

The complaint

Mr B complains about the advice given by Origen Financial Services Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a guaranteed annuity. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In October 2015, Mr B's employer sent the members of its DB scheme a 'flexible retirement offer' (FRO) in order that they could explore the option of taking their scheme pension benefits early. Mr B's employer said that taking scheme benefits early would not be suitable for everyone. The FRO proposed three potential routes for taking the scheme benefits:

- Route 1 was to take the scheme benefits by 31 October 2015. For Mr B (then aged 57) this would mean a total pension of £4,922.56 per annum or tax-free cash (TFC) of £24,903.68 and a reduced annual pension of £3,735.54.
- Route 2 was to transfer the scheme benefits to buy a pension outside of the scheme. By way of illustration, Mr B's employer said this would give Mr B a total pension of £7,726.34 per annum now or TFC of £42,415.79 and a reduced pension of £5,794.75. Mr B's employer said there were a wide range of options under this route which Mr B could choose to meet his needs.
- Route 3 was for Mr B to transfer his scheme benefits to receive a flexible income outside the scheme now. This route included a transfer value of £169,663.15 which Mr B's employer said could be taken as one, or a series of, lump sums. It also said it was possible to take 25% of the fund as TFC.

Mr B's employer said all the figures were for illustration purposes only and it had appointed Origen to provide free financial advice so that the scheme members could discuss the full range of options available. The FRO also stated that Mr B had a total deferred pension as of 31 October 2015 of £6,765.03 at his normal retirement date (NRD) at age 65.

Mr B decided to take up the offer of free advice from Origen and had a meeting with an adviser in early January 2016 to discuss his pension and retirement needs.

Origen completed a fact-find to gather information about Mr B's circumstances and objectives. His circumstances at the time were noted as follows:

- He was aged 57 and married with no dependent children.
- He was employed and he and his wife had a joint net monthly income of £3,990.
- Mr and Mrs B's disposable monthly income was £1,423.27.
- Their house was valued at £160,000 with an outstanding mortgage of £36,506 which had six years left to run.
- Mr and Mrs B had £4,000 in a savings account.

- Mr B had a stakeholder pension with a current fund value of £72,594.39 and Mrs B was a member of her employer's DB scheme which was forecast to provide her with an income at NRD (age 65) of £9,958 per annum.
- Mr B had two personal loans which each had 2 years 11 months left to run. Jointly they cost Mr B £509.72 per month. He also had car finance which cost £420 per month and had four years left to run.
- Mr B's preferred retirement age was noted as being age 66 and he expected to receive the full state pension.
- Mrs B intended to take early retirement in the very near future.

Origen also carried out an assessment of Mr B's attitude to risk (ATR). Mr B's completion of the risk questionnaire indicated he was a medium risk investor but in relation to his pension he was deemed to have a 'low' ATR. Origen assessed that Mr B had no capacity for loss in relation to the value of his DB scheme.

On 22 January 2016, Origen issued Mr B with its suitability report and advised him to transfer his pension benefits and immediately purchase a guaranteed annuity with a provider 'R' on a joint life basis with a 50% spouse's pension, a 10-year guarantee period and with the income payable monthly in advance. The annuity recommended by Origen was a level annuity and paid Mr B £466.85 per month after paying him TFC of £42,416. The suitability report said the reasons for this recommendation were, in summary:-

- So Mr B could access TFC immediately to clear his existing debts along with part of the mortgage;
- For the annuity purchase to provide a guaranteed income which Mr B could put towards his expenditure requirements both in retirement and whilst he remained in employment.
- It allowed Mr B to consider recycling the income he received from the annuity into his stakeholder pension.
- Although Mr B had not considered what his income needs in retirement might be and hadn't made any concrete plans for any home improvements, holidays or major spending he wanted to continue with a couple of nice holidays a year whilst he was young enough to do so and able to enjoy his money.

Mr B accepted the recommendation and the purchase of the guaranteed annuity went ahead shortly after. Origen received no fee for arranging Mr B's annuity. Mr B used his TFC (together with the TFC Mrs B received when she retired in early 2016) to clear all his debts apart from the car finance and to clear the outstanding balance on the mortgage.

In October 2021 Mr B, through his representative, complained to Origen about the suitability of the advice it had given him to transfer his DB scheme benefits. Mr B complained that Origen had failed in a number of the regulatory duties it owed him. Mr B also complained that:

- Origen had failed to show that the recommendation was in his best interests.
- Origen had failed him given the high critical yield (investment rate of return) identified in the transfer value analysis report (TVAS) in relation to his ATR and capacity for loss.
- Origen had failed to confirm his understanding of the benefits he held in his DB scheme.
- He didn't need the income from the annuity in 2016 because he and Mrs B had a surplus income every month.
- Origen had failed to establish both his future pension income in retirement and his expected expenditure in retirement.
- Origen had failed to discuss his desire to repay early debt that was clearly affordable to him.

- Origen had failed to advise him about alternative methods of debt repayment available to him and Mrs B including that Mrs B was about to take early retirement and receive TFC of £51,334.93 which could have been used by them to reduce their debt burden.

Origen looked into Mr B's complaint but didn't think that it should be upheld. It said that it was evident from the advice process that an annuity was a viable option for Mr B in his circumstances and it matched his ATR. It also said Mr B was keen to access the greater amount of TFC on offer by transferring so that he could pay off his debts and receive a guaranteed income for the rest of his life. Origen said it had discussed with Mr B the fact he would be giving up an index linked pension but that his preference had been to receive a higher level of income from the commencement of the annuity. Origen also said it had explained to Mr B that it takes many years for the crossover/break-even point – when comparing fixed and level income – to be reached.

Unhappy with the outcome of Origen's investigation into his complaint, Mr B complained to this service. Our Investigator looked into the complaint and recommended that it was upheld. He thought the transfer hadn't been in Mr B's best interests as he was unlikely to improve on the guaranteed benefits on offer through his DB scheme. He also thought that Mr B's objective of clearing both personal debt and his mortgage could have been met by other means. Overall, our Investigator thought Origen's recommendation that Mr B transfer his DB scheme benefits was unsuitable so he recommended that Origen compensate Mr B in line with the regulator's (the Financial Conduct Authority – FCA) guidance.

Origen replied to our Investigator to say that it disagreed with his findings and wanted the complaint referred for an ombudsman's decision. It repeated a number of facts and points it had made before. Our Investigator shared Origen's response to his findings with Mr B's representative and it then sent us its further comments. The representative said Mr B agreed with our Investigator's findings. The representative also commented that there was a difference between Mr B wanting to clear debt and needing to clear debt and that there were alternatives available to Mr B to achieve this objective that didn't involve transferring his DB scheme benefits contrary to Origen's assertion.

Our Investigator shared Mr B's additional comments with Origen however, no additional comments were received in response.

The complaint was passed to me for a final 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

What appears below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Origen's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must 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.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Origen should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Origen's role was to really understand what Mr B needed and to recommend what was in his best interests. Ultimately, I don't think the advice it gave Mr B was suitable or in his best interests. By transferring his DB benefits he was giving up a guaranteed, risk-free and increasing income and, in my view was very likely to obtain lower overall retirement benefits as a result. I can't see that there were any particular reasons which justified the transfer and outweighed this. I'll explain why.

Access to tax-free cash and debt clearance

The main objective identified by Origen for the transfer of Mr B's DB scheme benefits was so he could obtain access to TFC immediately in order to clear his existing debts along with the mortgage. I don't doubt that accessing TFC sounded like an attractive option to Mr B. But an adviser's job isn't to simply facilitate a customer's wants. Any objectives should be thoroughly interrogated to determine if they are realistic or not or achievable through other means. And ultimately the adviser had to determine whether giving up the secure, guaranteed benefits of available through the DB scheme was in Mr B's best interests.

I don't think Mr B had a genuine need to access his TFC early so I think he could have left his funds invested until a later date, or until he was ready to draw his pension. I say this firstly because it is clear from the fact-find that Mr B had, at the time of the advice, a significant surplus monthly income. He and Mrs B had a monthly disposable income, after all outgoings, of £1,423. They also had accessible savings of £4,000. I accept that Mrs B retired in January 2016 on a reduced pension of £7,700 per year (at the same time taking TFC of in excess of £51,000) and in so doing reduced their monthly disposable income to £564. However, there seems to be no exploration of whether some of that disposable income could be utilised in some way to achieve the debt clearance Mr B had identified such that there would be no need to lose the guaranteed benefits associated with the DB scheme.

And whilst Mr and Mrs B had two personal loans with a combined outstanding balance of £18,019 and each with an outstanding term of 2 years 11 months, I've seen no evidence that Mr and Mrs B weren't managing to comfortably meet the monthly repayments of £509 on these loans or that they wouldn't be able to continue to do so. Given that the loan repayments were affordable there was no need that I can see to transfer valuable DB scheme benefits to clear loans that would be repaid in less than three years' time in any event.

But most significantly I can't see that Origen took into account the significant TFC of over £51,000 that Mrs B was about to receive when considering Mr B's principal objective of debt clearance. Given that Mrs B was about to retire and that their monthly disposable income was about to be reduced, Mr B's desire to clear down his debts at this point is understandable. But Origen was there to provide Mr B with suitable advice for his circumstances. And his circumstances at the time included the fact that Mrs B was about to receive a significant sum in TFC that could be used to achieve the very objective Mr B was most interested in achieving and without having to sacrifice his valuable DB benefits.

The TFC Mrs B received was sufficient to clear the outstanding mortgage balance and the larger of the two personal loans and, in so doing, freeing up £933 per month in repayments. The only loan that would have been left outstanding was the small loan for £3,309 which cost £89 per month which, given Mr and Mrs B would then have a monthly disposable income of almost £1,500, could have been cleared within a few months had they so wished. Alternatively they could have used their savings to clear it. But I can't see that Origen explored with Mr B other means of Mr B clearing his debts

Overall I don't think that Mr B's desire to clear his debts – particularly given his circumstances at the time – was a good enough reason for him to be giving up a secure, guaranteed, escalating pension income in retirement. I think, given Mr B's financial situation at the time, the financial objectives for transferring his pension to access the TFC aren't justified, particularly when he could've used Mrs B's TFC and his savings – which were likely to be achieving minimal returns at the time – to clear all his debts.

Income needs

At the time the FRO was made Mr and Mrs B had a significant amount of surplus income remaining each month after all expenditure. Yet I can see that one of the reasons cited by Origen for recommending that Mr B transfer his DB scheme benefits was to purchase an annuity to put towards his spending requirements both immediately and in retirement. Given the surplus income Mr B had each month, I can't see why giving up his guaranteed DB benefits in exchange for income he didn't currently need was in Mr B's best interests. I can't see that Origen established why Mr B might need more income now or, if he did, how much he might require. Indeed I note from the fact-find that Origen recorded that Mr B '*confirmed your existing sources of income comfortably cover your existing expenditure requirements and provide you with surplus income on a monthly basis*'.

Origen also failed to draw to Mr B's attention to the fact that the additional income would make him a higher rate taxpayer and that he would be paying more tax for income he didn't need.

At the time of the advice, Mr B was aged 57 and based on what I've seen he had no concrete retirement plans. Mr B told Origen he intended to retire at his state retirement age of 66 so he had nine years to go before he needed to think about accessing his pension. But if Origen had had full regard to Mr B's information and communication needs I think it should have explored his actual retirement plans and what was important to him. And it should have assessed his income needs in retirement. But I can't see that it interrogated this with Mr B I

any meaningful way, indeed in the fact-find it noted: *"You haven't really considered what your income needs in retirement will be"*.

I accept that the fact-find and suitability report state that Mr and Mrs B would need a joint annual income in retirement of £16,000 but there is no explanation, or exploration about how this figure was arrived at and no further retirement income needs are mentioned. I can see too from the suitability report that with Mr and Mrs B's full state pensions at state retirement age plus Mrs B's occupational DB scheme at NRD that Origen stated they would have a combined income when Mrs B reached age 67 of over £26,000 excluding Mr B's DB scheme. But the figures used by Origen to arrive at this total don't account for the fact that Mrs B was about to take early retirement and that her pension would be reduced as a result (and so was £2,258 lower than the amount cited by Origen in the suitability report). Mr B has also explained that it was unlikely that Mrs B would receive the full state pension when she reached 67 because she hadn't made sufficient qualifying contributions in order to do so. So I think it is reasonable to assume that the combined income of £26,000 cited by Origen would be reduced even further.

Without any understanding what income needs Mr B may indeed have in retirement it isn't possible to say that the transfer was in his best interests and that it met those needs. At the time of the advice, those needs were, for Mr B, unknown. What was known, because it was noted on the fact-find that Mr B would be reliant on the income from his pension for his expenditure in retirement, was that he had no capacity for loss.

The 10-year annuity arranged for Mr B by Origen gave him an annual fixed income of £5,602.20 and TFC of £42,216. The annuity was a level annuity that didn't increase with inflation. If Mr B had remained in his DB scheme he would have been entitled to an annual index linked pension at NRD of £5,915 and TFC of £40,199. Origen has said that by the time Mr B reaches his scheme NRD his annuity would have been payment for nine years and it would take many years for the scheme benefits to outstrip the benefits he would have received from the personal pension. It's also said that Mr B's preference was to receive a higher level of income at the start of the policy although given the figures I've just cited I'm unable to agree with what it says about this.

Mr B's DB scheme was a significant component of his retirement income. Given Mr B is not intending to retire before his NRD of 66 I can't see any advantage to setting up a level annuity at 57 that would be eroded by inflation over the years, and taxed at a higher rate, just to clear debts that were serviceable and which would be cleared down well before retirement and, by so doing, foregoing a guaranteed index linked pension in retirement. The index linking included with Mr B's DB scheme is a valuable benefit that I don't think Mr B had the capacity to lose. The annuity Origen arranged for Mr B means he will have a decreasing (in real terms) income in retirement as compared to having an income from his DB scheme that increased each year in accordance with the scheme's index-linking benefit. I don't think this was in Mr B's interests and I think that if Origen had explained to Mr B that by taking an income at 57 that would never increase he would be giving up a valuable index linked income in retirement, I think that Mr B may have chosen to leave his benefits within the scheme.

Origen has said that its recommendation to transfer was suitable for Mr B because he required a secure income stream in retirement. However the index-linked income provided by the DB scheme already provided Mr B with that; so I can't see that there was any need to recommend a transfer to achieve something that Mr B already had. And if Mr B later had reason to transfer out of his DB scheme then he could have done so closer to retirement.

So it follows that I think it was too soon to make any kind of decision about transferring out of the DB scheme and I don't think Origen's recommendation that Mr B transfer was a suitable one.

Nor am I able to agree that Mr B giving up his guaranteed DB scheme benefits so that he could 'perhaps' recycle the income he received from the annuity into his stakeholder pension was in his best interests. By doing so, Mr B was exposing all his pension savings to investment risk whereas he could have retained his valuable DB benefits that were guaranteed.

Summary

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income just to repay debts that were affordable. So, I think Origen should've advised Mr B to remain in his DB scheme.

Of course, I have to consider whether Mr B would've gone ahead anyway, against Origen's advice. I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, against Origen's advice. I say this because Mr B was an inexperienced investor with a low/medium attitude to risk and this pension accounted for a significant portion of Mr B's retirement provision. So, if Origen had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

In light of the above, I think Origen should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

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 FG17/9 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 Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He would like his complaint to be settled in line with new guidance /rules. I consider it's fair that Origen calculates Mr B's redress in line with new guidance and rules when they come into effect.

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.

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 Mr B.

Origen 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).

For clarity, Mr B plans to retire at age 66. So, compensation should be based on his him taking benefits at this age.

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 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 any changes to DB transfer redress guidance or new rules come into effect and Origen has received notification of Mr B'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 Origen to pay Mr B.

Income tax may be payable on any interest paid. If Origen deducts income tax from the interest, it should tell Mr B how much has been taken off. Origen 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.

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 Origen Financial Services Limited 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 would additionally require Origen Financial Services Limited to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Origen Financial Services Limited 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 Origen Financial Services Limited pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts this decision, the money award becomes binding on Origen Financial Services Limited.

My recommendation would not be binding. 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 any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 March 2023.

Claire Woollerson
Ombudsman