

The complaint

Miss F has complained about the advice given to her by one of Grove Pension Solutions Limited's ("Grove") advisors to transfer her defined benefit pension to a personal pension.

Miss F is represented in this matter by a claims management company but for ease of reference I will just refer to Miss F.

What happened

On 3 April 2014 the advisor completed a *Personal and Financial Details* document (I'll refer to this as the "Fact Find") in order to get information on Miss F's financial situation and objectives. Of note, this recorded that Miss F:

- was in a good state of health
- had been employed for three months and didn't anticipate any changes in the near future
- was £2,000 in arrears with her rent and had other debts (including a payday loan – which she mainly repaid the interest on)
- was spending £41 a month more than she was earning
- had a Court date on 24 April 2014 regarding the rent arrears and she'd been told that eviction was a possibility if payment wasn't made in full
- needed to raise cash to avoid eviction "at all costs" as she needed to keep a roof over her head – not least because she worked from home and her earnings would cease
- felt that losing some money from her pension was a better option than being evicted.

The advisor sent Miss F his advice report on 23 April 2014. It said the transfer didn't represent good value and Miss F's pension would suffer as the growth needed by the new pension to match the benefits being given up wasn't achievable. It also said Miss F's reaction to this was that the losses she might suffer weren't ideal but she couldn't give up her home and she had no choice but to release the available cash (by transferring the pension). Ultimately, having analysed the options and what Miss F was trying to achieve, the advisor recommended that Miss F transfer the defined benefit pension to a personal pension so that she could access the funds that would become available.

On 30 April 2014 Miss F signed an *Authority to Proceed Declaration*. Amongst other things, she confirmed that the information contained within the Fact Find and advice report was correct and that it formed the basis of the advice given.

Miss F then transferred her pension and received a lump sum cash payment following the transfer.

In March 2015 Miss F asked Grove for advice on what she needed to do in order to cash in the remainder of her pension. The following month she arranged directly with her pension provider to withdraw funds from the pension. She withdrew the remaining funds later in 2015 and her pension ended at that point.

In February 2023 Miss F complained to Grove. She felt she'd received negligent advice and had suffered a financial loss as a result. Grove felt Miss F's complaint didn't reflect its records of what happened and didn't therefore uphold it.

Miss F still felt the advice was negligent so she referred her complaint to us. We received it on 27 April 2023. Grove didn't think we could consider the complaint as it felt Miss F had complained too late.

Our investigator thought we could consider Miss F's complaint because she had complained less than three years before becoming aware that she had cause to complain. But our investigator didn't think the complaint should be upheld because the advice was suitable as Miss F had a specific need to stave off eviction and she had no other way of doing this without using her pension.

Both Miss F and Grove disagreed with our investigator's conclusion. Miss F remained of the view that the advice was unsuitable and Grove remained of the view that Miss F had complained too late.

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.

Our jurisdiction

We can't consider the complaint if Miss F referred it to us more than three years from the date on which she became aware (or ought reasonably to have become aware) that she had cause for complaint. This time limit doesn't apply if Miss F referred the complaint to Grove within the three year period and there's a written record of the complaint being received.

Grove's argument is essentially that:

- Miss F's complaint was made because she felt the advice led to her suffering a financial loss in respect of the income she'll receive in retirement
- she should have known about the loss of pension income in 2014 as it was explained to her then
- she was definitely aware of it in 2015 at the latest – because she knew her defined benefit pension would have provided her *some* retirement and she knew in 2015 that the personal pension wouldn't provide *any* income at all (because it closed after she withdrew all the remaining funds)
- so it feels Miss F had until October 2018 at the latest to refer a complaint to us.

Grove's argument concentrates on Miss F's awareness of the consequences of the transfer ie the loss of the guaranteed benefits provided by the defined benefit pension and the loss of retirement benefits provided by the personal pension. But the nub of Miss F's complaint is that the advice in 2014 was unsuitable. So what's important is when Miss F became aware, or when she ought reasonably to have become aware, that she had cause for complaint about *the advice being unsuitable*.

The advice report made it clear that Miss F would be worse off in retirement if she transferred. It also said that taking further withdrawals from the new pension would inevitably reduce the value of the fund and Miss F's eventual pension. So Miss F actually becoming worse off to the extent that there wouldn't be anything left because of the transfer and the later withdrawals was exactly what she would have expected to happen – as that's what the advisor told her *would* happen. I'm not therefore persuaded that this was, or ought to have

been, the trigger point for her to realise that the advice she received in the first place might have been unsuitable.

I haven't seen and I'm not aware of anything else which shows that Miss F knew or ought to have known that she had cause for complaint about the advice before February 2020 (ie three years before she complained to Grove).

Accordingly, I conclude that Miss F referred her complaint to us in time and that it's one I can decide.

The advice

Some of what Miss F has said during her complaint doesn't match what's recorded from the time of the advice. For example, she said she was vulnerable because of her health but the Fact Find records that her health was good. She also said she was unemployed at the time and was receiving employment and support allowance but the Fact Find records that she'd been employed for three months – which is supported by the comments that her job *will be* (ie present tense) impossible if she is evicted. There was reference in the Fact Find to Miss F being unemployed and receiving benefits, but that was *before* the current job. Finally, Miss F said the information in the Fact Find about the imminent Court date is incorrect.

If the situation with Miss F's health, employment and/or eviction threat did change I haven't seen anything showing that she updated Grove. In the circumstances, I think it's more likely that the Fact Find, rather than Miss F's recollection of events roughly nine years later, contains the more accurate details of the situation at the time – particularly given the declaration Miss F signed under no undue pressure from Grove (ie everything was sent to her to read and sign in her own time, rather than having the advisor sitting with her). So where there's a discrepancy in the information I've considered the Fact Find and advice report to be the more accurate version of events.

In cases like this I usually decide in the first instance whether or not the advice was suitable. If it was suitable I don't uphold the complaint. If it was unsuitable I go on to consider whether or not the advice disadvantaged the consumer. So for me to find in Miss F's favour I'd need to firstly conclude that the advice was unsuitable and that the advisor should have recommended that she remain in her defined benefit pension. I'd then need to decide that Miss F would have acted differently had she received a recommendation along these lines.

I don't think Miss F would have acted any differently. I can't ignore the information recorded in the Fact Find and the advice report. This shows that Miss F was in a desperate position in respect of her existing financial situation and her immediate need to raise cash in order to stave off eviction. Miss F has argued that if other alternatives been explored and discussed she wouldn't have transferred her pension. But the Fact Find shows that other alternatives – such as restructuring the debts, borrowing from elsewhere, adjusting expenditure – were discussed and discounted for various reasons.

I'm not persuaded that Miss F had other options to raise the money she needed to prevent possible eviction from her home. The Fact Find shows it wasn't possible for her to access the benefits from her defined benefit pension early. Miss F said she might have been able to receive state or housing benefits but as Miss F was employed at the time it's not clear to me what benefits she might have been eligible for. And given that she'd been in receipt of benefits previously I think it's likely that Miss F would already have looked into this prior to seeking advice on her pension (and if she didn't look into it it's not clear why not). Further, as the Court hearing was only three weeks after the Fact Find was completed and one day after the advice report was issued I'm not necessarily persuaded that any benefits could have been arranged in time.

In any event, it's only a possibility that Miss F might have been able to receive some benefits ie it's not more likely than not. So the balance of probabilities isn't in Miss F's favour – it's equally possible that she wouldn't have been entitled to receive anything (or enough to satisfy the Court). So even if I concluded that the advice was unsuitable, I think given her circumstances at the time that Miss F would most likely would have transferred her pension anyway.

Summary

I haven't decided whether or not the advice Miss F was suitable. This is because even if I decided that it was, I conclude that Miss F would most likely have transferred her pension regardless of any advice she received. So she would have been in no worse position to what she's in now.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 23 October 2023.

Paul Daniel
Ombudsman