DRN-4399059

Financial Ombudsman Service

The complaint

Mrs M complains about the advice she was given by Origen Financial Services Limited in relation to her personal pension. She also complains about the fees she was charged.

What happened

Mrs M asked Origen to provide her with financial advice in relation to her pension. She intended to stop working at the time.

She had a Self-Invested Personal Pension Plan (SIPP) with a provider I'll refer to as "P" and was also a member of an Occupational Money Purchase Pension Scheme held with a provider I'll refer to as "V."

Mrs M signed an agreement with Origen which stated that even if she decided not to follow its advice she would still have to pay a fee. However, she says she wasn't satisfied with the advice which it provided to her. By way of summary she says:

- Origen recommended she should immediately take the maximum tax free cash entitlement from her pension. It said the reason for its recommendation was because she was close to the Lifetime Allowance (LTA). Mrs M says she'd made clear she didn't need the tax free cash at the time. She says Origen failed to tell her that, if she didn't take the tax free cash immediately, the LTA assessment could take place at any time up to her 75th birthday.
- Origen proceeded to issue a recommendation report about how the tax free cash could be invested. She says this recommendation was not required in circumstances where she didn't need or want to take the tax free cash.
- Origen's Advice and Recommendations Report contained numerous errors about her personal circumstances. For example it referred to her at one point using an incorrect name; it wrongly referred to her as a male; and it incorrectly stated the amount of a payment she was to receive from her employers. She says this was unprofessional and caused her to question the advice she was given.

Mrs M says that after conducting her own research into the LTA she decided not to take the tax free cash. She says she lost confidence in Origen as a result of what happened.

When Mrs M received an invoice from Origen for the advice it had provided, she raised a complaint.

Origen looked into her complaint. It said Mrs M had signed two Statements of Engagement (SoEs) which made clear that even if she decided not to follow its advice she would be required to pay £752.50 for retirement planning advice and £1,750 for investment planning advice. It said these fees were less than the amount she would've had to pay had she decided to follow its advice.

Origen acknowledged there had been some discrepancies in its recommendation report. But it said these did not affect the advice or recommendations. It apologised for the discrepancies and said an amended report had been issued to Mrs M where all the errors had been corrected – except for one. It said it was sorry Mrs M had lost confidence in it. As a gesture of goodwill it offered to pay her £200 for any distress and inconvenience she'd been caused as a result of the discrepancies in its report and recommendations.

Mrs M did not accept this. She referred her complaint to our service. Our investigator looked into her complaint. He considered the advice which Mrs M had been given in relation to her pension. He noted this had included a recommendation that Mrs M should switch one of her pensions, so that all of her pension was with the same provider. He thought this was her main objective when she contacted Origen. He said he was satisfied Origen had made Mrs M fully aware of her options regarding this matter and she'd ultimately decided to follow its advice on this point.

He then considered the advice she'd been given about taking tax free cash and investing it outside of her pension. He said the motivation for this recommendation was probably to cap the LTA. But, he hadn't been provided with any evidence that this was important to Mrs M or that the implications of not proceeding had been explained to her. He didn't think there'd been a balanced discussion with Mrs M about the pros and cons of crystallising her pension. He thought this meant Mrs M wasn't able to make a fully informed decision based on the advice she'd received.

Having considered everything our investigator thought Mrs M shouldn't have to pay for advice that wasn't fully justified. He thought Mrs M should pay for the advice about her pension (£752.50) but she shouldn't have to pay for the advice about investing (£1,750). He thought Origen's offer to pay her £200 for distress and inconvenience was in line with what he would have recommended. So he said Origen should pay Mrs M £200 for distress and inconvenience.

Origen didn't agree with what our investigator said. It said it was satisfied that its recommendations were suitable. If Mrs M had followed the advice she would've been able to gradually move 25% of her pension amount out of an environment where it was likely to be taxed in the future, into a fully tax free environment. It said the LTA had been discussed with Mrs M and it was a concern to her. It provided further evidence of recorded calls between its adviser and Mrs M to support this. Origen said this explained why Mrs M had agreed to sign the Fee Agreements for both the retirement and the investment advice.

Our investigator considered what Origen said but he didn't change his view. So, the complaint has been passed to me to decide.

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.

<u>The sequence of events</u>
Mrs M contacted Origen in 2022 to seek its advice. She planned to stop working and she said she wanted to sort out her finances.

Telephone call 26 April 2022
Origen has provided a recording of its telephone conversation with Mrs M on 26 April 2022. The call lasted 1 hour and 26 minutes. There had been an initial call the previous week but Origen has explained that the call on 26 April was a more detailed conversation.

During the call Origen discussed the fact that Mrs M had reached the Lifetime Allowance and for that reason it didn't recommend a payment she was expecting to receive from her employer should be added to her pension. Mrs M said she'd thought there was room to put some of this payment into her pension. Origen explained that the combined value of her two pensions, together with the value of an earlier amount of tax free cash she'd taken from her pension, meant she'd almost reached the LTA. Further payments were also due to be made into her pension before she stopped working and it was likely the LTA would be exceeded.

Mrs M accepted that in these circumstances there was no benefit paying more into her pension. She needed to inform her employer of this decision soon after the call.

Origen then explained, because it was possible Mrs M would exceed the LTA she'd be exposed to a potential 55% tax charge, on any excess. Mrs M said she wanted to avoid this "*at all costs*." She said she didn't want to have to pay 55% tax on any of her pension and she needed to do something to avoid that.

Origen then discussed taking an immediate tax free cash sum from at least one of her pensions. It said it wouldn't normally advise this in circumstances where, as here, the consumer didn't need the cash. But, it said the only reason it would advise Mrs M to do that was because of the LTA. It said she could invest or spend the cash.

There was then a conversation about matters such as whether the pension with V should be transferred to the pension held with P and Mrs M's financial situation going forward.

At the conclusion of the call Origen confirmed it probably wouldn't advise Mrs M to put the employer's payment into her pension. It said it needed to decide whether it would recommend she take the tax free cash and how much of it to invest.

The Meeting Summary document

The Summary document completed by Origen on 26 April 2022 recorded that Mrs M wasn't looking to pay any of the employer payment into her pension because she was concerned about exceeding the LTA and incurring a higher tax charge.

The Budget Summary recorded that Mrs M was proposing to take the full tax free cash amount from both of her pensions. It stated she intended to invest almost all of this. The remainder of the tax free cash together with other funds she had could be used to finance home improvements and make up any income shortfall over at least a two year period.

The reason recorded for the decision to invest the majority of the tax free cash sum was:

> *"you have concerns about exceeding the Lifetime Allowance and as such you would prefer to crystallise your pension benefits at this stage…[reference to Inheritance Tax]...Taking the tax-free cash from your pensions is therefore not a concern for you and feel that as you are close to the Lifetime Allowance it is better for your long-term financial planning."*

Telephone call 9 May 2022

A further telephone conversation took place on 9 May 2022. The adviser said he needed to put together the final pieces of "the jigsaw." He said,

> *"If we're going to take out the tax free cash from your P pension… how much have we got spare to look at investing."*

Mrs M said she had two pressing matters. First, she wanted to have thought out where she was going with her V pension and secondly, because she was at the LTA limit, she wanted to get the tax free cash out as soon as possible so that she wasn't "creating a tax bill for herself of 55%".

There was no discussion with Mrs M during this call about the pros and cons of taking the maximum tax free cash out immediately. The adviser didn't check with her whether she knew and understood that the LTA rules could change in the future. He also didn't clearly explain to her that if she delayed crystallising her pension until a future date, the LTA assessment wouldn't be carried out until that date.

The Statement of Engagement
Mrs M signed two Statements of Engagement (SoE) on 30 May 2022.

The first was in respect of retirement planning and the second in respect of investment planning. Each SoE set out the total fee, after any discounts, which would apply. The SoEs included a section headed:

> *"If the solution is not transacted by Origen Financial Services Limited"*

The fee that would apply in this circumstance was then set out - £752.50 for retirement planning and £1,750 for investment planning advice.

The Advice and Recommendation Report
Origen issued its Advice and Recommendations Report on 18 July 2022. Even though Mrs M had signed two SoEs, I've noted she received a single report which combined both the retirement planning and the investment planning advice.

The report listed three objectives. The first objective was to take the maximum tax free cash from the pension held with P, because Origen said Mrs M had concerns about exceeding the LTA and wanted to limit her exposure. The second objective related to combining the V pension with the P pension and ensuring it was invested in line with her attitude to risk. The third objective was to invest a significant portion of the tax free cash.

<u>Origen's Advice and Recommendations</u>

Investment planning advice

Having considered the sequence of events, I can understand why Mrs M said during the call on 26 April 2022 she wanted to avoid having to pay a higher tax charge of 55% on any part of her pension savings. She explained she'd made conscious decisions to forgo income over several years to invest it in her pension in a tax efficient manner. So, she didn't want to have to pay a 55% tax charge on any of her pension.

During the call Origen explained that the only reason it would recommend she take the maximum tax free cash immediately was because of the LTA. However, it didn't explain to Mrs M that if she left her pension fund invested, and didn't take any tax free cash immediately, the LTA assessment would only take place when a benefit crystallisation event occurred (such as taking tax free cash from her pension at a later date). It didn't tell her that a benefit crystallisation event would only happen automatically when she reached age 75 or upon her death prior to that date. Origen also didn't tell Mrs M that the rules about LTA and/or the threshold that applied could change in the future.

Mrs M says she didn't find out about these points until subsequently when she carried out her own research and subsequently spoke to a different adviser. I think these were important pieces of information which should have been discussed with Mrs M. Origen should have checked she fully understood the LTA issues before it determined that taking the maximum tax free cash immediately was one of her primary objectives – especially when she hadn't indicated that she needed or wanted the cash.

Because of what Mrs M had said during the call on 26 April and subsequently during the call on 9 May 2022, Origen offered her both retirement planning and investment planning advice – as set out on the SoEs. And after she signed the SoEs it proceeded to provide its advice.

So, I think it's fair to say that as far as taking the tax free cash (and obtaining the investment planning advice) was concerned, Origen assumed Mrs M had agreed that was the way she wanted to proceed. But she'd made that decision based only on what she'd been told during the telephone calls – which as I've mentioned above was incomplete information. There doesn't appear to have been any recommendation provided to her on this point – despite the fact that Origen had told her at the end of the call on 26 April it needed to decide whether it would recommend that she take out the tax free cash and then invest it. Instead, the Advice and Recommendations Report assumed that the decision had already been made.

I say that because the summary of Mrs M's objectives stated:

> *"1. Take the maximum tax-free cash entitlement from your P pension as you have concerns about exceeding the Lifetime Allowance and would want to limit your exposure.*
> *2. You want to move your existing V pension to your existing P plan and immediately crystallise the maximum tax free cash entitlement…*
> *3. Invest a lump sum of £x.. from the proceeds of the tax free cash you will take from your pensions…"*

The recommendation was that she take the full tax-free cash from her pension for the following reason:

> *"You want to crystallise your pensions so that you do not exceed the lifetime allowance…"*

No other reasons for this recommendation were listed.

Origen invited Mrs M to read the report carefully to ensure it accurately reflected her circumstances, objective and priorities.

After Mrs M read the Advice and Recommendations Report and reflected on it, she decided to carry out some further research herself. I think she did that because it wasn't one of her initial objectives to take tax free cash – she didn't need the cash and the adviser knew that. Mrs M says she discovered that if she didn't take the tax free cash immediately, the LTA wouldn't automatically be tested until she reached age 75. Mrs M said she wasn't told this and she wasn't told the rules about LTA, or the threshold that applied, could change in the future.

Mrs M decided not to take the tax free cash.

I'm persuaded, on balance, that if Origen had given Mrs M all the information and advice at the outset which she'd need to take into account before making a decision to take the maximum tax free cash, she wouldn't have sought, or required, investment planning advice from it. And I don't think she would've signed the SoE relating to investment planning advice.

I say that for mainly the following reasons:

- At the point in time when Mrs M signed the SoE for investment advice she'd not been given all the information she needed to make a decision about whether she should take the maximum tax free cash. She'd been given some information about this on the telephone call on 26 April 2022 - but as I've mentioned above the information she was given on that occasion was incomplete.

- Origen said during the call on 26 April 2022 it needed to decide whether it would recommend she take the maximum tax free cash. I've not been provided with any evidence that Origen provided Mrs M with its advice as to whether that course of action was being recommended or that it set out the reasons why it thought Mrs M should proceed on that basis. The summary document and the Advice and Recommendations Report assumed Mrs M did want to pursue that course of action and that she therefore needed investment planning advice. I think that explains why both the retirement planning and investment planning advice were contained in a single Advice and Recommendations Report - even though Mrs M had signed two SoEs.

  The only reason provided in the Report, as to why Mrs M was taking the maximum tax free cash entitlement, was her desire not to exceed the LTA. But there's no evidence Origen had discussed all the pros and cons of taking the tax free cash entitlement or that Mrs M had considered all of her options regarding the fact she'd reached, and probably would exceed, the LTA.

- I'm not persuaded, on balance, Origen acted fairly and reasonably when it listed Mrs M's primary objective was to take the maximum tax free cash because of her concerns about exceeding the LTA - when it hadn't made sure she had a sound knowledge and understanding of the LTA.

Having considered everything, including the telephone conversations, the meeting summary document, the information in the Advice and Recommendations Report and the actions Mrs M took after she had carried out her own research about the LTA, I'm not satisfied, on balance, it's fair or reasonable she should be required to pay for investment planning advice.

Retirement planning advice
I've then considered the advice Mrs M was provided with regarding her retirement planning.

The retirement planning advice contained in the Advice and Recommendations Report was comprehensive and covered a range of matters including transferring her V pension to the P pension; how the combined pensions should be invested having regard to Mrs M's financial knowledge and experience, her attitude to risk and her capacity for loss; an overview of her general finances; and advice on taxation aspects. Mrs M hasn't complained about the specific advice she was given in relation to these matters. She has complained about discrepancies in some of the information contained in the report – which I'll comment on later. But the crux of her complaint is about the fee she was charged for the advice she was given about taking and investing the maximum tax free cash.

I've thought about what Mrs M has said here. Having done so, I'm persuaded, on balance she should be required to pay for the retirement planning advice. I say that because I think the advice she was given regarding her retirement planning was suitable. And although I've decided that Origen shouldn't have assumed Mrs M had made an informed decision to take the maximum tax free cash, I don't think for the most part, that meant its retirement planning advice was unsuitable.

I've also considered what Mrs M has said about the discrepancies in the report. Origen has acknowledged the errors it made and has apologised. It also issued an amended report. Unfortunately not all of the errors were amended. However, although I can understand why Mrs M was upset that errors had been made, I'm not persuaded they were such as to affect the substance of the retirement planning advice she was given.

So, having considered everything here I've decided Mrs M should pay for the retirement planning advice she received - but she shouldn't be required to pay for the investment planning advice.

As Origen has acknowledged, the discrepancies in its recommendation report shouldn't have happened. It's offered to pay £200 by way of compensation for the distress and inconvenience caused. I think that's fair and reasonable and in line with our general guidelines about compensation for distress and inconvenience.

Putting things right

Origen issued an invoice to Mrs M dated 2 December 2022, for the amount of £2,502.50 in respect of its Advice and Recommendations Report dated 18 July 2022 (advice only). As set out on the two SoEs which Mrs M had signed, this amount was made up of £752.50 for retirement planning advice and £1,750 for investment planning advice.

For the reasons set out above, I've decided that Mrs M should have to pay for the retirement planning advice she received but she shouldn't have to pay for the investment planning advice. So, to put things right I think Origen should now withdraw and void its invoice dated 2 December 2022. I think it's fair and reasonable that Origen should send Mrs M a replacement invoice for the total amount of £752.50 in respect of the retirement planning advice set out in its Advice and Recommendations Report dated 18 July 2022. It should not apply any fee in respect of investment planning advice it provided to her.

Origen has already offered to pay Mrs M £200 in respect of the distress and inconvenience she experienced as a result of the discrepancies in its report. I think that's fair and reasonable. So, if it hasn't done so already, Origen should now pay Mrs M £200 by way of compensation for distress and inconvenience she experienced as a result of what happened here.

My final decision

For the reasons given above I uphold this complaint, in part, about Origen Financial Services Limited.

I now require Origen Financial Services Limited to take the following action:

- Withdraw and void its invoice dated 2 December 2022 requesting the payment of £2,502.50. Issue a replacement invoice to Mrs M for £752.50 (in total) in respect of the advice it provided to her in its Advice and Recommendations Report dated 18 July 2022.
- If it has not done so already, pay Mrs M £200 for the distress and inconvenience she experienced as a result of what happened here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 April 2024.

Irene Martin
Ombudsman