going against Grove's advice, I don't think this can, reasonably, have been the case.

But this only gets us so far. For the reasons given above, I don't think Mr B was given the full picture ahead of making his decision. The advice was provided during a telephone call, the follow-up email was limited and a fuller analysis of why Mr B shouldn't touch his pension – and the risks of doing so – was only provided in the advice report sent *after* he had already made a decision. So I need to consider what Mr B would have done had Grove's processes being more thorough.

My view is that Mr B would have still transferred and taken cash from his pension had Grove acted as it should have done. I say this because Mr B's reason for engaging Grove was relatively straightforward: he was looking to take cash from his pension because he wanted to clear his debts. His desire to do so was long standing and consistent, with comments along those lines contained in the enquiry form, fact-find, telephone call notes and Mr B's own emails. Grove told him he couldn't take cash from his pension unless he transferred but that he shouldn't touch his pension because he was already able to service his debts and he was better off letting his pension grow tax free until the age of 65. The message got to the heart of what Mr B wanted to know. And I'm satisfied the message was understandable, even to someone with relatively limited financial expertise (which is how Mr B describes himself). Given Mr B's apparent determination to pay off his debts using his pension, and the relatively clear message that he shouldn't do this, I'm satisfied that Mr B would have still continued with his transfer, even if his information needs had been better met and even if he had been encouraged to take more time to reflect on his decision.

In coming to this conclusion, I've taken into account Mr B's GMP. As I've said previously, this doesn't look to have been explored in a particularly thorough manner. However, my view is Mr B wouldn't likely have considered the GMP to have been a valuable enough guarantee to consider keeping it. The transfer value comfortably covered the GMP. And it would have needed an unlikely set of circumstances for the underpin to have come into effect at a later date had Mr B not transferred. Given Mr B's apparent determination to pay down his debts – despite the lack of need to do so and clear enough messages to that effect – I'm not persuaded better information on the GMP (or anything else) would have made a difference here.

Finally, Grove advised Mr B on where he should transfer his pension to and the investment he should make. I haven't seen any persuasive evidence or arguments that these recommendations were unsuitable for someone seeking to withdraw cash from their pension or with Mr B's attitude to risk, which he describes as cautious. So I don't consider Grove's recommended pension and investment fund are reason enough to uphold Mr B's complaint.

My final decision

For the reasons given above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 29 November 2023.

Christian Wood
Ombudsman