

The complaint

Mr B complains about the advice he received from Grove Pension Solutions Limited when he transferred his Option 32 pension to a personal pension and he has suffered financial loss as a result.

What happened

Mr B had an Option 32 pension policy (sometimes referred to as a Section 32 Buy-out policy) with a provider I'll refer to as "C". He says he contacted Grove in 2013 to seek advice about retirement planning. He informed Grove what his objectives were and it provided financial advice.

Mr B says Grove advised him to transfer his Section 32 pension to a personal pension. He thinks it acted negligently and not in his best interests when it provided this advice. He says he was not informed of the valuable guaranteed benefits he would be giving up and Grove made no attempt to ensure he understood its advice. For example, he says Grove did not discuss alternative options with him.

Mr B instructed a claims management company in 2022 and a letter of complaint was sent to Grove dated 22 November 2022. Mr B also referred his complaint to our service.

Our investigator contacted Grove. It said the advice Mr B had complained about was provided in 2013 – which was more than six years previously. It also said more than three years had elapsed since Mr B was aware, or ought reasonably to have become aware he had cause for complaint. It referred to the fact that Mr B had encashed all of the money from his pension in 2016. Grove said the complaint was time-barred and in any case, it hadn't done anything wrong in 2013. It hadn't recommended Mr B should transfer his pension and had only facilitated his request because it said he was an "insistent client."

Grove did not consent to our Service investigating the complaint.

Our investigator looked into Mr B's complaint. He initially said the complaint was time-barred because more than six years had passed since the advice was provided and he thought Mr B ought reasonably to have been aware he had cause for complaint in 2016 when he encashed the pension.

Mr B did not agree. He said he didn't know he'd been advised to give up his valuable Guaranteed Minimum Pension (GMP). He only found out about this after he saw an online advertisement by the claims management company. He said he hadn't received any comparisons in 2013 or in 2016 which showed him what he had given up against what he had been recommended to do.

Our investigator thought again about what Mr B said. He thought, on balance, there was insufficient evidence to say Mr B ought to have been aware he had cause for complaint in 2016 because he hadn't received any comparison at that time. He also thought a consumer would not usually be aware of guaranteed benefits until he reached normal retirement age – which in the case of Mr B was 2022. So, he decided we could consider Mr B's complaint.

Having reviewed everything our investigator thought Grove:

- had made clear it didn't recommend Mr B should transfer his pension and provided him with contact details if he had any questions;
- had provided a clear explanation illustrating what benefits he was entitled to with his existing pension and the fact he would lose the Guaranteed Minimum Pension if he proceeded. It quoted in monetary terms how much he could lose if he lived to age 84;
- had considered an alternative way to reduce his debt through discussion with the debt management company. Although Mr B now said he could have borrowed money our investigator didn't think that would've met his objectives; and
- he couldn't have accessed the tax free cash in his existing pension until he reached his normal retirement age – so that wasn't an available option for him at the time.

Our investigator thought Grove had understood Mr B's circumstances, needs and attitude to risk. Mr B had told it that "after a lot of thought" he wanted to go ahead despite Grove having told him it did not recommend he should. He thought Grove had been clear about its recommendation and he also thought it was likely Mr B would have gone ahead in any case.

Grove did not agree that the complaint fell within our jurisdiction. It said it was pleased with the conclusion that Mr B would have proceeded in any case.

Mr B did not agree with what our investigator said. By way of summary he said:

- He would not have gone ahead regardless of the advice he'd received. He had no financial background.
- The declaration he signed was pre-written by Grove and he was told to sign and complete it. He did not understand the nature of the guarantees he would lose.
- The Financial Conduct Authority (FCA) guidelines stated that a client could only be insistent if he decided to go ahead after getting a recommendation. He'd not been given sufficient information before Grove decided to treat him as an insistent customer.
- The information he was given was not clear. It was full of financial jargon and he hadn't made a fully informed decision.
- But for the advice he'd received, he would not have transferred his pension in 2013 and wouldn't have encashed it in 2016.

Because neither party agreed with what our investigator said, the complaint has 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.

For reasons which I've set out separately I've decided this complaint is one that our service can consider. Whilst Grove doesn't agree, it hasn't provided any further information or raised any new arguments which cause me to change my view about that. So, in this decision I will be considering the merits of Mr B's complaint.

What Rules applied at the time of the transfer?

Our role is to decide what's fair and reasonable taking into account all the circumstances that applied at the time. In order to decide that, we have to consider a number of things -

including relevant law and what we consider to have been good industry practice at the time.

Mr B first approached Grove about transferring his pension, which included the promise of a guaranteed minimum pension, in or about March 2013. Information about his existing pension was provided to Grove in May 2013 and Grove provided its advice to Mr B after that.

Grove was regulated by the Financial Conduct Authority (FCA) at the time. The FCA replaced the Financial Services Authority (FSA) on 1 April 2013. So, when thinking about how this complaint should be resolved I've taken into account the FCA Principles and the Conduct of Business Sourcebook (COBS) Rules which applied at the time. Without prejudice to the generality of the foregoing, in particular I've considered:

The FCA Principles

These required Grove to:

- conduct its business with integrity (Principle 1);
- conduct its business with due skill, care and diligence (Principle 2);
- pay due regard to the interest of its customers and treat them fairly (Principle 6); and
- 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 (Principle 7);

The FCA Conduct of Business Sourcebook (COBS)

This required Grove to:

- act honestly, fairly and professionally in accordance with the best interests of its client (COBS 2.1.1).
- to communicate with Mr B in a way which was clear, fair and not misleading (COBS 4.2.1)
- take reasonable steps to ensure that a personal recommendation was suitable for Mr B - having obtained the necessary information regarding his knowledge and experience, his financial situation and his investment objectives (COBS 9.2); and
- comply with the Rules in COBS 19 which concerned the provision of advice about the transfer of a pension which had defined benefits.

Mr B says Grove did not act in line with its regulatory requirements. For example, he says he was not informed about the benefits he would be giving up if he transferred his pension; he wasn't given any comparison; the advice he received was "full of financial jargon;" Grove didn't make sure he'd understood its advice and didn't discuss alternative ways he could reach his objectives. Mr B says that if he'd been given all the information he should have been given, he would not have proceeded.

I've considered what Mr B has said.

Grove's recommendation

Mr B told Grove he wanted to access his pension to obtain a lump sum to clear his debts, pay for his divorce and purchase a new car.

C had explained to Grove in its letter dated 17 May 2013 that its current estimates showed the pension which could be paid to Mr B at that time was lower than the GMP amount it would have to pay him from age 65. In these circumstances it said it was not able to make payment of any benefits to him from his policy at that time. So, as our investigator explained, it was not an option for Mr B, at the time, to get a cash lump sum payment from C or to start

receiving his pension. That meant Mr B could only immediately access the pension he held with C if he transferred it to another provider.

Grove discussed the matter with Mr B. It then sent him an email dated 18 June 2013 followed by a suitability report a few days later.

The content of the email dated 18 June 2013 is important because in it Grove explained why it had recommended Mr B should not transfer his pension away from C. The email set out the reasons why. It said:

"I am writing to emphasize my recommendation not to release your pension at this time.

As I explained

- The pension is growing virtually tax free and the longer it is left the more the benefits are likely to be worth.*
- If you release a lump sum now it will reduce your income in retirement because of the combined effect of taking a lump sum out now and the charges applied for doing so.*
- In addition you would forfeit your GMP (Guaranteed Minimum Pension) of £435 per month increasing at 3% per year that C have to pay you at age 65.*
- The potential income at retirement age on transfer/release would then be entirely dependent on investment returns rather than guaranteed.*
- If you transfer/release the pension now to generate a lump sum of circa £x and then live to age 84 (in line with life expectancy) you would have lost £28,400 in total pension payments.*
- Your debts are not incurring any interest charges and your debt management company have already confirmed that you could pay a reduced amount each month. If you were to temporarily accept this offer you could then save up the money to pay for the divorce.*

In view of these risks and the availability of alternatives, as I said my recommendation has to be to leave the pensions to age 65/retirement age."

I'm satisfied, on balance, the language used in the email was clear. The risks were set out succinctly. The amount of the GMP, including the fact it was guaranteed, and the amount Mr B would lose over the longer term if he proceeded was set out. An alternative way to deal with Mr B's debts was also included.

Mr B responded on 20 June 2013. He said that "*after a lot of thought*" and having discussed it with his partner he wanted to go ahead with the transfer and get the lump sum. He said he knew the risk he was taking but he needed to do this to "move on" in his life.

Grove then had a further conversation with Mr B and issued its suitability report on 21 June 2013.

In the suitability report Grove reiterated its recommendation was that he should not release his pension. It noted that Mr B had decided not to take its advice. In these circumstances it said its suitability report was based on Mr B's instructions and his decision not to take the advice he'd been given.

The suitability report included further information and warnings about the proposed course of action. Grove reminded Mr B that if he proceeded:

- he would be giving up the GMP - which was the amount he would have to be paid by C when he reached retirement age – irrespective of the value of the fund;
- the GMP amount was around £5,230 per year increasing by 3% per year;
- this GMP guarantee would be lost if he proceeded and he would end up with a reduced pension at retirement;
- this was a very expensive way to raise funds. If for example he released the pension now and then lived to age 84 he would have lost over £28,000;
- further detail was included in the Appendix to the report which set out separately the value of the GMP benefits he was entitled to (his existing arrangements) at age 65. The amount of £5,230.68 per annum was quoted. There was also a note indicating that this would be paid monthly and would increase during payment by 3% each year. The note explained that if he proceeded with the transfer he would need to achieve an annual average rate of growth of 11.83% to match what he was giving up. It stated this illustrated “how good” the existing pension was.
- the Appendix also set out a comparison of the benefits he might get if he proceeded to transfer his pension. It stated Mr B could take a tax free lump sum of £x immediately and an annual pension of just under £2,500 (non-increasing). The notes stated Grove did not recommend he should take any income, if he did decide to transfer his pension, until his selected retirement age.

Mr B says the suitability report was merely a papering exercise and alternative options, to achieve his objectives, were not fully discussed or explored with him. So, I’ve thought about what he’s said here.

I can see that Grove completed a fact find which captured details of Mr B’s personal and financial circumstances at the time. It recorded that Mr B was in a debt management plan and didn’t have any disposable income as a result. However, he was confident his creditors would be willing to settle for less than he owed. He also didn’t think his divorce would cost him a significant amount because the debts were related to his marriage.

The report set out that Mr B didn’t have any knowledge or experience of financial matters and assessed his attitude to risk as “moderate.”

Grove did consider alternative ways Mr B could achieve his objectives. It pointed out that his debts were not currently incurring any interest charges and there was a very real possibility he could reduce the amount he was paying each month. That could release some money each month to enable him to finance his divorce.

Grove also looked at other alternatives such as borrowing, reducing his expenditure or using savings. This is documented in the fact find. However each of these options was ruled out because Mr B had no savings and had no surplus disposable income to support further debts being incurred.

Mr B says that he wasn’t informed of any benefits he’d lose by transferring his pension and, he says, if he’d been told about this he wouldn’t have proceeded.

The Appendix to the Suitability Report compared the benefits of Mr B’s existing arrangements with the benefits he might get after he transferred his pension. This included the current values and also the amount of pension each policy offered. It stated that the existing arrangement provided a guaranteed minimum pension. As mentioned above, it set out the amount the new pension arrangement would have to grow by to be as good as the pension he was giving up. And it stated this showed “how good your existing pension is and whether the transfer represents value for money.”

Grove made clear it did not recommend he should transfer his pension. However, Mr B said it was important to him to clear his debts quickly so he could move on with his life. Given how important that objective was to him, the alternative which Grove had suggested was not something he wanted to pursue.

I'm satisfied on balance, having considered everything here, Grove took reasonable steps, in line with its regulatory obligations as set out above, to assess whether the recommendation it provided was suitable.

It collected information about Mr B's financial situation, his knowledge and experience and his investment objectives. It considered alternative ways to achieve his objectives and discussed these with him. It set out the risks associated with what he wanted to do and considered his responses. The suitability report explained each of these matters in clear language. It compared the benefits of the new arrangements with the existing arrangements.

Having read the email and the suitability report, I'm persuaded on balance, Mr B had been given enough information to enable him to understand that Grove did not recommend he should proceed with the transfer and the reasons why it had said that. I think, on balance, he would also have understood that Grove had only agreed to facilitate the transfer because of the strong desire he'd expressed about wanting to clear his debts and "get on with his life". When reaching that view I've considered Mr B's responses to what he'd been told.

Mr B's responses to Grove's recommendation

The suitability report documented Mr B's responses to Grove's recommendation. In particular, I've noted the report included the following:

- Mr B told Grove he didn't wish to take its advice not to release his pension early;
- Grove stressed that the policy had an underlying GMP. If he proceeded to release his pension early this guarantee would be lost and he'd likely end up with a reduced pension at retirement. Mr B's response to this was that he fully understood and appreciated the warning however this wouldn't necessarily put him off because of the importance to him of being able to start afresh;
- There was a risk the pension could be treated as part of the marital assets – Mr B said he was prepared to take this risk and he wanted to move on with his life without "a dark cloud hanging" over his head;
- Grove said Mr B could achieve his objectives without releasing his pension – Mr B responded to say that although he understood where Grove was coming from when it said this he wanted to clear everything. He said he'd sat down and given all the warnings a lot of thought. He'd confirmed this in his email dated 20 June 2013.
- Grove discussed the high risks associated with "draw down" contracts and explained to Mr B that although he would be able to draw down further amounts before he reached retirement age, it did not recommend he should do that. Mr B confirmed he did not intend to make any further drawdowns.
- Grove described the investment risks associated with drawdown contracts and warned Mr B he should not proceed unless he understood and was prepared to take these risks. Mr B confirmed he understood these risks.

Having read Mr B's response to the email and the information recorded in the suitability report about his discussion with Grove, I'm satisfied on balance he had been given enough information in language that was clear, fair and not misleading, to enable him to make a fully informed decision. Although he'd been advised not to transfer his pension, he still wanted to proceed - after he said he'd given "a lot of thought" to the risks which Grove had pointed out.

Should Grove have facilitated the transfer?

Grove says Mr B was “insistent” about completing the transfer despite its recommendation not to proceed.

Mr B says Grove didn’t follow the rules that applied to insistent clients. For example he says it wasn’t enough for Grove to simply facilitate a transfer because the client had requested this. Grove was under no obligation to continue with its advice or to facilitate the transfer if it did not believe it was in the client’s best interests. He also says it should have got him to write out in his own words why he wanted to act against the advice he’d been given.

It is the case that at the time Grove was required to act in the client’s best interests and comply with the FCA Rules. However, although there have been changes to the Rules since 2013, there wasn’t a rule which prevented a firm from transacting business against the advice it had given where a client insisted. There also wasn’t a definition in the FCA Handbook for the term “insistent client.”

When considering whether Grove acted fairly and reasonably and in line with its obligations, I need to take into account all the circumstances that applied at the time – including the FCA Rules and what we consider to have been good industry practice.

Having done so, I’m satisfied on balance Grove did act fairly and reasonably here. As I’ve said, although it wasn’t required to continue to act where it believed the transfer was not in the client’s best interests, that didn’t mean it was required to say it couldn’t facilitate the transaction.

In the Suitability Report Grove reminded Mr B it had advised him not to proceed. It said its report detailed how best Mr B could achieve what he wanted to achieve but explained this was based on his instructions and his decision not to take the advice he’d been given.

Grove set out the reasons why it didn’t recommend Mr B should proceed with the transfer. The language it used was clear. He had time to consider the recommendation, and the reasons for it, before he informed Grove that despite the risks he still wanted to proceed. He was sent a suitability report which reiterated the warnings and reminded him that Grove did not recommend he should proceed. The suitability report included quotations of the words Mr B used when he told Grove he wanted to proceed despite the advice he’d been given.

I’m persuaded, on balance, Grove satisfied itself that Mr B understood the risks and made clear to him he was acting against its advice.

Having considered everything I’m satisfied, on balance, Mr B had all the information he needed to make a fully informed decision before he asked Grove to facilitate the transfer. In these circumstances, I’m persuaded Grove acted fairly and reasonably. I don’t require it to have to do anything further to resolve this complaint.

My final decision

For the reasons given above I do not uphold this complaint about Grove Pension Solutions Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 23 April 2024.

Irene Martin

Ombudsman