DRN-3920740

The complaint

Mrs B says Origen Financial Services Limited (OFS) was responsible for failing to execute the advice it gave her to transfer her pension provisions into a Self-invested Personal Pension (SIPP), purchase a fixed term annuity and invest residual funds according to her risk attitude. She says this caused her financial detriment, stress and inconvenience.

What happened

Broadly, the background to Mrs B's complaint is not a matter of dispute between the parties.

Mrs B requested advice about her defined benefit (DB) and defined contribution (DC) pensions. OFS gathered information about her circumstances, objectives and appetite for risk in January 2021.

Mrs B was said to be looking to move and require an injection of cash to purchase a new home. Her current property was valued at £220,000 and was unencumbered. She was looking to purchase a property valued at £400,000. In addition to the purchase price she anticipated associated legal/moving costs of £30,000.

Mrs B was also recorded as requiring a pension income of £1,000 per month from around September 2021. She says OFS knew that she wanted this income as soon as possible. From her residual funds she wanted a combination of capital growth and income with the aim of returns beating inflation.

OFS issued a suitability report to Mrs B with its recommendations dated 20 April 2021. Amongst other matters it said:

"*I have recommended that you transfer and take benefits now from the [DB scheme] for the following reasons:*

- *I believe that your objectives would be better met if you transfer your benefits from [your DB] scheme to a Flexi-access drawdown policy [with Aegon] and take a fixed term annuity [with Legal & General] for 11 years and 10 months to provide £12,000 income to age 67.*
- *You are planning to take the maximum tax free cash in order to assist with your house move and also require £12,000 income per annum, by transferring you can meet both of these objectives.*
- *A Flexi-access drawdown allows you the flexibility to draw as much, or as little, income as you need from your pension. You have full flexibility on this; you could draw the entire fund as a lump sum (with 75% subject to income tax) or could take no income at all.*
- *A level Fixed Term annuity will provide you with £12,000 per annum for 11 years and 10 months enabling your income requirements to be met [142 payments].*
- *You are not concerned about inflationary increases, so a level annuity has been recommended at a purchase cost of £130,847.07…*

- *You are a moderately cautious risk investor and having a money purchase pension fund you are familiar with the rises and falls in the value of assets over time. You also confirmed that to meet your objectives you are happy to accept that the transferred funds will fluctuate in value in line with your chosen underlying investments.*
- *…the tax free cash of £64,522.27 offered by the scheme, however by transferring this defined benefit pension and the attached Afterwork account the tax free cash is increased to £171,423.97, which is £106,901.70 higher; this will assist with your house purchase whereas if you took the scheme benefits you would have to deplete your savings considerably.*
- *By taking the income now from the scheme you will receive £9,678.34 per annum, this is lower than the £1,000 per month you require, by taking a fixed term annuity you will receive £12,000 to state pension age, at which point any shortfall can be met from the flexibility in the pension..."*

Mrs B accepted OFS's recommendations, and on 21 June 2021 her pension funds were transferred to her new provider Aegon. Unfortunately there were problems implementing what OFS had recommended and on 14 September 2021 it informed her it was unable to set up the fixed annuity product with Legal & General (L&G). On 5 October 2021 it wrote to her with an addendum to its original suitability report explaining:

"I am unable to complete our original advice due to the entire pension being crystallised at Aegon and you were unable to return the tax free cash to unwind the process as you have committed to buying a caravan with the majority of the cash in October."

"I have therefore sourced an alternative provider [LV] who will provide the fixed term annuity and SIPP as per my original recommendations, however with a new provider and with a slight difference in funds."

"You have confirmed that there have been no changes to your circumstances or objectives since the previous report was produced."

OFS's revised recommendations gave rise to a number of consequential impacts. The cost of the fixed annuity product changed. The number of payments to be made under the contract was reduced. In addition, one of the four funds it had originally recommended for the investment of her residual funds wasn't available through the new provider and so an alternative was recommended. And the fees to be paid by Mrs B also changed.

Mrs B accepted OFS's revised recommendations. But she wanted assurances that this wouldn't place her in a worse position than had it been able to implement what she originally agreed to.

On 21 October 2021 Aegon confirmed Mrs B's pension funds had been disinvested and it sent these to LV on 2 November 2021. These were re-invested by LV on 15 November 2021. On 17 December 2021 Mrs B received her first monthly income payment of £1,000 for her LV annuity.

Mrs B raised a complaint with OFS about what had happened. It responded to her in October 2021, acknowledging how things had gone wrong, it said:

"It is clear from my review that in order to establish the required advice a comprehensive initial research process was undertaken by Origen's Paraplanning department. However, unfortunately during this process an individual error was made in the assumption that L&G would allow the purchase of their fixed term annuity following the full crystallisation of your pension funds."

“Unfortunately following the initial transfer of your pensions it was identified that L&G would only allow this type of fix term annuity to be purchased from uncrystallised pension funds. As stated above L&G’s position on the annuity purchase was not adequately checked prior to its inclusion in the initial advice provided to you”.

OFS apologised. It agreed to pay her the difference between the cost of the original annuity product and what was actually purchased. And it offered to pay her £6,000 to cover what it said was the period of delay in having the regular income in place, to which it added interest.

Mrs B considered OFS’s offer derisory and she brought her case to this Service.

An Investigator considered Mrs B’s complaint and upheld it. She thought that although OFS’s offer was reasonable in most respects, it needed to do more to address her concerns about the effect of having to move her funds from Aegon to LV. She also considered it should make a payment to recognise the trouble and upset it had caused her.

The Investigator noted OFS’s argument that because Mrs B’s annuity product hadn’t been arranged on time, the funds to purchase this remained within her SIPP earning returns. It hadn’t taken this into account, but this should now be considered in the overall loss calculations. In effect allowing it to offset any investment gain against the underpayment of her annuity. The Investigator agreed this would be fair.

Mrs B wanted to see all the calculations set out before agreeing to a settlement. OFS said that agreeing the redress principles and methodology were what mattered and the calculations would flow from that.

As both parties couldn’t agree with the Investigator’s view, Mrs B’s complaint was passed to me to review afresh. I issued my provisional decision in January 2023. I’m grateful to both parties for their further submissions, which I’ve taken into account in arriving at this 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.

Where there’s conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what’s most likely to have happened.

I’ve not provided a detailed response to all the points raised in this case. That’s deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I’ve taken into account all submissions, I’ve concentrated my findings on what I think is relevant and at the heart of this complaint.

I’m upholding Mrs B’s complaint.

Both parties are agreed about the background to her case and OFS has accepted it got things wrong. What matters now is ensuring fair redress.

Putting things right

Mrs B needs to be returned to the position she’d have been in now, or as close as reasonably possible, had it not been for OFS’s failings.

The effect on Mrs B of OFS not being able to implement its recommendations meant that there was a delay in her receiving her regular pension payment of £1,000. The provider of her annuity product had to be changed – and this meant the price of the contract and term altered. In addition she had to move to a different SIPP provider, which entailed a different fee structure and a change of investment funds.

A change in the annuity type product

There were a number of ambiguities in the information provided by OFS about both the initial L&G annuity type product and the LV replacement recommended. It has now provided me with further evidence about these. In particular, the start and end dates for the respective products; the number of instalments provided for by each contract; and the actual cost of each product.

Confusion here has arisen for a number of reasons. For example, the figures quoted in OFS's final response letter to Mrs B were incorrect. More substantively, her situation was necessarily dynamic. For example, the suitability report OFS delivered on 20 April 2021 said the cost of the L&G annuity would be £130,847. It said the contract would run for 11 years and 10 months. What it failed to explain to her was that these details were not fixed, they were based on a quote from 4 April 2021.

Reasonably, L&G's offer was subject to change depending on the timing of when the deal was done (or in this case could reasonably have been so, had things gone according to the original plan). Mrs B's funds were transferred and available from 21 June 2021, so the equivalent quote I've seen from L&G dated 7 July is a reasonable comparator to use with the LV policy which was actually bought.

So, the cost of the L&G annuity type product at the relevant date was £128,430. The effective cost of the LV equivalent was £129,681 (this includes the cost of a 'quasi' annuity payment for November 2021, which I'll return to later). So, on a pure cost basis the new arrangement was more expensive.

Origen Financial Services Limited needs to compensate Mrs B for the price difference between the cost of the relevant L&G contract available and the effective cost of the replacement contract with LV. To this sum, OFS must add 8% simple annual interest, from the date when the contract was purchased until the date of my decision.

According to the suitability report from April 2021, Mrs B's target start date for the annuity payments was September 2021. The actual start date was November 2021 -so a delay of two months. But her pension funds were transferred and available from June 2021, so OFS appears to have assumed this should've been the start date for the annuity – hence its original offer of 6 months backdated income. This fits with Mrs B's recollection that she wanted the annuity to start as soon as possible.

But, as I've established, we need to work from the relevant L&G contract quote based on what would've been available at the date Mrs B's funds were available after transfer. This was due to run for 139 months (11 years and 7 months). The purpose of the annuity was to cover an income gap until she received the state pension when she turned 67. At the time of the transfer of her funds she was 55 years and 5 months old. The annuity was 'level' meaning that it wasn't adjusted for inflation. This meant the contract provided for payments over the term of £139,000.

The LV contract began in November 2021, with the first 'quasi' payment being made. It was also due to run until Mrs B reached 67, with a final monthly payment due in March 2033.

That would yield 135 payments, or £135,000 – an underpayment against the relevant comparable L&G contract of £4,000.

Origen Financial Services Limited needs to compensate Mrs B for any loss of income from the annuity contract when comparing what she signed up for initially with L&G, from the relevant date, compared to the effective replacement contract with LV. To this sum, OFS must add 8% simple annual interest, from the date when the income instalments should've been paid to her until the date of my decision.

A change in the SIPP provider

The change of SIPP provider from Aegon to LV came with changes to the fees structure. In particular it seems the latter required that OFS's ongoing advice fees be applied to the annuity product as well as the funds under investment. That had not been the position with the L&G proposal. I think it's fair to say its attempts to explain the position were vague. Indeed in its initial final response letter to Mrs B it didn't acknowledge an issue here. And its follow-up letter dated 25 October 2021 wasn't clear.

Origen Financial Services Limited did provide the Investigator with a more fulsome breakdown, which she shared with Mrs B in the following terms:

"Origen have confirmed that due to the discounts provided by LV, both the platform and investment charges are lower than those that would have been implemented by Aegon. They've explained there is a reduction in charges of approximately £597 per year. They've provided the calculations which show that Mrs B isn't paying any more charges now she's transferred to LV:

<u>"Original advice – Aegon/Legal & General</u>

Both parts of [occupational DB and DC] pensions - £685,695.86

Standard Life Group Stakeholders pension - £15,290.87

Total fund value = £700,986.73

Transfer to:

Aegon Flexi-access drawdown via a SIPP = £700,986.73

Purchase L&G fixed term annuity = £130,874.07 (from SIPP value)

Tax free cash to be taken = £175,246.68 (maximum 25%)

Potential advice fee payment of £10,000

Remaining SIPP value = £384,465.98

It was agreed with the client a 0.5% on going advice fee which based on the SIPP value only which would be £394,465.98 x 0.5% = £1,972.33.

In addition an aggregated total recurring charge of 1.34% on the SIPP fund value would be £394,465.98 x 1.34% = £5,285.84

Therefore total charges = £7,258.17"

<u>"Addendum advice – LV</u>

Both parts of [occupational DB and DC] - £686,869.96

Standard Life Group Stakeholders Pension - £15,819.72

Total = £702,689.68

Transfer to:

LV Flexi-access Drawdown via a SIPP = £702,689.68

Purchase LV fixed term annuity to provide £12k PA income - £131,034.54.

Tax free paid = £175,673.16 (maximum 25%) – Additional £426.48 paid.

Advice fee payment - £10,000

Remaining SIPP value and Fixed term annuity of £385,981.98 +£131,034.54 = £517,016.52

As LV take an Adviser charge on the whole fund including the annuity we have reduced the adviser charge to 0.37% which based on the SIPP/Annuity value would be

£517,016.52 x 0.37% = £1,912.96

In addition an aggregated total recurring charge of 1.23% only on the SIPP fund value would be £385,981.98 x 1.23% = £4,747.57

Therefore total charges = £6,660.52"

It seems clear therefore that the arrangements put in place by OFS with LV will result in lower ongoing charges. No further comments have been received about this element of Mrs B's complaint, so there is no further action required here.

A change in the investment funds

The change in SIPP provider from Aegon to LV impacted on the funds available to Mrs B to invest her residual pension funds. Three of the four funds OFS had originally recommended were available through the new platform, but one wasn't and an alternative was recommended, which was consistent with her risk appetite.

Mrs B has questioned whether the original fund selected performed better than the replacement fund. I'd simply note that the funds appear to have been similar in terms of exposure to risk given her moderately cautious outlook. And I don't think the change impacted on the overall balance of her portfolio.

That said, I do think there's merit in her argument that she was 'out of the market' while her funds were dis-invested with Aegon and then transferred to LV. And that this had been a consequence of OFS's failings. She shouldn't be penalised for any investment loss.

I also accept OFS's argument that had the transaction proceeded as it should've, the funds invested through her Aegon SIPP would've been reduced. That's because the funds to purchase the annuity type product would've been paid over. Because of the delay in effecting that arrangement, her SIPP produced investment returns on that element of her funds.

So, Origen Financial Services Limited needs to find the notional value of Mrs B's SIPP, excluding the actual cost of the annuity type product from 21 June when funds were available for its purchase, assuming the residual money remained invested in the four funds it originally recommended, from when the funds were invested by Aegon, and then assume for the three funds which were still available via LV there'd been no need to dis-invest and then reinvest. And for the fourth fund assume a same day switch on 21 October 2021 into the newly recommended fund. This will be value A.

OFS should then compare this with the value of Mrs B's current SIPP (making any necessary adjustments for withdrawals or additional contributions on the dates which these occurred). It can also make the adjustment I've mentioned concerning the timing of the purchase of her annuity and any returns to that sum. The adjusted, as appropriate, like for like comparison will be value B.

If value A exceeds value B, Mrs B has suffered a loss which OFS needs to make good. Conversely, if value B exceeds value A there hasn't been a loss on this element of the transaction.

The November 2021 payment to Mrs B from her SIPP

Since her complaint has been with this Service, Mrs B has raised a concern that she received a payment of £1,000 on 17 November 2021 which she understands was made via a withdrawal from her residual SIPP funds, reducing what was available for investment.

The Investigator thought as this was a new complaint point she would need to raise the matter first with OFS. I suggested as the issue was relevant to Mrs B's complaint, to reduce costs for OFS and to cut down on inconvenience for Mrs B, we dealt with this matter now.

Origen Financial Services Limited has now confirmed Mrs B's understanding that £1,000 was held over from her investment funds. It says the LV contract couldn't be implemented until December 2021, and it was acutely aware she'd already gone without promised income payments for some months. So £1,000 was held to enable a 'quasi' annuity payment for November 2021.

I'm satisfied that the effect of this has been taken into account in the redress I've provided for under the previous section *changes in the annuity type product.* That's because the £1,000 outlay has been added to the actual cost of the LV contract to enable a like for like comparison.

Distress and inconvenience

When I'm considering a complaint like Mrs B's, I think about whether it's fair to award compensation where failings have occurred, separate from pure financial loss. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Origen Financial Services Limited's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Mrs B was looking to put her retirement arrangements in place. OFS's failings meant she experienced uncertainty and inconvenience over a period of several months. I've also found when communicating with Mrs B about putting things right, it wasn't as clear and fulsome as it should've been.

Origen Financial Services Limited needs to pay Mrs B £300 in recognition of the things it's got wrong.

My final decision

For the reasons I've already set out, I'm upholding Mrs B's complaint. As such, I require Origen Financial Services Limited to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 March 2023.
Kevin Williamson

Ombudsman