DRN-3768264

The complaint

Mr M complains about the advice given by Grove Pension Solutions Limited (Grove) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was flawed and unsuitable for him. He believes that this has caused a significant financial loss. He also thinks it has caused some stress and anxiety.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

Mr M approached Grove in December 2017 to discuss his pension and retirement needs. Mr M was referred to Grove by another adviser who wasn't able to assist with the DB transfer. Mr M was concerned about the situation with his employer and about any potential reduction in his pension benefits because of this.

Grove completed a fact-find to gather information about Mr M's circumstances and objectives. This showed that he was aged 35, married and had two dependent children. He was employed full time. Mrs M was also employed. They lived in their own property which was subject to a mortgage. Mr M had investments and savings that had a value of about £24,000.

Grove also carried out an assessment of Mr M's attitude to risk, which it said was 'medium' although that he had very little investment experience.

In respect of Mr M's pension arrangements:

Mr M had received a cash equivalent transfer value ('CETV') from the BSPS in November 2017. This showed that he had over ten and a half years' service. He was entitled to a pension of about £6,600 at the date of leaving the scheme. The CETV was about £142,400.00

Mr M had also joined his employers new defined contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%.

In January 2018, Grove advised Mr M to transfer his pension benefits into a personal pension and invest the proceeds in funds that met his attitude to risk. The suitability report gave a number of reasons for the DB transfer, but the two most important were that Mr M was concerned about his future pension, and any reductions to it, if his benefits moved to the BSPS2 or the PPF. He also said that he was concerned that if anything were to happen to him then he wanted the fund value to pass to his wife. In addition to these two reasons Mr M was also considering retiring early at age 60 and he wanted to have some flexibility with his pension arrangements.

Mr M complained in 2022 to Grove. He felt that the advice he was given may not have been suitable for him.

Grove didn't uphold Mr M's complaint. It said that, in summary, Mr M had made an informed decision to transfer, bearing in mind what was important to him at the time. He was provided with full information about the transfer, and he demonstrated that he understood this, including the risks and downsides.

Grove made an ex-gratia offer to settle this complaint, but Mr M didn't accept this. I understand this offer is now withdrawn.

Mr M referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended that Grove calculate and pay any compensation that would be due. This was because Grove should have provided some reassurance about the future of his DB scheme. And given Mr M was a member of the new DC scheme this would have provided the flexibility he wanted. They also said term assurance should have been considered if Mr M did want to improve on his death benefits. The information from the time shows that Mr M was likely to receive lower pension benefits due to the transfer, so it wasn't in his best interests.

Our Investigator also thought that Grove should pay Mr M £300 for the distress and inconvenience the advice caused him.

Grove didn't initially respond to the investigator's opinion, so the complaint was referred to and ombudsman to make a final decision. Before the complaint was passed to me the regulator, the Financial Conduct Authority ('FCA') developed, and now provides, a BSPS-specific redress calculator. Grove became aware of this, and also noted the FCA's view of BSPS related sales and the Financial Ombudsman Services past decisions on these issues. It said that this makes it likely that the Financial Ombudsman would think that this transfer would be inappropriate.

It went on to say that it could have advised on whether Mr M would have elected to join BSPS2 or the PPF. It thought that as Mr M wanted to retire early, and take tax free cash, that it should have advised him to join the PPF.

And it said that it would accept the Investigator's decision to conduct a redress calculation. It also agreed to pay the amount that the Investigator recommended for any distress and inconvenience Mr M may have suffered.

However, Mr M's representative has said that it would like an Ombudsman to consider the complaint. And Grove hasn't yet completed a loss assessment - I understand it needs information from Mr M to do this. So, I'm now issuing my 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 to uphold the complaint for largely the same reasons given by the Investigator.

- The transfer value analysis ('TVAS') report, that Grove was required to carry out by the regulator, said that the critical yield - how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 7.22% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 6.48%. To match the full pension the PPF would've paid from 65 the critical yield was 5.82% and to match the tax-free cash and reduced pension the PPF would've offered, it was 5.58%.

- Despite the fact it was known by the point Grove instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr M, the analysis was based on the BSPS benefits. And Grove didn't undertake any analysis of the benefits he'd have been due under the BSPS2, even though details were available. I think it should've done. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- Given Mr M's recorded 'balanced' attitude to risk, the discount rate of 4.7% for 29 years to retirement and the regulator's middle projection rate, I think Mr M was always likely to receive pension benefits, from age 65, of a lower value than those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk.

- The suitability report noted that whilst the critical yields were 'fairly high' but that they 'may' be achievable. But I don't think this properly represents the situation here as even the lower critical yields were above the regulators 'medium' projection rate of 5% and some were nearing the higher level of 8%. It's very unlikely Mr M would achieve these levels of growth given his attitude to risk.

- Mr M wanted to retire at age 60 if possible. However, Grove didn't really look into this in any detail and the TVAS didn't calculate any critical yields for retirement at this age. But it is usual for these to be significantly higher than those at age 65. So, I think he was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early.

- Grove has said that the flexibility from the personal pension would help him achieve one of his aims of early retirement at age 60 with an income of around £20,000. I think it's fair to say that this doesn't seem to be one of his main objectives, and it wasn't discussed in detail. As I've said above calculations of what he could expect to receive from the DB scheme at this age weren't performed.

- The TVAS estimated that at age 65 the DB scheme would provide an annual income of £13,634 or a lower income and some tax-free cash. This was below his income requirement of £20,000, and it would be lower still if he retired early.

- But Mr M would receive his state pension in time and Mrs M would also receive this. Mrs M was a contributing member of a DB scheme as well. But perhaps most importantly, Mr M was a member of his employers new DC scheme. There have been several estimates made about the potential value of this at his retirement which fall between his estimated contributions of £160,000 to a fund value after investment returns of around £225,000. I think it's reasonable to say he would have a significant amount in this, or if, as is likely he joined a similar arrangement in the future. And he could use this flexibly to fund an early retirement by topping up any guaranteed forms of income he may have or take cash sums when he needed them.

- So, taking all of this into consideration, I think there was a realistic possibility that Mr M would have enough already (with Mrs M's provision) to enable him to possibly retire early. And I think the guaranteed pensions under the BSPS2 or PPF were likely to be the most appropriate way to meet Mr M's income needs in retirement – which is the primary purpose of a pension.

- Furthermore, Mr M was only 35 at the time of the advice. As he had at least 25 years before he was thinking about accessing his pensions, I think it was too soon to make any kind of decision about transferring out of the DB scheme. I don't think it was a suitable recommendation for Mr M to give up his guaranteed benefits now when he didn't know what his needs in retirement would be. If Mr M later had reason to transfer out of his DB scheme he could have done so closer to retirement. Overall, as Mr M had no concrete plans to stop working prior to age 65. I don't think transferring to obtain flexibility was in his best interests.

- Grove said Mr M was interested in the alternative death benefits the transfer to the personal pension offered. He said that he wanted to know that if he died his fund value would pass to his children and it was recorded that death benefits were important to him. But the priority here was to advise Mr M about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr M drew in his lifetime. And so may not have provided the legacy that Mr M may have thought it would.

- It was recorded that Mr M had life cover of £100,000 within the DC scheme and Mrs M had had £60,000 as part of her pension arrangements. If Mr M had wanted to leave a legacy in addition to this for his family, Grove could've explored life insurance as an alternative. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence Grove did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr M. I don't think that insurance was properly explored as an alternative. And ultimately Grove should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- I think Mr M's desire for control over how his pension was invested was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring away from his DB scheme.

- Mr M may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was Grove's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr M with guaranteed income and the option of accessing tax-free cash. Mr M was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

- I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr M had over 25 years before he expected to retire, and he didn't know what his needs in retirement would likely be. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr M would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr M was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Grove should've advised Mr M to opt into the BSPS2, and compensation should be based on this.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interests to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr M received from Grove was unsuitable for him.

Our Investigator recommended that Grove also pay Mr M £300 for the distress caused by the unsuitable advice. Mr M has said that finding out his pension benefits may have been adversely affected by the advice caused him some stress and anxiety. I don't doubt that Mr M has been caused distress and concern in relation to his retirement planning, particularly given the wider circumstances of the transfer. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would most likely have opted to join the BSPS2 if suitable advice had been given.

Grove must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Grove should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr M and our Service upon completion of the calculation together with supporting evidence of what Grove based the inputs into the calculator on.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Grove should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Grove's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of his redress augmented, and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Grove may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – presumed to be 40%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Grove should also pay Mr M £300 for the distress the poor advice has caused him.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Grove Pension Solutions Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Grove Pension Solutions Limited pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Grove Pension Solutions Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 November 2023.

Andy Burlinson
Ombudsman