complaint

EGB Financial Ltd offered to review Mr B's pension plans. As a result, it transferred his Legal & General stakeholder plan to an Aegon personal pension. He thinks this transfer was unnecessary and primarily benefited EGB in the way of commission.

background

Mr B's details were forwarded to EGB in 2011 after he says he was cold-called by a third party introducer. It then obtained details of his current plan, and compared it to alternatives.

EGB set up an online 'portal' for Mr B to securely view its reports and the plan projections in full. Mr B told the adjudicator that he isn't very comfortable with the internet and may not have read all of the online content. But in any case much of this was also summarised in letters EGB sent Mr B; including the fact that EGB didn't consider it was giving advice.

EGB also says it had phone calls with Mr B in which it outlined the scope of its service was to give him information only, not advice. This process concluded with reports and letters setting out that the projected pension at retirement could be higher with Aegon. And Mr B then acted on that information by agreeing to transfer.

One of our adjudicators thought that Mr B's complaint should succeed. This was because:

- Whether or not this was a non-advised sale, the transfer reports sent to Mr B were prepared in a way to encourage him to transfer his plan.
- The information that EGB provided to Mr B wasn't '*clear, fair and not misleading'*, as required by the regulator.
- It appeared that in the long run the new plan would offer lower charges. But this would only happen in the later years due to the initial cost of the advice.
- Mr B was relatively young and he might change his plans in future. The transfer value of the new plan would be lower for some time compared with his original plan.

EGB disagreed with the adjudicator's assessment. It commented:

- Mr B was given accurate information about the charges on his old plan compared to the new one.
- The review it carried out complies with the rules in the regulator's handbook.
- The purpose of the review was to compare the costs of his current plan with an alternative. And this was fulfilled.
- It was reasonable to make comparisons based on the overall term remaining until Mr B's retirement.
- Mr B would need a '*very good reason'* to move from his new plan. And he would've had access to financial advice if he wanted it.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I've looked at whether EGB advised Mr B. Its reports gave the impression that lowering the charges under his existing arrangement should be a priority for him. It then presented two options to Mr B – one of which projected a higher pension at retirement (due to the charges). In my view this could be construed as advice, as it was intended to encourage Mr B to transfer to the new plan. Not surprisingly, it had this outcome.

But whether advice was given or not, EGB also had to ensure that it treated Mr B fairly and gave him information that was clear, fair and not misleading. In my view that would mean presenting a balanced picture of how much he was likely to benefit from the transfer. Not just by the time he reached retirement, but throughout the term. So this is the overarching aspect that I need to address.

EGB chose to be paid for the advice via commission, which was indirectly collected from higher ongoing charges on the transfer-in segment of the new plan. It didn't take commission from the regular premiums, meaning the charges for that part were lower. However it combined the two parts when concluding that, *by retirement*, Mr B's new plan might produce a higher overall value than the existing one. That was only part of the picture, because for quite a large part of the earlier years, Mr B wouldn't be much better off – if at all.

Mr B transferred about £19,000 to the new plan. So I've assumed that quite soon afterwards – particularly if ongoing contributions were paid – his funds would have gone above £20,000. At that point, his existing plan would have cost 1% per year, but after 'large fund' discounts the new plan would have cost 0.95% per year. And on the new premiums Mr B was paying, he would only be charged 0.45% per year. So there was a very small, but increasing, improvement against Mr B's old plan as he built up new funds from his regular premiums.

However this would become limited once Mr B's plan value reached £25,000. At that point he reached a new tier of charges on the old plan, which meant that his funds in excess of £25,000 would attract a lower charge of 0.8% per year. In effect this meant at this point:

- Under the old plan, Mr B would have had the following:
  - £25,000 with a 1% charge.
  - A new, gradually increasing sum in excess of £25,000 with a 0.8% charge. Future growth on *all* his funds would benefit from this lower charge.

- Under the new plan, Mr B would have the following:
  - The vast majority of his £25,000 fund (resulting from the transfer-in) with a 0.95% charge. Future growth on this segment would still see a 0.95% charge.
  - A minor, but increasing, segment (resulting from regular premiums) with a 0.45% charge. But only this segment, and the growth on it, would continue to benefit from this lower charge.

Both plans then also had further charge reductions when the fund reached £50,000. On the old plan the charge would drop by another 0.2%, but only on funds above this value. Under the new plan the reduction was only 0.05%, but it would apply to *all* the funds.

In my view this meant that for many years the difference between the two plans wouldn't be very significant. It was only by maintaining the regular premiums until well into the term that Mr B could ensure he was much better off. Only then would he have accumulated funds from his regular premiums that were comparable to the funds he'd transferred in, so that the lower charges on that segment had enough impact. I don't think this was made fully clear to Mr B.

EGB's analysis focused on the figures at retirement, which was a long way off. It assumed Mr B's circumstances, and therefore ability to make the contributions, wouldn't change. And the briefer 7-page summary of the report (which it appears was posted to him) said:

> ***‘2. Do you have to make regular contributions?***
> ***No***
> *It is your plan, so you decide if you want to pay into it, and how much. There is no obligation to pay into the plan, but you can, should you so wish.’*

This was despite the fact that a decision to transfer could leave Mr B worse off *unless* he kept paying premiums. Mr B also wasn’t told in anything posted to him that, even if he did keep paying premiums, there was a penalty on a sliding scale from 6.5% to 4.5% on transferring-out in the first five years. It also wasn’t fully explained in the online report.

It’s not clear to me whether EGB took steps to ensure Mr B was familiar with how to access the full online report. But even if he’d been confident at doing so, page 20 only highlighted the immediate difference in fund values on transferring. How the penalty was calculated, and how long it lasted, would still have remained unclear. He could only find the full information by continuing to read another document – Aegon’s illustration.

Given the volume of documents Mr B was given, or told to access, I would have expected such a key aspect of the new plan to be highlighted more prominently. And certainly for it to form part of the summaries that were posted to him. Mr B says that he only became aware of the penalty when it was highlighted by a new adviser, and I think that’s understandable.

The 1-page summary contained a list of ‘important notes’; none of which mentioned this penalty, or that the strategy was mainly dependent on Mr B maintaining his premiums. And the 7-page summary included the following section:

> ***‘Are there any risks?’***
> *The Key Features Document details any risks and potential disadvantages associated with the new contract. You should be aware of the following points:*
> *…’*

A list followed which included points extracted from the Key Features Document. This diminished the significance of those points that weren’t mentioned, because it gave Mr B less reason to read the document. There was no mention of a transfer penalty in the early years, or a specific warning that Mr B might be worse off if he didn’t maintain his premiums.

For a combination of all these reasons, I don’t think Mr B was given complete information; or information that was clear, fair and not misleading. The comparison was too reliant on the position at his retirement date, and gave insufficient warning of other scenarios. These included:

- Mr B stopping his premiums in the earlier years due to changes in circumstances; such as affordability, or joining an employer’s pension scheme.
- Mr B seeking to transfer his plan into such a scheme.

I have to consider whether, even if EGB wasn’t advising Mr B (as it maintains), he would still have made the same decision with better information. It’s unlikely Mr B would’ve have been sure of his future plans; and therefore his ability to maintain the contributions. And one key change taking place in the near future was the government’s plan for auto-enrolment into workplace pension schemes.

In fact EGB mentioned this in its 7-page summary of the report. It said:

The Government intends that from 2012 all employers will have to provide a workplace pension, automatically enrol all of their employees who meet certain criteria, and contribute a minimum of 3% of salary. Employers will be phased into their new duties between October 2012 and September 2016, as will the minimum employer contributions which will eventually rise to 3% of salary (between a lower and upper limit). NEST is intended to be a low cost, easy to use, online pension scheme open to any employer.

Given that EGB was giving Mr B this information, I think he might well have concluded that he wouldn't be contributing to this plan for the full term. I understand Mr B joined his workplace scheme about a year ago. EGB had told him that workplace pensions were likely to be a low cost option. So I think he would've viewed a transfer penalty of at least 4.5% until 2016 as a disadvantage of the new plan; in the event that he later wanted to amalgamate his pensions.

So I think Mr B's complaint should succeed on the basis of the information EGB gave to him alone. I don't think it dealt with Mr B fairly and, had it done so, he'd have decided differently.

But I also mentioned above that the way EGB presented the information to Mr B could have been construed as advice – as it encouraged Mr B to make the transfer. If that's the case, then I also think this implied advice was unsuitable for Mr B. I think suitable advice would have needed to take into account Mr B's continuing ability to fund premiums at that level after the introduction of workplace pensions. It meant Mr B shouldn't have been encouraged to alter his plans so close to these changes taking place. He would be giving up the flexibility of his existing plan to implement a long-term strategy that might not be sustainable.

my final decision

I uphold Mr B's complaint. He should be put into the position he would be in had he never transferred his plan from Legal & General. EGB Financial Ltd must:

1. Ask Legal & General to provide the notional transfer value of his plan had he never transferred out.
2. Ask Aegon for the actual transfer value of Mr B's current plan.
3. If (1) exceeds (2), pay 80% of the difference to Mr B as a cash lump sum. The 20% reduction takes into account income tax relief Mr B can obtain on reinvesting the payment into his plan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 November 2015.

Gideon Moore
ombudsman