DRN-3621634

The complaint

Mrs O complains about the suitability of the advice provided by Grove Pension Solutions Limited ("Grove") in January 2018 to transfer the value of her safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Mrs O is represented in this complaint by a law firm ("Representative").

What happened

Mrs O had built up safeguarded benefits in the BSPS while employed by Tata Steel UK Ltd ("Tata Steel"). The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members.

In March 2016, Tata Steel announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their safeguarded 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 DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017. By that point, Mrs O had built up about 11 years' pensionable service in the BSPS.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, the BSPS issued its *'Time to Choose'* communication pack to members including Mrs O. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP (the transfer value available to Mrs O was £95,188.04)

Options 1 and 2 would've enabled Mrs O to retain guaranteed lifetime income, albeit at a lower level than provided by the BSPS. Members that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

In response to the announcement by Tata Steel, Mrs O contacted a local independent financial adviser ("IFA") for advice. The IFA introduced Mrs O to Grove in January 2018 to provide pension transfer advice. Grove recorded the following information about Mrs O and her husband:

- She and her husband were both aged 32 and in good health. They didn't have any children or other people financially dependent on them;

- She was employed full-time by Tata Steel and paid gross annual income of about £20,000;
- Their assets comprised the marital home valued at £160,000 and cash savings of about £2,500;
- Their liabilities comprised a repayment mortgage of £106,000 on their marital home which was due to be repaid in about 15 years' time when they would be aged 47;
- They had surplus disposable income of about £1,000 available every month;
- In addition to the value of her safeguarded benefits in the BSPS, she was on course to receive the full state pension at age 68 and had been a member of Tata Steel's defined contribution ("DC") pension scheme provided by Aviva since April 2017. The total annual contribution into her DC plan was 16% of her gross annual salary;
- She had very little knowledge and experience of investments;
- She had an *'Adventurous'* risk profile; and
- Her two main objectives in connection with her safeguarded benefits in the BSPS were to retire early at around age 58 and to maximise the death benefits available to her husband in the event of her earlier death.

In January 2018, Grove issued its suitability report to Mrs O recommending that she transfer the value of her safeguarded benefits in the BSPS to a PPP to achieve her key objectives to retire early and to maximise death benefits, along with some other general objectives.

This complaint

In 2022, the Representative, on behalf of Mrs O, complained about the suitability of Grove's pension transfer advice. It said that the advice was unsuitable and had caused her to suffer a financial loss.

Grove didn't uphold this complaint. In summary, it was satisfied that the pension transfer to the PPP enabled Mrs O to achieve her recorded objectives and was therefore suitable. However, to bring this matter to a close, it offered Mrs O a payment of £20,000 as a gesture of goodwill. Mrs O rejected the offer. She asked us to look into this complaint at which point Grove withdrew its offer.

One of our investigators considered this complaint and recommended that it be upheld because, in his view, Grove had failed to demonstrate at the time that transferring to the PPP was clearly in Mrs O's best interests to achieve her objectives. Given Mrs O's age, he didn't think there was any pressing need to transfer to a PPP at that time. He thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that Grove carry out a redress calculation in line with the Financial Conduct Authority's ("FCA") guidelines on the basis that Mrs O transferred to the BSPS2, took benefits at age 65 and would be a 20% income taxpayer in retirement. In addition, he recommended that Grove pay Mrs O £300 compensation for the trouble and upset caused by its unsuitable recommendation.

Grove disagreed with our investigator's assessment and, with the support of an external consultant, provided additional comments in response. Our investigator considered those comments but wasn't persuaded to change his view and recommendation that this complaint should be upheld. Grove requested that this complaint be referred to an ombudsman for review.

While this complaint was in the queue awaiting allocation to an ombudsman, Grove contacted us in July 2023 to say it had changed its mind and accepted the investigator's assessment. It stated, *"…we will therefore abide by the adjudicator decision to conduct a redress calculation using current FCA PS22 methodology"*. It said it would contact Mrs O to obtain the necessary information to carry out the loss assessment.

This complaint was recently allocated to me for review. Based on the available evidence, it appeared that there hadn't been any meaningful progress in resolving the matter since Grove made its offer in July 2023. So I informed the Representative and Grove that if I wasn't provided with confirmation by 12 October 2023 that they had resolved the matter informally, I would proceed to issue my final decision upholding this complaint on the basis that Grove has conceded and is prepared to calculate and settle any redress due in line with PS22/13.

The deadline of 12 October 2023 has passed. As at the date of this final decision, I haven't received confirmation from the parties that this complaint has been resolved. So I've decided to proceed and issue my final decision. This is the last stage of our process.

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 deciding what's fair and reasonable, I take 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. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

Given that Grove previously told us that it accepted the investigator's assessment and recommended remedy, I don't see the need to address the suitability of its pension transfer advice to Mrs O in detail. However, I would like to state that I agree with the investigator's view the pension transfer advice Grove gave to Mrs O was unsuitable for largely the same reasons. In summary:

- Mrs O's safeguarded benefits, accounting for about 11 years' pensionable service, represented the backbone of her retirement provision built up by that time. I think it's fair to say that when she came to retire, she would be reliant, in some part, on the value of her safeguarded benefits to generate a minimum level of core income to support her standard of living in retirement. So I think it was important not to expose the value of these benefits to unnecessary risk;

- Grove recorded that Mrs O had very little knowledge and experience of investments. Transferring to the PPP led to the investment, inflation and longevity risks being transferred from the scheme to Mrs O. Those risks would've been retained by the BSPS2 had she transferred to that scheme. Taking these factors into account, it's my view that there needed to be a compelling reason why it was suitable for an inexperienced investor like Mrs O to transfer to the PPP compared to the alternative option of retaining guaranteed lifetime income under the BSPS2;

- At the time of the advice, Mrs O was aged 32. She couldn't access any benefits until age 55 at the earliest under the PPP. It was recorded that she wanted to retire early at around age 58. Her annual retirement income need at that age was recorded as £30,000. The further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. And in Mrs O's case, I think it would've been difficult to calculate an accurate figure with such a substantial timeframe until age 58. Grove's external consultant agreed that the timescale involved meant there was an "*obvious uncertainty at the point of advice in quantifying"* Mrs O's retirement objectives. In my view, with such a time horizon until pension benefits could be accessed and the level of uncertainty involved in quantifying objectives, it made the case for a pension transfer at that time – for the sake of achieving possible early retirement – more difficult to justify;

- Had Grove advised Mrs O to transfer to the BSPS2 she would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when she could immediately access benefits and, crucially, determine her retirement income and lump sum needs with far greater accuracy than at age 32;

- There's no real evidence that Mrs O required the flexibility of irregular lump sums, variable income or staggered income during retirement. Flexibility and control might sound attractive, but I can't see that Mrs O had any concrete need for it. She had received guaranteed income all her working life. So I think an element of guaranteed retirement income would've been valuable for an inexperienced investor in Mrs O's circumstances. But even if she did require flexible benefits, I think this could've been provided by her DC workplace plan provided by Aviva. She joined that scheme in April 2017 and the total annual contribution was 16% of her gross annual salary. It was noted the value of her plan was then about £3,000 and that she intended to remain employed by Tata Steel. So, by retirement, I think it's likely she'd have access to a significant DC fund to meet any flexible retirement needs, further undermining the case for a pension transfer at that time;

- A change in the format of death benefits was Mrs O's other key objective for transferring to the PPP. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mrs O about what was best for her own retirement provision. Withdrawing money from the PPP to meet income and lump sum needs from age 58 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. I can't see that this was explained to Mrs O. A pension is primarily designed to provide income in retirement. It's my view that Mrs O had no health issues at the time Grove advised her which might reasonably have prompted her to relinquish the guarantees attached to her own retirement income for the sake of an enhanced safety net for her husband. Notwithstanding this point, through her employment, Mrs O had death in service life cover based on a multiple of four times' her salary which would be paid to her husband in the event she died while still employed by Tata Steel. In addition, the value of her Aviva DC plan would be payable to her husband as a tax-free lump sum. So it's clear her husband would receive a large (relative to their wider financial situation) lump sum death benefit from other sources in the event of her earlier death. And if this was deemed insufficient, the substantial surplus disposable income they had available could've been used to obtain life cover to provide a lump sum on death;

- Grove recommended the transfer to the PPP to remove the risk that Mrs O might be transferred to the PPF at a later date. While I understand that Mrs O may have been concerned about the security of her safeguarded benefits, I don't consider a transfer to the PPF was an outcome for her to avoid. Under the PPF, Mrs O would've received a minimum of 90% of her scheme pension. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. If Mrs O was concerned about her safeguarded benefits being transferred to the PPF which would result in her losing 10% of her scheme pension, then I question why, as an inexperienced investor, she would accept the risk of transferring to a PPP and invest on an *'Adventurous'* basis which exposed her to unlimited downside risks where the loss could be significantly greater than 10%;

- For the reasons stated above, I don't think there was any need to transfer at that time, especially given the critical yield figures attached to the transaction. These were 6.98% on the basis Mrs O took a full pension at age 65 or 6.20% on the basis she took a reduced pension and tax-free lump sum at age 65. But Mrs O was looking to take benefits at age 58. So I would've expected Grove to have calculated the critical yield figures at age 58 to enable Mrs O to make an informed decision. But it appears it only calculated and presented the figures at age 65 in the suitability report. I think this was a material oversight because the critical yield figures at age 58 would've been higher (compared to at age 65) due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This meant that Mrs O wasn't provided accurate information about the level of investment growth required in the PPP to match the scheme pension if she took benefits at age 58; and

- Overall, I don't think the contemporaneous evidence supports the position as to why Mrs O's early retirement and death benefits objectives would've been sufficiently compelling reasons for her to relinquish valuable benefit guarantees by transferring to a PPP at that time. I haven't seen any evidence that persuades me the pension transfer to the PPP led to Mrs O gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2. As a result, I think it's fair and reasonable to uphold this complaint.

Putting things right

A fair and reasonable outcome would be for Grove to put Mrs O, as far as possible, into the position she would now be in but for the unsuitable advice she was given. My view is aligned with that of our investigator.

Our investigator concluded that, if properly advised, Mrs O would've transferred to the BSPS2 and her benefits would now be preserved in that scheme. While some information on the benefits of the BSPS2 were still to be confirmed, it's my view that by January 2018 the risk of the BSPS falling into the PPF had receded by a large extent following the announcement by the PPF in May 2017 that the terms of a RAA had been agreed. So I think Grove should've considered the BSPS2 as a viable option. So, in addition to the PPF, I think it's fair to consider the BSPS2 as a potential comparator scheme for redress purposes.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. I'm not convinced that it could be reasonably determined in 2018 that the PPF was the likely better option for Mrs O. And so I think, given her age and the lack of clarity surrounding when Mrs O would retire, the BSPS2 was likely the better option for her based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 the Representative on behalf of Mrs O and our service upon completion of the calculation.

The 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 Mrs O's acceptance of this 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 Mrs O redress as a cash lump sum payment,
- explain to Mrs O before starting the redress calculation that:
    - its 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 the redress prudently is to use it to augment her PPP
- offer to calculate how much of any redress Mrs O receives could be augmented rather than receiving it all as a cash lump sum;
- if Mrs O accepts Grove's offer to calculate how much of her redress could be augmented, request the necessary information and not charge Mrs O for the calculation, even if she ultimately decides not to have any of her redress augmented; and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs O's end of year tax position.

Redress paid to Mrs O 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've been taken as tax-free cash and 75% would've been taxed according to Mrs O's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition, Grove should pay Mrs O £300 compensation for the trouble and upset caused by its unsuitable recommendation, as recommended by our investigator.

My final decision

Determination and money award: I uphold this complaint and require Grove Pension Solutions Limited to pay Mrs O the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Grove Pension Solutions Limited to pay Mrs O any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Grove Pension Solutions Limited to pay Mrs O any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Grove Pension Solutions Limited pays Mrs O the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs O.

If Mrs O accepts this final decision, the money award becomes binding on Grove Pension Solutions Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mrs O can accept this final decision and go to court to ask for the balance. Mrs O may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 November 2023.
Clint Penfold
Ombudsman