DRN-4243484

The complaint

Mr B complains about the advice Grove Pension Solutions Limited gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr B to bring this complaint. But, for ease of reading I will refer to the representatives' comments as being Mr B's

What happened

Mr B first contacted Grove in February 2015. At the time he said he was still working for his employer. He would be finishing work that year and wanted to consider using his pension funds to invest in the family business.

After Mr B had finished working for his employer, in May 2015, the administrators of his former employer's DB scheme sent Grove details of Mr B's entitlements from the scheme. In June 2015 Grove completed a fact-find to gather information about Mr B's circumstances and objectives. It also obtained a transfer value analysis report ('TVAS').

On 2 July 2015 Grove sent Mr B its suitability report setting out its analysis and recommendation. It also appended a report of Mr B's personal and financial details, showing the results from its fact find.

Amongst other things Grove said Mr B was 56. His wife, Mrs B, was 54. She ran a business which had been in Mr B's family for around 25 years. It had previously been run by his parents and still employed several other family members.

Grove set out Mr B's entitlement from the DB scheme both at its normal retirement age of 65 and if he took the benefits from it straightaway. If he took his DB benefits immediately he could have tax free cash ('TFC') of £90,845 and a yearly pension of £13,625. The DB pension had a cash equivalent transfer value ('CETV') of almost £724,000. If he transferred the CETV to a personal pension he could take TFC of almost £181,000 without taking an immediate regular income and leave the remainder invested until his normal retirement age of 65.

The reports said Mr B had contacted Grove because he wanted to use the TFC from his pension to help his family business expand. The plan was to buy a similar business in another area. He had already identified the business he wanted to buy for a price of £260,000. He and his wife had savings of between £90,000 and £100,000 which they could put towards the purchase, Mr B could then use his TFC to make up any shortfall. He could then draw an income from the business. The long term plan was to merge the new business with and expand the existing family business.

Grove recorded that it discussed other methods of raising money for the business purchase but Mr B discounted those.

Mr B said that transferring was an opportunity he didn't want to lose and he was "*100% certain*" that they wanted to expand the family business and that releasing funds from his pension was the best way to do it. Grove told him that doing so would reduce his retirement income.

Mr B said his plan was to be debt free by retirement age. He and his wife then planned to then live in a property they owned abroad and rent out their UK house. They already owned a property abroad but intended to sell it and acquire a larger one.

Grove pointed out that his DB pension was guaranteed and by transferring he was putting those funds at risk. Mr B said he understood that but his priority was the business expansion. He said it was only a matter of when he did that. He said he had already made up his mind to do so. He added that he was very confident that by doing so he could provide a steady income for himself and his wife as well as the ongoing employment of other family members including his adult children.

In light of this, Grove recommended that Mr B should transfer his funds into a named personal pension and use the TFC to fund the new business purchase. It said it was important that Mr B didn't draw further income from the personal pension. Three days later, Mr B signed a statement to say he'd read and understood Grove's suitability report and wanted to proceed with the transfer.

In 2016 Mr B withdrew all the remaining funds from the personal pension
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In 2022 Mr B complained to Grove that its advice to transfer wasn't suitable for him. Amongst other things he said he'd wanted funds to buy a property abroad and had other means of raising that cash.

After we asked Grove for its file it raised questions about whether or not we had jurisdiction to consider the case. One of our Investigators looked into the complaint. He explained why he felt we had the jurisdiction to consider the matter. He then went on to consider the merits of Mr B's complaint. In short he felt that Mr B was determined to go ahead with the transfer so he would have done that regardless of the suitability of Grove's advice.

Grove didn't make any substantive comment on our Investigator's complaint assessment. Mr B didn't agree with it; so it's been passed to me to decide.

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.

In bringing this complaint Mr B's raised a number of points. But, in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key outstanding points following our Investigator's assessment of it.

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.

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.

Mr B's objectives and circumstances

Mr B's DB scheme didn't allow him to transfer from it while he was still working for his employer. However, before he'd ceased working for that employer he'd contacted Grove, in February 2015, and told it that he was looking to release TFC from his pension in order to invest in a business.

Mr B spoke with Grove in June 2015 when it completed a fact-find. At that time, Mr B was clear that he wanted to release TFC in order to invest in his wife's business. That was over four months since he had initially contacted Grove but it's evident that his objectives hadn't changed during that time. His prime motivation remained the expansion of the family business.

It's also notable that, before speaking with him, Grove had sent him information about DB schemes that said, amongst other things, that DB schemes are considered the "*best sort*" of pension available and Mr B should only consider transferring "*as a matter of last resort*". But, despite that warning it's evident Mr B was clear from the outset that he wanted to transfer. He said he was "*100% certain*" he wanted to expand the business and that transferring his pension was the best way to do so.

Grove ran through alternative options for Mr B including his wife's business taking on the finance itself in order to expand. Mr B had already considered this. He said that while this was an option, the cost of borrowing for the business would be prohibitively high and would significantly reduce the opportunity from profiting from the expansion. He had therefore dismissed this. He also said that he was no longer earning a salary and, at that time, his wife wasn't drawing an income from the business, as they were steering any profit towards the expansion. So, as they didn't have an income they couldn't take on any further personal borrowing. He also said the savings they did have would be used to fund the business expansion. He dismissed any other alternative suggestion of raising the funds. It therefore appears that from Mr B's perspective, at that time, his only viable route to raising the money was by transferring his DB funds to a personal pension and using his TFC.

That said, I do think Grove could have done more to challenge Mr B's objectives in light of what he was giving up. And, in spite of Mr B's clear goal of releasing TFC, on balance I think Grove should not have recommended that Mr B transfer out of his DB scheme. Instead it should have urged him to use one of the other methods to fund his wife's business expansion or encouraged him to put it on hold until he could find another fundraising solution. But, while I think that's something Grove should have done, I don't think it would have made a difference to the outcome here. That's because the contemporaneous evidence is clear that Mr B had been planning the business expansion for some time. He was investing into a business that had been in his family for a quarter of a century. And he said that in doing so he believed it would improve his own future and that of his relatives, including his adult children, who worked there.

Further, I've noted that Grove did stress to Mr B that transferring was putting his pension funds at risk. It also said he could be worse off in retirement as a result. And I think Mr B was aware of the benefits he would be giving up by transferring. But I think he'd already decided that the transfer would provide a route to funding a business expansion he'd been planning for some time. He also believed that by taking that route, he would be laying the foundation for a better future for both himself, his family business and the family members employed by that business. So, in those circumstances, I think he would have gone ahead with the transfer regardless of whether or not Grove recommended it.

I also think it’s worth pointing out that less than a year after Grove advised Mr B to leave the remainder of his funds invested until his retirement Mr B chose to draw down the entirety of his remaining fund. That drawdown would have been subject to a deduction of 40% tax. That was plainly against Grove’s advice and I think demonstrates that Mr B was capable of making his own mind up about the actions he wished to take regardless of the advice Grove gave to him.

In response to our Investigator’s assessment of the complaint Mr B’s said the business expansion plans were not concrete and that the purchase of another business fell through. But I don't think the fact that the purchase fell through means that the business expansion wasn’t a concrete plan at the time. And if the business purchase hadn't fallen through it seems likely he would have continued with the plans. All of the contemporary evidence on file is that Mr B was motivated to transfer his DB funds to a personal pension in order to release TFC to solve a funding issue for his wife’s business.

Mr B’s said that instead of investing in the business he bought a holiday home abroad. I've noted that Mr B did refer to his desire to buy a bigger holiday home when he spoke with Grove. But this wasn’t given as an objective for transferring within its suitability report. So I don't think the fact that Mr B apparently altered his plans following a change in circumstances means that Grove incorrectly recorded Mr B’s motivation for seeking the transfer when he did. And it seems to me that Mr B used the funds in that way because the business plan fell through, rather than because it was always his intention to do so.

It follows that, while I think Grove should have recommended against the transfer, as I've said above, I think Mr B would have gone ahead with the transfer regardless of anything Grove said. And I think he understood that his actions would likely leave him worse off in retirement

My final decision

For the reasons given above I don’t uphold this complaint

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 18 September 2023.

Joe Scott
Ombudsman