

The complaint

Mr B complained he'd been unsuitably advised by Calculis Financial Planners Limited to transfer benefits held in an Occupational Pension Scheme (OPS) and a linked Additional Voluntary Contribution (AVC) Scheme.

Calculis Financial Planners was an earlier name for Pegmos Limited; both sharing the same FCA number. Pegmos accept responsibility for this complaint.

What happened

Mr B was advised to transfer his Defined Benefit OPS benefits and those held in his employer's Additional Voluntary Contribution (AVC) plan (held with Zurich) to a Personal Pension Plan (PPP) with Old Mutual Wealth.

The advice was provided by Pegmos. The information from Mr B's OPS suggests he joined the scheme on 1 July 1988 and left it on 7 February 2017. The scheme had a retirement date at age 65 and it provided a 50% spouse's/ dependant's pension.

In 2017 Mr B and his partner met with a Pegmos adviser. In a document dated February 2017 Mr B and his partner's personal information is recorded by the Pegmos adviser. This document was updated later during 2017 by Pegmos. The advice and suitability report provided by Pegmos (dated September 2017) refers to having recorded information in April 2017.

Starting with the personal information record for Mr B started in February 2017, it was recorded Mr B wanted to look at his options with his pension arrangements. At the time:

- Mr B was aged 64 and living with his partner.
- They jointly owned their home valued at £400,000.
- Mr B's partner had an income of £15,000.
- Mr B had recently ceased his long-term employment (over 40 years employment was recorded) and related legal proceedings were ongoing.

There was an update to Pegmos' record in the early summer of 2017 that Mr B had been successful in his legal proceedings and was awaiting settlement. This information was further updated in the suitability report by which time it was said Mr B had received around £70,000.

- In February 2017 it was recorded Mr B didn't intend to retire and after taking a short break (around a month), he was considering starting a self-employed project.

Mr B expected an income of around £20,000 a year from this work; prior to this he'd been earning a total annual income of £38-40,000. In mid-summer 2017 the record was updated that Mr B had started self-employment.

Mr B and his partner were existing Pegmos clients with ISAs. These had been started in 2013. Mr B's ISA had a value of just over £86,000 (with a starting lump sum investment of

just over £72,000). His partner's ISA had a value just over £13,000. Neither Mr B or his partner were making regular contributions.

On retirement it was said Mr B was hoping for an income of £23,000- £24,000 a year (in addition to his state pension) and he hoped for a cash lump sum of around £25,000. Pegmos recorded Mr B wanted flexibility in how he took his benefits and wanted to review death benefits in relation to his younger partner.

Mr B and his partner scored less than 5 out of 10 on the risk profile completed. It was set out that Mr B and his partner were happy to invest in line with this. Mr B was said to be willing to take an increased risk with the AVC pot. Pegmos recommended that an Old Mutual AVC met his needs better than his Zurich AVC plan. Pegmos said Mr B's in-house AVC and their own balanced portfolio had shown similar performance over the previous years. Pegmos went on to tell Mr B their own adventurous portfolio had shown better returns than his in-house AVC over the previous five years (not invested with an adventurous risk profile).

The graph Pegmos used to demonstrate performance of the AVC and their portfolios was said to demonstrate the in-house AVC had increased volatility and Pegmos said this wasn't in line with Mr B's attitude to risk. The graph noted in smaller writing that this data hadn't included 12% of the AVC investment held in a diversified fund.

As at February 2017 a statement from Mr B's OPS set out that Mr B would receive £19,715.05 (escalating) a year (with a dependant's pension of just under £9,900) as at that date. The estimated pension at age 65 was £20,341.66 (escalating) and information on the dependent's pension was also provided.

In February 2017, Mr B's OPS provided a cash equivalent transfer value (CETV) of £471,703. Mr B's employer's AVC plan transfer value around the same time was £57,669. By September 2017 there is reference to Mr B's OPS having a CETV of £459,746 and his AVC £59,993; other values also are recorded.

August 2017

Pegmos provided a letter dated 4 August 2017 addressed to Mr B. This set out that Mr B had received full and regulated financial advice in relation to the transfer of his OPS and that he was aware he would lose any safeguarded benefits on transfer. It went on to say the advice has been in respect of the transfer of safeguarded benefits to flexible benefits.

Mr B signed the document to authorise the transfer from his OPS on 31 August 2017. The same date as the authorization signature by the Pegmos adviser.

It's not entirely clear how this letter from Pegmos fits into the chronology, as the advice and suitability report is dated September 2017.

Pegmos' Financial planning report dated September 2017

We've been provided with Pegmos' Financial planning report dated September 2017. In this report transfer values were given for Mr B's two employee pension arrangements:

- Defined benefit OPS: Cash equivalent transfer value of just under £520,000.

The OPS contained a guaranteed minimum pension and details about annual escalation rates were provided.
- Employee AVC: Fund and transfer value of just under £60,000.

The AVC was managed by Zurich and was invested in six funds, with no apparent penalty on transfer.

The September report records Mr B recent payment from his ex-employer. At this stage Pegmos recorded Mr B's priorities and objectives, including:

- Working until retirement age
- To understand his options and calculation of his expected income in retirement
- Receive regular reviews
- Potentially benefit from the flexibility afforded under the new pension freedoms

Approach to investment risk

Mr B's attitude to risk continued to be assessed as being five out of ten; this was said to match to Pegmos' cautious portfolio. Pegmos' report says they discussed that Mr B would benefit from a more adventurous approach to investment and that the portion of Mr B's retirement benefits contained in his AVC would be invested in their Growth portfolio to meet this more adventurous approach. This was said to usually be appropriate for someone with an attitude to risk of seven out of ten. Pegmos said this investment would be reviewed after a year.

Capacity for loss

In respect of Mr B's capacity for loss, Pegmos don't appear to have fully assessed this against Mr B's circumstances. Pegmos went on to record Mr B said he'd be concerned by a drop of more than 10% in a year; but that he accepted a short-term loss due to market volatility wouldn't have a material effect on his standard of living.

Report on OPS

Pegmos reported Mr B's OPS was a well-established scheme that provided guaranteed, inflation-linked pension benefits (subject to certain limits) plus an optional Pension Commencement Lump Sum which was tax free. They acknowledged *"the general approach to such schemes, especially when they appear to be meeting minimum solvency requirements, like this one. Is that any transfer out is NOT a good thing"*.

Pegmos went on to say the scheme and its benefits appeared secure for the time being, and, whilst many pension transfers have an *"emotional element"* this should not detract from making a considered decision. *"It is impossible to replace the sort of guaranteed benefits that this scheme provides via any form of private or personal pension arrangement, and once a transfer out has occurred the benefits cannot be reinstated and any future investment losses in a replacement arrangement cannot be undone"*.

Pegmos' report says it attempts to fully outline Mr B's existing scheme benefits in order that he may make a considered judgement. The report set out information on the investment return required to match the value of the benefits given up under the OPS, the "Critical Yield"; and explained this would often be key to a decision as to whether to whether someone ought to decide to proceed to transfer.

Pegmos' report told Mr B that because he was within one year of the OPS retirement age, they weren't able to produce a full Retirement Transfer Analysis Report showing a critical yield. Pegmos said this meant they could only base their advice on retirement models. Pegmos went on to explore what this might mean on the assumption the fund was

transferred and invested achieving yearly growth of 6% (before charges). Pegmos told Mr B the rate of future increases in the OPS were unknown, as they were largely linked to changes in inflation and so may be higher or lower than this.

The report went on to suggest Mr B's intention was *"not to match scheme benefits and the main reasons for moving the monies are:*

- *to give you greater control over how and when you draw the income*
- *to provide improved and more flexible death benefits*

On the assumption that you take a level income".

Mr B's complaint

Mr B's representatives made a complaint to Pegmos on his behalf.

Pegmos' response to Mr B's complaint

Pegmos rejected Mr B's complaint. Overall they said they'd told Mr B what they were required to and this was evidenced by their suitability report. They made a number of points and referred to various documents. They also thought Mr B's representatives had relied on submissions that were inaccurate.

Pegmos said Mr B had known he was losing guaranteed benefits by transferring. They relied on Mr B signing a confirmation slip they said had accompanied their suitability (advice) report confirming his understanding (October 2017) and he'd never raised any concerns to them.

Pegmos considered they had provided information on the OPS benefits and alternative options to a transfer to a personal pension plan (PPP) in their suitability report. They suggested their advice was sound, as Mr B's pension objectives would not have been met if he'd not transferred. Pegmos rejected the suggestion they'd failed to reach the regulator's requirements regarding the starting point on this type of work and the only situations where a transfer ought to be recommended.

They didn't accept Mr B had not wanted to take any risk with his pension arrangements. Pegmos considered they knew Mr B sufficiently having known him since 2013 when he started the ISA and he'd met with their adviser for this work and had a fact find completed.

Pegmos said it was wrong to suggest they'd received a £5,000 fee. Whilst this had been initially proposed and agreed by Mr B, an adviser had gone on to waive this fee.

Investigator's view

An investigator at this service thought Mr B's complaint ought to be upheld as the advice to transfer OPS benefits had been unsuitable. The investigator referred to the regulator's approach. They thought that taking account of Mr B's age and the significance of the OPS to Mr B's pension plans, there had needed to be a significant chance for Mr B to improve on his OPS benefits to recommend the transfer. This hadn't been the case with Mr B.

The investigator accepted what Mr B had told us about his reliance on the adviser and his thinking. The investigator went on to set out the redress proposed and that Pegmos ought to also pay Mr B £300 to represent the distress and inconvenience caused here.

Mr B accepted the investigator's view. Pegmos did not.

Pegmos' response

Pegmos provided a number of detailed reasons as to why they didn't agree. In summary:

- Mr B had a good relationship with the adviser, and he was now just trying his luck.
- Pegmos pointed to matters they considered errors in the investigator's view.

This included noting that although a £5,000 fee had originally been agreed, this had been waived by the adviser who took over Mr B as a client and had never been taken. Pegmos accepted a letter confirming this ought to have been provided but repeated that the provider would confirm no fee was paid.

- Mr B's intention to start working on a self-employed basis was one of the main reasons he required a cash injection; and this was what he'd gone on to do.
- Mr B was an investment client of Pegmos since October 2013. We were told more about this.

"Mr B first became a client... in 2014 when we advised him regarding his existing investments... [they analyzed the] holdings with the result that they came out at 7/10 and 6/10 respectively. Neither of these portfolios could be described as low risk. [One was] ... a client-controlled platform and Mr B was responsible for choosing his investment funds. Mr B clearly had experience of investing".

I previously indicated I didn't intend to make any findings in respect of this, unless invited, which I have not been. I acknowledge the fact-find report completed on Mr B highlighted he had no assets apart from the 2013 ISA.

- Mr B demonstrated in his attitude to risk questionnaire that he was prepared to take a 'level of risk'.

Pegmos stress Mr B might have said he'd be scared about managing his pension fund, but that didn't mean he wasn't an experienced investor who had previously self-managed a number of different investments.

- Full information regarding Mr B's existing scheme benefits had been provided to him. The benefits available under the existing scheme were fully explained in the Suitability Report along with other alternative options.
- As Mr B isn't married, the decision about whether his partner would be accepted by the OPS trustees as a dependent was not clear, as it would be at the trustee's discretion. The PPP allowed Mr B's children to be beneficiaries, if Mr B and his partner died, this was an additional benefit which he wanted.
- Pegmos set out the regulator's starting point on OPS transfers and addressed the importance of critical yield in their report.
- The OPS guaranteed pension was less than Mr B required and would have been reduced further if a cash sum was accessed. Mr B wanted to exceed the benefits offered by his OPS, as the guaranteed benefits weren't sufficient for his requirements.
- It's supposition to conclude Mr B would have achieved his desired income if he had

remained in his OPS. They say the OPS sums alone only offered between 81.3-85.7% of the sum he wanted.

- Mr B had nearly three weeks between being sent his suitability report on 15 September and signing an acknowledgement of understanding and agreement with the report on 5 October 2017. It's implied this was sufficient time for him to reflect and Pegmos say he would not have gone ahead if he didn't think it met his objectives.

By moving to a PPP, Mr B was in a position of increased flexibility that was a benefit to him.

Although Pegmos didn't have access to the full records for Mr B, they confirmed the following information:

Amount invested £519,967.27
Lump Sum Withdrawals £50,000.00
Regular Withdrawals £49,248.00
Net Investment £420,719.29
Value at date of leaving Calculis £427,700.82

Pegmos say there was a gain of £6,981.55 after all withdrawals.

Investigator's further thinking

The investigator wasn't persuaded to change her thinking, but she provided further detail. She added that Mr B could have obtained a cash sum given how close he was to taking OPS benefits or could have explored other options and still have retained his deferred benefits. It doesn't appear the investigator was aware Mr B was due or had received the settlement sum from his legal case before the transfer when she replied to Pegmos.

The investigator continued to think the benefits offered by the OPS outweighed the submissions made by Pegmos. She continued to think the costs associated and growth required to match benefits, meant the transfer was unsuitable for Mr B.

Further submissions from Pegmos

Pegmos provided further submissions; again, in summary:

- Pegmos suggested Mr B was only involved in legal proceedings when they advised him, there was no guarantee he would win. Pegmos thought the investigator had relied on hindsight. They didn't think other alternatives were sensible.

I previously indicated I'd seen Pegmos' personal record on Mr B was updated in early summer 2017 that Mr B had won the legal proceedings and was awaiting the settlement payment. The advice report of September 2017 records he'd received the settlement. This submission was not pursued further by Pegmos.

- Pegmos continued to think Mr B had been properly informed and suitably advised.

Mr B was put in the position of achieving the level of income he wanted, not just close to it.

- Their 0% initial fee and 1% ongoing charge are extremely low compared to usual adviser costs. It was suggested Mr B was determined to transfer whatever.

Additional information

Mr B's representatives let us know Mr B transferred away from Old Mutual. [We were originally told this was to a Transact SIPP, but this was clarified following my first provisional decision]. We weren't told prior to my first provisional decision when or how the further transfer happened, if he was advised, nor what investments were made or his current position.

First provisional decision

I issued a provisional decision on this case on 31 March 2022. In it I indicated I intended (subject to further information and submissions) to uphold Mr B's complaint. It didn't appear to me the advice was suitable for Mr B in the circumstances of this complaint. Mr B had valuable preserved benefits in his OPS forming an important part of his retirement planning and he was close to being able to take benefits from the scheme. Having taken account of his circumstances at the time I didn't think Mr B was suitably advised to transfer and lose the preserved and guaranteed benefits from his OPS. Nor did it appear to me there was any need or benefit to Mr B to transfer funds from his AVC plan.

However, there were areas where I required further information to conclude my thinking and in respect of proposed redress. I set out further detail on this.

Second provisional decision

I issued a further provisional decision on 29 May 2022, in this I indicated I hadn't changed my thinking and intended to uphold the complaint. I also set out more information on what I intended to say Pegmos would need to do.

We also ensured further information provided was shared. Information had been provided by third parties in addition to Pegmos and Mr B's representatives. I provided a brief summary of some of the further information provided.

Information from Mr B's representatives

- Mr B transferred the arrangements put in place by Pegmos to a Transact Personal pension having been advised by a new adviser and this is managed by the adviser.
- Letter about the OPS regarding the request to transfer dated 25/8/2017 and further information around this. This confirmed the plan had a guaranteed minimum pension (GMP) and the guaranteed transfer value from the OPS had a deadline of 25/11/2017; and that Mr B's Zurich AVC had been started on 1/3/1999.
- The Old Mutual Collective retirement account transaction history, with a start date of 31/10/2017. By 4 April 2019 the account had no value.
- Information from Transact, including Mr B's statements from January 2019 to May 2022. This includes information about transfers in and withdrawals.

Information from Pegmos

Mr B's in-house AVC commenced on 1 March 1999 and was managed by Zurich. The fund information was provided. Pegmos were unable to confirm the historic charging information. The charges in respect of the plan held with Old Mutual Wealth were provided.

The initial fee of £5,000 was waived following a conversation with Mr B. Pegmos provided a transaction history confirming the only fees taken were on-going adviser fees (totalling £747.84).

Information on the in-house AVC

Mr B's AVC/ scheme AVCs were invested in the Cash Lifestyle fund. The investments were held until 21st September 2017. At that point the funds were sold in order to process the transfer away. There were no additional charges or fees applied to this transfer; Pegmos did not receive any fees from them.

Information from Old Mutual (also provided by Mr B's representatives)

Mr B held two Old Mutual collective retirement accounts. Both had an adviser fee of 1% a year paid in monthly instalments. There appears to have also been an ISA.

The first account was started in October 2017 with a payment in of £459,746. In November 2017 Mr B took just under £50,500 in tax free cash. He thereafter started taking a taxable income of £1,154.25 each month as well as a tax-free sum of £384 each month. For the period until March 2018 the adviser was paid £1,692.82 as the servicing fee and there was a product charge of £438.99.

The second account was started in October 2017 with a payment in of £60,221. For this period the adviser was paid £250.97 and there was a product charge of £65.09.

We have further statements covering the entire period until the last statement finishing in July 2019. Throughout this time Mr B continues to make regular monthly withdrawals from one of his collective retirement accounts, as well as regular charges/ fees being applied.

Responses to second provisional decision

Mr B accepted my second provisional decision through his representatives. Pegmos did not respond. I'm satisfied we have given Pegmos sufficient opportunity to respond.

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.

Based on everything, I am not persuaded to change my thinking on Mr B's complaint and I adopt what I said in my second provisional decision. Overall I don't think the advice Mr B received on transfer was suitable here, and had he been suitably advised, on balance, I don't think the transfer would have proceeded.

I'm required, under DISP 3.6.4R, when considering what is fair and reasonable in all the circumstances of the case, to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of all the available evidence and the wider circumstances. When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator's rules, guidance, and standards.

I come to my conclusions on the basis of the evidence I've seen; this of course includes what the parties say about what happened. And, where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities, in other words, what I think is most likely to have happened, taking into account the available evidence and the wider circumstances.

Mr B had valuable preserved benefits in his OPS. These benefits represented a significant part of his retirement planning and he was within a year of the OPS retirement age. Although Mr B was not planning to retire immediately, his employment status had changed and was continuing to change significantly.

I don't accept Mr B had a pressing need for funds; and even if he did, he had substantial alternative and more suitable options, which were not explored sufficiently (if at all) by Pegmos. Taking account of Mr B's circumstances at the time I don't think it was suitable advice to transfer and lose the preserved and guaranteed benefits from the OPS.

I appreciate that during the early part of 2017 Mr B might have been feeling financially vulnerable and concerned, I've seen what's said about Mr B being determined to transfer. However his circumstances changed by the summer and early autumn, and prior to the suitability report being produced and transfer proceeding. This would also not remove the onus on Pegmos to provide suitable advice. I don't think there's enough here for me to say that even if he'd been advised against transfer he would have elected to proceed. On balance I tend to think, that had Mr B been suitably advised the transfer would not have proceeded.

I don't consider the reasons relied on by Pegmos to support Mr B's transfer are made out, nor were they in his best interests. I don't accept giving up the OPS benefits to enable Mr B to access funds was suitable (or necessary) here, and I am left with the impression this was at the centre of the advice. The regulator explained the starting point when an adviser is considering whether or not to transfer a defined benefit pension plan, it said:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests." (COBS 19.1.6).

The starting point is to assume it is unsuitable, unless it can be clearly demonstrated it was in Mr B's best interests. Pegmos fail at the first hurdle here. I don't accept it was in his best interests. There is nothing that leads me to accept Mr B identified a pressing need for funds. Even if he had done, and I accept starting his new self-employed business might come with additional costs, Mr B had enough alternative options. To give up the valuable and guaranteed benefits reflecting a substantial length of service ought to have been the very last option; here I don't accept other options were adequately advised upon or considered.

Mr B was so close to retirement age that a critical yield could not be assessed. This ought to have made Pegmos even more cautious when reviewing, let alone recommending a transfer. I agree with the investigator in general terms, the preserved benefits under the OPS suggested Mr B were not far off where he wanted to be in terms of pension income. I'm not persuaded by the suggestion that because the OPS might not precisely provide the sum discussed with Pegmos, this made a transfer suitable. I don't consider there was any reasonable likelihood Mr B's fund on transfer would be able to match, let alone exceed his preserved benefits in such a short period as was required, even if, as Pegmos say, they did not take the initial advice fee. This is something I don't consider was dealt with sufficiently by

Pegmos in their report. In any event Mr B apparently anticipated swiftly achieving an income from his new employment and would have also been in a position to supplement any potential small shortfall in required pension income from the OPS from other sources. This aspect was simply inadequately considered, and the overall advice was not suitable for Mr B.

Some of Pegmos' submissions have been to the effect that Mr B wanted to significantly exceed the benefits provided by his OPS and their advice would have enabled him to do so. As a member of a final salary scheme Mr B's benefits weren't dependent on investment returns but on his pensionable service and salary and were in effect guaranteed. To make the losing of such benefits potentially suitable, I would expect to see, for example, a real likelihood that Mr B's benefits on transfer would be significantly improved to make such a loss to be in his best interests. I don't consider taking account of Mr B's age and when he intended to take benefits, this was something that could ever have been reasonably likely to be achieved. I've seen what's said about Mr B wanting greater control over his investment and pension. I am not persuaded this is an accurate reflection of Mr B and his priorities at the time.

I've also seen what's said about Mr B being an experienced investor, but this doesn't persuade me to change my overall thinking. It was reasonable for Mr B, given what I've seen on his experience and circumstances, to have relied on the advice of Pegmos. There's nothing that makes me think he would have been in a position to challenge the advice he was given in a sufficiently informed manner. I don't consider that if Pegmos had advised against the transfer, but had, for example identified alternative retirement planning and accessing cash sums, it was more likely than not, that Mr B would have insisted on going ahead with the transfer against advice.

It's suggested Mr B obtained the benefit of being able to make provision for his children as well as his partner on transfer. I accept Mr B completed his expression of wishes to indicate a small portion to be split between his children, but it's sufficiently clear his main priority when it came to death benefits was his long-term partner, who is younger than him. Whilst it is right to note the ultimate decision about whether an OPS will pay out death benefits to any dependant lies with the trustee of the scheme, there is nothing to suggest here, that Mr B's partner might be considered differently or as an exception. I don't accept this was such a substantial benefit to Mr B or meeting such a pressing priority (for a man who was so close to accessing his OPS benefits in any event) as to make the advice suitable.

I previously noted a potential inconsistency with the submissions made on apportionment of death benefits against what was actually put in place. I haven't received further submissions on this, and I don't consider it takes matters any further.

By June 2017, it was known Mr B would be receiving a lump sum from his legal proceedings. If there was a need, and I not persuaded Mr B did have a pressing need for a cash sum within any particular time frame, this would have been an relatively imminent source of funds; putting aside Mr B's other assets, or the possibility of a short-term loan. By the time of Pegmos' report in September 2013 Mr B had apparently received the settlement lump sum. However, the intended use of the lump sum settlement wasn't apparently taken into account or considered.

For completeness although the forms signed by the adviser on 31/8/2017 set out the £5,000 fee to Pegmos and the 1% servicing fee to be paid monthly to Pegmos, I accept Mr B did not pay a fee of £5,000 to Pegmos for the advice. It isn't suggested that Pegmos were motivated by financial gain in making their recommendations to Mr B.

I've seen what's said about Mr B's attitude to risk. This makes it even less likely that a transfer was in Mr B's best interests. Mr B was characterised by Pegmos as a person who is open to risk and chance. I haven't seen anything to support these submissions.

I previously expressed my gratitude to all parties for their assistance in providing the further information I requested. I was somewhat surprised to see Mr B taking a regular monthly income following the transfer. I did consider this aspect carefully and took it into account when thinking about Mr B's personal objectives and intentions. It did weaken the persuasiveness of some elements of his complaint. But ultimately it didn't mean I was able to conclude Pegmos had provided suitable advice, in-line with the guidance of the regulator. I remain unclear on what happened to the settlement payment.

For completeness, in respect of Mr B's in-house AVC, I haven't been provided with the full terms, but I continue to be unpersuaded this transfer was necessary or in Mr B's interests. It might have been necessary as Mr B was transferring his OPS. This itself was unsuitable, so I continue to consider the advice to transfer the in-house AVC and OPS were both unsuitable transfers for Mr B, such as to mean Pegmos are required to complete a redress exercise.

Overall, the transfers represented Mr B's entire pension provision at the time. Regardless of what other retirement savings Mr B was able to make, the benefits he'd accrued in the OPS and his AVC would form a significant proportion of his pension benefits when he came to retire. I can't see, given it's accepted that he had a low to medium risk approach, that he'd have wanted to take any significant degree of risk with the benefits he'd accrued. And I don't see that he had any real capacity for loss when it came to these benefits.

Transferring meant that Mr B took on investment risk which I don't think he wanted or was in a position to accept. And I'm not convinced that Mr B was given enough information to make a fully informed decision to transfer his benefits. The paperwork around how and when the advice was given is inconsistent. We'd expect Mr B to have been given sufficient, clear information to make an informed investment decision, based on a firm understanding of the risks involved and a knowledge of what protection, rights, expectations, and options he was giving up. Even where information was provided, Pegmos still had an overriding duty to provide suitable advice. Suitable advice here appears more likely to have involved indicating that a transfer was unlikely to allow Mr B to achieve his income goals and that alternative sources of cash could be more suitably identified.

Putting things right

What Pegmos must do

OPS transfer

A fair and reasonable outcome would be for the business to put Mr B as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. Pegmos must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision. It will also reflect the withdrawals Mr B has had the benefit of.

Pegmos may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr B within 90 days of the date Pegmos receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Pegmos to pay Mr B.

Income tax may be payable on any interest paid. If Pegmos deducts income tax from the interest, it should tell Mr B how much has been taken off. Pegmos should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

In-house AVC transfer

My intention is to put Mr B as close as to the position he would be in if he had not received the unsuitable advice. It isn't clear to me whether Mr B would have been required to transfer from his in-house AVC held with Zurich, on transferring his OPS arrangement, or whether it would have been considered paid up.

As I've previously set out, I don't accept the reasons provided to transfer from Zurich to Old Mutual at the time were persuasive. I haven't seen any adequate charges comparison and I consider it more likely than not, that Zurich would have been able to offer suitable investment choices, if any adjustment of Mr B's investments had been required, which I am not persuaded was needed here.

So whether the transfer took place because of the unsuitable advice provided on the OPS transfer or in respect of the AVC alone, the consequence was the same. Mr B's in-house AVC was unsuitably transferred. I have sought further information on charges to assist, but the absence of this information this doesn't prevent me from reaching my decision about how any loss ought to be identified and dealt with for Mr B.

I consider it appropriate here to conduct a loss calculation exercise as follows. If any loss is established this will need to be paid to Mr B taking account of the assumption I consider appropriate here in respect of tax (20%). Subject to any further submissions, I intend to require Pegmos to undertake the following redress exercise on the AVC transfer.

Pegmos will need to calculate the notional value of Mr B's in-house Zurich AVC if he had not transferred away and had remained invested as he was prior to transfer. This value ought to be calculated up to the date of calculation, here the date Mr B transferred out of the Old Mutual plan arranged by Pegmos in 2019.

This notional value will need to be adjusted for all charges and fees that would have been applicable and take account of any withdrawals, distributions of capital or income payments that Mr B made.

This notional value ought to be compared with the actual value. The actual value being the value of Mr B's Old Mutual plan as at the date of calculation, here the date Mr B transferred out in 2019 (prior to the application of any early redemption, transfer or adviser fees or charges).

My understanding is the funds from the Zurich AVC were transferred into the Old Mutual plan and were not mixed with any other funds or supplemented by any other investments or payments in. If I am wrong about this, the proportion of the value of the actual value represented by the funds transferred in from the Zurich plan ought to be calculated.

I am satisfied it's fair to use the value at the date Mr B's Old Mutual plan was transferred. This was a reasonable and fair time to identify and crystallize any loss, prior to the involvement of the new adviser. I don't consider a new adviser was required to put right any errors in respect of the AVC transfer, as my primary concern around this transfer is any charges comparison.

If the notional value is higher than the actual value, then Mr B has suffered a loss for which he will need to be compensated by Pegmos. If the actual value is higher, then Mr B did not suffer a loss and no compensation is payable.

If a loss is identified I consider interest ought to be applied to any sum identified from the calculation date in 2019 to the date of settlement. Interest is to be paid at the rate of 8% a year simple until the date of settlement.

The calculation of any investment loss needs to take into account amounts paid out by way of withdrawals, distributions of capital, or income paid before tax. Pegmos should ensure their calculations properly reflect the history of the investment – involving a series of calculations to allow for regular or non-regular withdrawals, as and when they were made.

Pegmos should not deduct all the withdrawals upfront before calculating the return. Instead, they need to make a series of calculations – each one reflecting income withdrawn at a different time. I say this because although the advice did not appear to be about Mr B achieving regular income payments, this is what took place as soon as the 2017 transfer was completed, and as such I think this was part of agreement between Mr B and Pegmos.

There were a number of regular income payments on top of the payment of a tax-free lump sum. To keep the calculation simpler, it's acceptable for Pegmos to first calculate the compensation without taking away the regular payments – and then reduce this amount by the total income payments. Pegmos should not take away the income payments first before calculating the return.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

A copy of the calculation ought to be provided to Mr B in a clear and simple format.

Distress and inconvenience

The investigator recommended Pegmos pay Mr B a sum of £300 to reflect his distress and inconvenience. Mr B has been represented in his complaint and as such I have considered whether it would be appropriate to make an award, having balanced everything carefully, I intend to say Pegmos must pay Mr B £300 to reflect his inconvenience here.

Fair Compensation

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

Determination and money award:

I require Pegmos to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Pegmos to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Pegmos to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation:

If the compensation amount exceeds £160,000, I also recommend that Pegmos pays Mr B the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my decision, the money award is binding on Pegmos. My recommendation is not binding on Pegmos. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons given I am upholding Mr B's complaint against Pegmos Ltd.

Pegmos are required to complete the redress exercises set out above. They are also required to pay Mr B £300 to represent his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 June 2022.

Louise Wilson
Ombudsman