

The complaint

Mrs S complains about PEGMOS Limited (“PEGMOS”). She says PEGMOS gave her unsuitable advice when it recommended that she transfer out of her defined benefit (DB) occupational pension scheme (OPS) to a personal pension plan (PPP).

Mrs S is represented in this matter by a third party (“the representative”).

What happened

Having been offered a review of her OPS pension, Mrs S and her husband, Mr S, met with PEGMOS in October 2016. Notes were taken during the meeting and a fact find and risk profile questionnaire were completed. In summary, PEGMOS recorded the following:

- Mrs S was almost 55 years old, married and in good health. She had no financial dependents.
- Mrs S no longer worked. Mr S, who was employed, covered their joint expenditure.
- Mr S had suffered ill health two years prior, causing him and Mrs S to re-evaluate their lifestyle and financial plans. Specifically, Mr S’ health issues had concerned them about how long his income would be maintained. Nevertheless, their mindset was to “*live for today*” and they looked forward to regular holidays they’d planned.
- Mr and Mrs S’ monthly expenditure was £861; they didn’t wish to carry out a detailed expenditure analysis.
- Mr and Mrs S owned their home, valued at approximately £275,000 with an outstanding mortgage.
- Mr and Mrs S held £180,000 in cash investments. They also owned three buy-to-let (BTL) properties, together valued at £655,000, with outstanding mortgages totalling £409,500. The BTL portfolio brought in rental income of £2,550 per month. The equity Mr and Mrs S had in these properties gave them a sense of comfort.
- Mr and Mrs S planned to increase their BTL portfolio but required further advice on the matter.
- Mrs S was considering accessing cash from her OPS pension to manage their existing BTL portfolio. She didn’t want to receive annuity income due to its inflexibility.
- Despite their outstanding liabilities, Mr and Mrs S didn’t want to consider repaying or reducing them because they wanted to “*retain control of capital*”.
- In terms of investment objectives, Mrs S said the target amount she wanted to achieve from her pension was £1,200 per month at age 55.
- Mrs S’ attitude to risk (ATR) was balanced.
- The Cash Equivalent Transfer Value (CETV) of Mrs S’ OPS pension was £176,434.02.
- Mrs S expected to receive her state pension at age 66.

A Transfer Value Analysis (TVAS) report was produced in December 2016, with PEGMOS' Suitability Report for Mrs S finalised in January 2017. In summary, PEGMOS said the following in its report:

- It recommended that Mrs S transfer and invest in one of its balanced portfolios. In doing so, Mrs S would be able to flexibly access her funds in line with her requirements; secure more attractive death benefits; have wider fund choice and receive regular reviews to ensure her retirement plans remained on track.
- Mrs S' priority was to potentially access funds from her pension to manage her existing property portfolio.
- Critical yield figures weren't a driving force in Mrs S' decision to transfer. Her main reasons for transferring were greater control over how and when she drew income and to improve on and gain flexible death benefits.
- Having considered her finances and worked on cash flow modellers, all indications were that Mrs S would have more than enough joint income with her husband in retirement. This had influenced Mrs S' decision to transfer.

Mrs S accepted PEGMOS' advice and later transferred.

In 2021, through her representative, Mrs S complained to PEGMOS about the advice she'd received in 2017. PEGMOS responded to the complaint and didn't uphold it, saying the advice was suitable. It said its advice file evidenced that Mr and Mrs S' BTL portfolio would meet their retirement needs, while transferring provided Mrs S with the flexibility and lump sum she needed over and above that provided by her other income sources.

Unhappy with PEGMOS' response, Mrs S' representative referred the complaint to our service. One of our investigators considered the matter, concluding that the complaint should be upheld. In short, she didn't think transferring was in Mrs S' best interests.

Our investigator's assessment was sent to PEGMOS and when it later entered voluntary liquidation, a copy of the assessment was forwarded to PEGMOS' appointed liquidator. No response from either party was received, so the matter has been passed to me for a decision.

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.

Having done so, I'm going to uphold Mrs S' complaint. I'll explain why.

The regulator's position

At the time of PEGMOS' advice, the regulator, the Financial Conduct Authority (FCA), set out the principles for assessing suitability. The relevant rules in the FCA's Handbook and Conduct of Business Rules (COBS) are 9.2.1 and 9.2.2. These required PEGMOS to gather sufficient information from Mrs S to ensure its recommendation met her objectives; that she could financially withstand the risks associated with these objectives and that she had the necessary experience and knowledge to understand the risks involved in the transaction.

I don't think all the factors in deciding suitability were met in this case. I'm not satisfied PEGMOS went far enough in terms of gathering and recording enough information about Mrs S' circumstances; adequately exploring and interrogating her objectives or satisfactorily evaluating, explaining, and documenting the associated risks with transferring. Because of

this I don't think it was reasonable for PEGMOS to conclude that transferring was a suitable course of action for Mrs S to take.

DB schemes like Mrs S' typically have significant benefits and guarantees. Giving these up and subjecting future pension income to the risks associated with unpredictable investment returns should only be done where it can be shown it's clearly in the best interests of the consumer. Under 19.1.6 the COBS rules at the time of the advice said:

"When advising a retail client who is (...) a member of a defined benefits occupational pension scheme (...), a firm should start by assuming that a transfer (...) will not be suitable. A firm should only consider a transfer (...) to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, (...) is in the retail client's best interests."

Given the regulator's position, my starting point is that a transfer won't usually be suitable. So, PEGMOS should've only considered a transfer if it could adequately demonstrate that there were compelling reasons why, instead of maintaining safeguarded benefits, the transfer was in Mrs S' best interests. And having looked at the evidence available, I'm not satisfied it was.

Mrs S' position at the time of PEGMOS' advice

At the time of the advice, Mrs S' had accrued significant qualifying service – over 28 years – in her former employer's OPS. Other than her state pension entitlement at age 67, Mrs S' OPS benefits were her only retirement provision. And when considered alongside her husband's modest PPP (valued at just over £28,000) and state pension entitlement, Mrs S' OPS benefits represented the largest proportion of the couple's entire future retirement income.

In terms of other assets Mrs S could potentially rely on if her transfer didn't work out, Mr and Mrs S held £180,000 in cash investments, owned their own home, and had a BTL portfolio. PEGMOS recorded that the latter gave Mrs S comfort and ultimately persuaded her to transfer. But PEGMOS failed to collate and set out information about these assets, especially the BTL portfolio, in any meaningful way. Without this it's not clear to me how PEGMOS could satisfy itself that the level of reassurance Mrs S got from her assets was realistic or ensure that she was making an informed decision to transfer.

Notably absent details from PEGMOS' advice file included the amount of equity in the BTL properties, tenancy types and details of outstanding mortgages, such as mortgage type, term, remaining balance, and existing and anticipated mortgage payments. It also neglected to establish exactly what Mr and Mrs S' cash investments comprised of. PEGMOS' suitability report made only the fleeting references to Mrs S' assets, so it wasn't – and still isn't – entirely clear what information PEGMOS relied on which enabled it to conclude that Mrs S had sufficient capacity for loss and should transfer.

Although PEGMOS says Mrs S confirmed she could accept a 15% fall in the value of her pension over the course of a year, I'm not sure this is entirely accurate. The only evidence I've seen shows that when completing PEGMOS' risk profile questionnaire Mrs S ticked her agreement to a statement saying that a fall of more than 15% would most *concern* her. I don't think this necessarily meant she was *able* to accept losses of 15%. The answer she gave in the questionnaire was based on how she'd feel as opposed to what she could withstand in practice. So, I don't think it could be relied on in the way PEGMOS has sought to.

As it stands, Mr and Mrs S had significant outstanding mortgages on all their BTL properties. And from what I've seen, these mortgages (along with Mr and Mrs S' residential mortgage)

were all interest only. This meant that at the end of each mortgage term Mr and Mrs S would be required repay the original amount borrowed, likely as a one-off lump sum, re-mortgage or sell their properties. Information like this was crucial for PEGMOS and ought to have been a key consideration when advising Mrs S on whether to transfer. It would've provided a more accurate picture and deeper understanding of Mrs S' situation, especially in terms of the amount of risk she could afford to take.

So, while I accept that Mrs S' financial position was, by all general appearances, quite favourable, PEGMOS' failure to establish the specifics of this position, meant that key information was missing. And this leads me to question the basis on which it was able to conclude that Mrs S' financial position could be relied on to mitigate the risks associated with transferring and that it would provide "*more than enough*" retirement income for Mrs S and her husband.

Despite any feelings she may have had, the fact remains that Mrs S was dependent on PEGMOS' expertise. She wasn't a pensions expert, able to effectively assess whether her financial circumstances meant it was appropriate to take additional risks with her OPS benefits. PEGMOS needed to accurately establish her financial position at the outset, including her specific retirement needs, and make a reasonable assessment of the situation. Had it done so, I think it would've been clear that, for several reasons, Mrs S transferring out of her OPS wasn't essential or worthwhile.

Financial Viability

An important part of assessing the viability of a DB transfer, is a careful analysis of the investment returns required from any investments in the receiving scheme, to match (let alone exceed) the benefits being given up by transferring out of the DB scheme. And that needs to be done in conjunction with other important considerations, including an investor's ATR, financial circumstances, and objectives.

PEGMOS' advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable for a typical investor when the advice was given in this case.

As set out in the TVAS prepared for Mrs S, the critical yield required from any new arrangement to match Mrs S' OPS benefits at age 56 was 56% pa if she took a full pension and 32% pa if she took TFC and a reduced pension. At age 60, the critical yield required to match Mrs S' benefits was 15.8% pa if she took a full pension and 11.9% pa if she took TFC and a reduced pension.

This compares with the discount rate of 2.3% pa for 1 year to retirement at age 56 and 3% for 4 years to retirement at age 60 in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% pa. I've taken this into account, along with the composition of assets in the discount rate, what PEGMOS recorded as Mrs S' ATR – "balanced" – and the term to retirement. The critical yield in this case was considerably higher than both the discount rate deemed achievable over the same period, and the upper-band growth rate used by the regulator. So even if the arrangement Mrs S transferred to achieved the highest growth at that time, it was unlikely she'd receive a materially higher pension as a result of transferring. To come anywhere near to achieving this, she would've needed to take investment risk which likely exceeded her ATR.

I can't see that Mrs S was ever provided with a copy of the TVAS and the critical yields therein. In the circumstances, I would've expected PEGMOS to, at the very least, share the critical yields relevant to Mrs S' situation – so, the critical yields required if benefits were taken at her scheme retirement age (60) and her desired retirement age (56). PEGMOS provided Mrs S with neither of these figures in its suitability report. Instead, for reasons unknown, it set out critical yield figures based on Mrs S' OPS transferring to the Pension Protection Fund ("PPF") – a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. But Mrs S' OPS wasn't at risk; it was fully funded. So, the information PEGMOS provided to Mrs S in this respect was meaningless at best and misleading at worst.

Without giving Mrs S key facts and relevant explanations about the critical yields involved, I'm not satisfied that PEGMOS met its obligation to understand and pay sufficient attention to Mrs S' circumstances; recognise her lack of investment knowledge and experience; and provide the information she needed to understand the risks involved and properly consider the potential implications of transferring to meet her objectives.

PEGMOS essentially dismissed the of critical yield figures, saying they weren't "*the key driving force*" in Mrs S' decision to transfer as she was seeking more control and flexibility, along with improved death benefits. That's understandable given that PEGMOS never provided Mrs S with correct critical yield figures or an explanation of what they meant in real terms. Notwithstanding this, I accept that the critical yield isn't an entirely precise or personalised tool to reflect all individual circumstances and objectives. However, critical yield figures generated do give a good indication of the value offered by an OPS and the ability to secure comparable benefits on the open market. So, they're nevertheless useful in that regard.

I think PEGMOS' position regarding the critical yields tends to underplay their importance. Considering Mrs S' circumstances and the level of growth required to ensure she wasn't financially worse off, I think it was clear that the transfer would represent a high-risk transaction only suitable for an experienced investor with enough additional drivers for the transfer to mitigate the risks involved. I don't think there were in Mrs S' case. In my view transferring wasn't in Mrs S' best interests and PEGMOS shouldn't have advised her to do so.

PEGMOS produced cashflow modellers which it said indicated Mrs S would have more than enough joint income with Mr S in retirement. But given the limited evidence showing that PEGMOS tried to establish what, in financial terms, Mr and Mrs S' specific income needs and circumstances in retirement were likely to be, I have serious doubts about the value of these.

PEGMOS wrote "*NOT DISCLOSED/REVIEWED*" on several sections of its fact find. In some instances, it crossed out entire sections or left them completely blank. This included sections meant to capture details of Mr and Mrs S' existing income, anticipated income changes, future income requirements and goals. In a section for Mr and Mrs S' liabilities (of which minimal detail was provided), PEGMOS recorded that they didn't wish to repay or reduce these as they wanted to "*retain control of capital*". There's no indication PEGMOS made any enquiries about this with Mr and Mrs S, least of all to establish what was meant and more importantly, when, and how they intended to settle these liabilities. The same is true for the section where it's recorded that Mrs S didn't want expected income changes to be incorporated into the modeller.

This was a significant omission. Although Mrs S' husband was working at the time of the advice and meeting his and Mrs S' expenses, the reality was that half of his recorded income was made up of bonuses and he'd had recent health issues which had led him and his wife

to want to take a different, more 'in the moment', approach to life. So, it was reasonable to assume that Mr S would retire at some point and in all likelihood soon. PEGMOS ought to have established when this might be and factored the resulting income change into its advice.

Without understanding Mrs S' income requirements along with details of Mr and Mrs S' mortgages (including existing payments, anticipated increases due to fixed interest rate periods ending and standard variable rates kicking in, mortgage redemption dates and repayment strategies), I don't think that PEGMOS can be said to have met the regulator's requirement for an adviser to know enough about its client's situation and ensure its advice took this sufficiently into account.

Notwithstanding what I've said above, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. My understanding of PEGMOS' position is that the basis of its recommendation was the benefit transferring had for Mrs S in terms of other objectives being met.

Needs and objectives

PEGMOS was required obtain sufficient information from Mrs S to understand the essential facts about her and have a reasonable basis for believing its recommendation would meet her needs *and* objectives. Without adequately considering both, PEGMOS couldn't demonstrate the suitability of its recommendation or that the transfer was in Mrs S' best interests.

Managing property portfolio

PEGMOS recorded that accessing funds from her OPS to manage her BTL portfolio was one of Mrs S' priorities and objectives. But I've seen nothing demonstrating that PEGMOS discussed this objective with Mrs S, such that it understood what this meant in practical terms. Without this, PEGMOS was essentially partly basing its advice to transfer on an objective which wasn't fully articulated. And in doing so it ignored key considerations like how much money Mrs S wanted to access and when, the impact of this on her remaining fund and therefore the financial viability and level of risk involved in the whole transfer. PEGMOS should've been aware that significant withdrawals in early retirement could result in a lower sustainable income that might not meet Mr and Mrs S' essential needs later in retirement and advised them accordingly.

Income needs and flexibility

As I've said above, I don't find that PEGMOS made reasonable efforts to ensure its recommendation met Mrs S' retirement income needs. Significantly, it failed to establish what exactly her (and her husband's) income requirements were, either based on existing circumstances and known liabilities, or reasonable estimations about their needs, likely financial obligations in the future and general wishes. For example, PEGMOS never accounted for the cost of the increased amount of holidays Mr and Mrs S said they intended to take in retirement.

There's information in the advice file about the monthly rental income Mr and Mrs S were receiving from their BTL portfolio (£2,550) and total mortgage payments they had to make each month (£861). However, this was nowhere near enough information for PEGMOS to confidently conclude that Mr and Mrs S income needs in retirement could be more than met upon transfer; especially given the lack of information PEGMOS had about their "*other income sources*". As I've said, there's no record of PEGMOS establishing what Mr and

Mrs S' cash investments were in, how easily accessible these were or what the funds were originally intended for.

To my mind, advising a client to make an irreversible decision and transfer when this advice is based on an extremely limited comprehension of the client's needs and financial situation, reflects a high-risk strategy and a disturbing lack of regard for the client. The regulator's position on this matter is clear – where a firm fails to collect necessary information to assess suitability, it shouldn't go on to make a personal recommendation to a client.

In terms of flexibility, PEGMOS said transferring would result in Mrs S gaining access to her pension fund in line with her requirements. But PEGMOS didn't state what these requirements were or demonstrate that it had considered why the flexibility Mrs S allegedly required couldn't be met by her cash investments or Mr B's pension which allowed flexi-access drawdown before discounting them. These were logical considerations if flexibility really was a key objective for Mrs S which, if deemed appropriate, could've resulted in her gaining flexibility while retaining the valuable benefits provided by her OPS, including a guaranteed income for life with increases, a 50% spouse's pension and 5-year guarantee period.

To sacrifice guaranteed benefits for the sake of flexibility in an arrangement unlikely to achieve the same value as that offered by Mrs S' OPS, wouldn't in my view be a suitable course of action. Mrs S would effectively be swapping a higher guaranteed income for the sake of flexibility in withdrawing a lower overall income. Unlike drawdown, Mrs S' OPS didn't carry the risk of being exhausted due to longevity and/or investment performance.

There's nothing which leads me to believe that flexibility and specifically the features of Flexi-Access Drawdown were discussed in any great detail with Mrs S. Although PEGMOS' advice file said Mrs S wanted to access the new style pensions offered under pension freedoms, this wasn't something which was explored further. I don't accept that the non-specific information provided in the 14-page appendix of PEGMOS' 28-page suitability report addressed this.

Death benefits

PEGMOS recorded that Mrs S wanted to secure more attractive death benefits for her family. The death benefits under her OPS were briefly set out in its suitability report and generic information was provided about the death benefits available under a PPP. This appears to be the extent of PEGMOS' efforts to understand and address Mrs S' supposed need for improved death benefits.

It's understandable that Mrs S wanted to ensure her family benefited from her pension when she died. However, I don't think PEGMOS has provided sufficient evidence, demonstrating that transferring for this reason was worthwhile; that it met its obligation to provide Mrs S with enough specific information about the death benefits available under her OPS; or that it had regard for the effect of replacing her OPS benefits with the options under a new arrangement.

PEGMOS didn't identify what, in real terms, "*more attractive*" death benefits looked like for Mrs S. Nor did it establish who specifically Mrs S was seeking to provide for upon death, the amount she thought they'd need and how they might prefer to receive benefits. And there doesn't appear to have been any consideration by PEGMOS of alternative ways Mrs S might meet her death benefit objective, for example by using the excess income PEGMOS claimed she'd have in retirement to purchase life insurance.

Transferring to a PPP did offer flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, lump sum, income drawdown or any combination of these. But Mrs S was in good health, there was nothing to suggest she couldn't expect a normal life expectancy and therefore require money from the PPP to meet or supplement her income needs in retirement. So, this could mean that upon death the size of Mrs S' PPP fund remaining for her beneficiaries could be much smaller, particularly if investment returns were less favourable than expected.

I also think it was remiss of PEGMOS not to establish the specifics of Mr S' own pension provision which might have reduced his dependence on Mrs S' OPS. As I understand it, Mr S had his own pension from a previous employer, but there's no indication that PEGMOS considered this when advising Mrs S to transfer for death benefits.

Overall, I'm not satisfied that PEGMOS put Mrs S in a position where she fully understood her various death benefit options, such that she could make an informed decision about transferring for this reason. And I don't think the alternative death benefits offered by the PPP justified the likely decrease in retirement benefits for Mrs S.

Summary

While having regard for Mrs S' circumstances, objectives, ATR and capacity for loss, it was PEGMOS' responsibility to evaluate the merits and shortcomings of transferring, while considering alternatives, to determine the best course of action for Mrs S, especially in terms of what would place her in the best possible position in retirement. I'm not satisfied PEGMOS did this. And in my view, transferring at a time when Mrs S should've been reducing – not increasing – the risk she was taking, presented a level of risk that was unnecessary.

Although I'm conscious of PEGMOS' record of Mrs S' objectives, I'm also mindful that retirement planning while it may have regard for an individual's overall preferences, its primary focus should be a client's personal circumstances with a view to putting them in the best possible position at retirement, with the appropriate income provision in place long-term. So, while I can accept that Mrs S may have expressed certain priorities, needs and objectives, I think a greater level of concern needed to be given to her future long-term position. I don't think PEGMOS' recommendation did this.

PEGMOS had a significant and overriding responsibility to interrogate Mrs S' objectives and not accept them at face value. It should've sought to identify the underlying reasons why Mrs S needed or wanted certain features from her pension, recorded her options in detail and determined whether Mrs S' identified objectives made giving up the guaranteed benefits under her OPS worthwhile. I'm not persuaded they were. So, I'm not satisfied it was appropriate for these factors, which in my view weren't sufficiently personal, compelling justifications or significant enough incentives, to form the basis for PEGMOS' recommendation that Mrs S transfer.

PEGMOS' submissions indicate that prior to its transfer advice, it had a pre-existing relationship with Mr and Mrs S relating to mortgage advice on their BTL properties, but this doesn't in my view alter the requirement for it to gather and retain necessary information to demonstrate that it knew Mrs S well enough and could give suitable advice about her OPS pension.

While information gathered from PEGMOS' mortgage advice file may have been of some use at the time of the transfer advice, I'm conscious that this wouldn't have been as broad or as in depth as the level of information required when advising Mrs S to give up valuable safeguarded benefits on which she might reasonably rely on throughout her retirement.

Overall, I think the quality of the information PEGMOS gathered and its approach to the advice it gave Mrs S resulted in material information gaps and ultimately unsuitable advice. It also belied what PEGMOS' suitability report seemed to acknowledge – namely, that pension transfers are subjective and complex matters.

Ultimately, I think PEGMOS should've advised Mrs S to remain in her OPS.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-<https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mrs S whether she preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

She would like her complaint to be settled in line with new guidance/rules. I consider it fair that PEGMOS Limited calculates Mrs S' redress in line with new guidance and rules when they come into effect.

A fair and reasonable outcome would be for PEGMOS Limited to put Mrs S, as far as possible, into the position she would now be in but for the unsuitable advice. I consider she would have remained in the occupational scheme. I consider Mrs S would have most likely remained in her OPS and not drawn benefits until her normal retirement age of 60. So, the calculations should be based on Mr S staying in her OPS until age 60.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mrs S.

PEGMOS Limited must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs 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 Mrs S 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 her 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 Mrs S within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and PEGMOS Limited has received notification of Mrs S' acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes PEGMOS Limited to pay Mrs S.

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

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.

My final decision

Determination and money award: I uphold this complaint and require PEGMOS Limited to pay Mrs S 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 would additionally require PEGMOS Limited to pay Mrs S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require PEGMOS Limited to pay Mrs S 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 Limited pays Mrs S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs S.

If Mrs S accepts this decision, the money award becomes binding on PEGMOS Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs S can accept my decision and go to court to ask for the balance. Mrs S may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 May 2023.

Chillel Bailey
Ombudsman