

The complaint

Miss D complains about the advice given by Grove Pension Solutions Ltd (Grove) to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). She says the advice was unsuitable for her and thinks this has caused a financial loss.

What happened

Miss D approached Grove in February 2018, by completing an enquiry form. She wanted to discuss her pension and retirement needs. I understand she was given information about Grove from a colleague who suggested she contact it in relation to taking some money from her pension fund.

Grove completed a fact-find to gather information about Miss D's circumstances and objectives. This showed that she:

- Was aged 55, in good health with one older, but still dependent, child.
- Was employed full time and living within her means.
- Wanted to purchase a property with a family member. And she was looking to raise money to secure a deposit for a mortgage to do this.
- Didn't want to borrow money for the deposit due to the pending mortgage.

In respect of her pension arrangements Miss D had a DB scheme which had a transfer value of around £14,000. As far as I can see she didn't have any other pension provisions. The DB scheme would provide an annual pension of £1,151 or a tax-free lump sum of £4,933 with a reduced annual pension of £740 from her age 65.

Grove also carried out an assessment of Miss D's attitude to risk, which it said was 'intermediate'.

Following this initial contact Grove sent Miss D an email dated 4 April 2018. This advised her not to transfer her DB pension, Grove explained why it thought she should not do this. Miss D responded straight away and said that she would like to proceed anyway. Grove then said it would arrange this. I'll look at the correspondence about this in more detail later on.

On 19 April 2018, Grove sent Miss D a suitability letter about the transfer of her DB scheme to a SIPP. This again advised Miss D not to transfer.

The suitability report said that Miss D wanted to transfer to purchase a property with her family member and to possibly rent this out in the future. It outlined some of the alternative options that it said had been discussed with Miss D and summarised the contact it had with her so far.

The suitability letter said that as Miss D had confirmed that she would be going ahead with the pension in any event, then she would need advice about a destination for the funds. And it advised her to start the SIPP for this. The transfer value was £14,067.40 and I understand Miss D took the pension fund as cash as soon as she could.

Miss D complained in 2022 to Grove about the suitability of the transfer advice. She said that:

- Her attitude and capacity for risk were low and so the DB transfer was unsuitable for her.
- She was not able to purchase a property with her family member as intended as the funds raised were not enough.
- Any alternatives she may have had were not explored.
- She has lost out on future retirement benefits.
- She will also receive lower death benefits.

Grove didn't uphold Miss D's complaint. It said that it gave her advice not to transfer her DB scheme benefits but that she had insisted on doing this in any event against its advice. So, it was not responsible for the suitability of the advice.

Miss D referred her complaint to our service. An Investigator didn't uphold the complaint. He said that it wasn't suitable to recommend that Miss D transfer the pension benefits. This is because she was likely to receive lower benefits than the DB scheme. But Grove had not recommended that she transfer. And the transfer did meet her requirement for releasing some cash. Added to this he was persuaded that, whilst there were shortcomings in the insistent customer process, Miss D was an insistent customer as she had strongly indicated that she would have proceeded with the transfer in any event.

Miss D, via her representative, disagreed saying that she wasn't provided with enough information to have allowed her to make an informed choice. And she couldn't recall the telephone conversation where she insisted that the transfer go ahead. It thought that Miss D would not have proceeded with the transfer if Grove had properly highlighted the disadvantages of it.

And Grove didn't entirely agree with what the Investigator said. It reiterated that the information Miss D received clearly explained that the transfer was not in her best interests, and why this was. This was communicated to her reasonably. The process Grove followed to treat Miss D as an insistent customer was robust and met, or exceeded, the FCA's guidelines of the time. She was aware of the consequences of the transfer.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'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 Grove'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.

Having considered all of this and the evidence in this case, I've decided not to uphold the complaint for largely the same reasons given by the investigator.

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, Grove should have only considered a transfer if it could clearly demonstrate that the transfer was in Miss D's best interests or that she was an insistent customer.

There isn't any disagreement that certain aspects of the DB transfer were not in Miss D's best interests. So, I've briefly looked at the suitability of the DB transfer and then considered if it was right to say that Miss D was an insistent customer.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The critical yield required to match Miss D's benefits at age 65 was 15% if she took a full pension and 12.24% if she took tax-free cash and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.8% per year for ten years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Miss D's 'intermediate' attitude to risk and also the term to retirement. There would be little point, from a pension planning point of view, in Miss D giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was over 12%, I think Miss D was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

For this reason alone a transfer out of the DB scheme wasn't in Miss D's best interests. And this was established, and well documented, at the time of sale. Both the initial emails and the suitability report clearly document that transferring the DB scheme was likely to leave Miss D financially worse off, due to the reduction in pension benefits.

Miss D proceeded despite this as she wanted to access the funds and she thought the DB pension benefits were modest and so would not affect her overall retirement planning. I've considered this aspect of the sale.

Enhanced Tax-Free cash

Miss D wanted to use the funds she had in the pension early, at her age 55, and she needed access to the lump sum of £14,000 to use as a deposit to obtain a mortgage. This was to purchase property with a family member. I don't think she could have achieved this by staying in the DB scheme.

This is because she was only entitled to take tax-free cash of around £5,000 from the DB scheme and this was at her age 65. She would have been entitled to a lower amount, if anything, if she took the DB scheme benefits at age 55. She didn't have savings, other pensions, or assets that she could've used to meet this need. She couldn't borrow this money as it was being used to obtain borrowing itself. So, I think transferring out of the DB scheme met this objective.

Death benefits

Miss D was single and she had one older but still dependent child. And whilst the death benefits of the DB scheme were outlined, I don't think they formed a material part of the advice. Possibly because Miss D didn't have a definite need for the dependent's benefits, and the DB scheme benefits were modest in any event. So, I don't think losing these benefits disadvantaged Miss D.

Was Miss D an insistent customer

Since 2018, COBS 9.5A includes 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.

Like the investigator, I think there were shortcomings in Grove's process and how it treated Miss D as an insistent client – that is, one who wanted to act contrary to the advice given. I do have concerns that agreement was reached before Miss D had received all of the information that she should have, such as a detailed suitability report.

On the face of it, Grove and Miss D agreed to proceed with this transaction after some telephone calls and a brief email exchange. Grove has telephone notes, but not call recordings, and the telephone notes are very brief. So, I don't think all this adequately shows that Mrs D was properly informed about all of the detail of her preferred course of action.

That said, the point of an insistent customer process is to ensure that, essentially, a customer proceeds with the knowledge that the transaction was not in their financial interests. And it is clear that, despite this, they clearly do want to proceed. And I think this is the case here. I agree that, even if Grove had altered this process, Miss D would still have gone ahead with the transfer of her DB pension to the SIPP.

It was Miss D who contacted Grove with a view to releasing money from her pension. And she did have a firm plan in respect of the funds she wanted to release.

It was documented that Miss D wanted to access the funds from her pension to use as a deposit towards a property that she wanted to buy with a family member. And they were planning to (if possible) rent this property out to gain an income or enable them to make further property related investments. There isn't any dispute that Miss D wanted to use her DB scheme value in this way.

Grove sent Miss D an email on 4 April 2018. It acknowledged a transfer wouldn't be financially viable following its analysis and said it didn't recommend Miss D transfer her DB scheme benefits. The email outlined the amount of pension Miss D was giving up, and said that the critical yield was very high and so she would lose a significant amount of money. It said this was an expensive way to raise funds. The email concluded by saying *'In view of these risks as I said my recommendation has to be to leave the pension to age 65'*

I think it's reasonable to say here that Miss D was aware at an early point of the main benefits she was giving up. And that she wanted to go ahead with the transfer she would be acting against Grove's advice.

The following day, Miss D called Grove to discuss the information and advice she had been given. The call note says:

'Client called in as has had corres from [Grove] saying that he recommends against releasing her pension. Client was cross as she said that she doesn't care what we say – if she wants us to release her pension, that is what she believes she will be paying us to do. Wants a call back from [Grove] asap. Have emailed [Grove].'

I think Miss D had made up her mind and was willing to take extra steps to enact the transfer at this point. Despite the information she had been provided so far that said this wasn't in her best interests. I think it's reasonable to say that she was driving this transfer here.

Miss D also had clear plans for the tax-free cash she was able to withdraw by transferring her pension, as I've outlined above. I think it's reasonable to say that Miss D had clearly

thought about the benefits to her of transferring at that point. And Miss D had confirmed she had no savings or other means to finance this.

Miss D spoke with Grove again later that day and sent an email asking for the transfer to go ahead despite the advice. She said:

'...thank you for your recommendation I have noted this but wish to release the full amount of my pension Please action this as soon as possible into a personal pension for release.'

Grove responded on the same day and said:

'Thanks for your e-mail and for taking the time to speak with me a moment ago, I acknowledge your decision to proceed with the release of your pension against my advice. I will now drop you a line in the post with all of the paperwork.'

On 19 April 2018, Grove sent its Pension Report, detailing how Miss D would access the funds as an insistent client. This reiterated its advice not to transfer and outlined some of the conversations the adviser had with Miss D. Miss D completed the relevant paperwork and the transfer proceeded after this time. So even though Miss D didn't have all of the information that I think she should have when she decided to go ahead, she did have full information before she completed the transfer.

Miss D has raised concerns surrounding the insistent client process because she says the benefits of the DB scheme weren't fully explained and the relevant warnings weren't made clear. Miss D believes if it wasn't for these failings, she wouldn't have transferred the pension. But I don't think this is the case, as I've outlined above, I think she was committed to the transfer despite the information she was given, and this was unlikely to change.

Miss D has recently said that she was unhappy with the process Grove was following and this is why she may have called Grove and said she was unhappy. She says she was speaking to a lot of different people, but she was happy with the substance of the advice. But I think the communication notes, and emails that surround them clearly show that Miss D disagreed with Grove's advice not to transfer.

And, I think Miss D knew she was giving up something that was guaranteed and beneficial and that proceeding potentially wasn't in her best interests. And I've borne in mind that the transfer and DB pension were relatively modest, and she had a definite plan for the money.

Overall, even though I think Grove's insistent client process could have been fairer, I don't think that would have changed the outcome in Miss D's particular case. I say that because on balance, I think even if Grove had made their insistent client process fairer, Miss D would have pursued the transfer and insisted on Grove transferring her pension.

My final decision

For the reasons set out above, I don't uphold Miss D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 August 2023.

Andy Burlinson
Ombudsman