DRN-4433235

The complaint

Mr M has complained about the advice he received from Origen Financial Services Limited to transfer his defined benefit ("DB") pension.

What happened

Mr M was a member of a former employer's DB pension scheme. In 2017 the scheme sent him a personal statement which said:

- if he retired on 31 October 2017 he could
    - receive an annual pension of £9,197 or
    - take £32,774 as a lump sum tax-free cash payment and receive an annual pension of £7,415
- if he wanted to transfer the pension it had a transfer value of £242,079.

The scheme outlined various options if Mr M transferred the pension and said it would pay for any advice Mr M needed.

On 22 January 2018 Origen's advisor called Mr M and discussed the scheme's offer and Mr M's objectives and financial position. Although he said he was in two minds, Mr M said that after talking to different people he had two main thoughts:

1. his initial thought was to work until he was 66 and then take an income from the DB pension of about £10,000 a year; and in the meantime he would drawdown a regular amount from a defined contribution ("DC") pension he held
2. but he then wondered about combining the two pensions, taking a lump sum payment of about £60,000 and having an annual pension from now of about £10,000.

During the call Mr M confirmed:

- he was looking to take benefits from his pension now as a lump sum and an annuity
- he was more interested in annual income of £10,000 rather than a 'massive' lump sum
- his target combined (ie with his wife's) net annual retirement income at 65 was £18,000
- he wasn't a risk taker.

The advisor summarised the situation as Mr M:

- wanting a secure income for the rest of his life as soon as possible
- taking a lump sum tax-free cash payment for some home improvements, a new car and some holidays
- and then having a combined ongoing income in addition to State pension for the rest of his and his wife's lives.

Origen also obtained a Transfer Value Analysis ("TVAS") report. Amongst other things, this said the DB scheme would pay Mr M:

Age pension taken	Full pension	Reduced pension with tax-free cash taken
61	£10,158	£7,637 and £45,095 cash
65 (the normal retirement age)	£14,445	£10,217 and £68,112 cash

On 30 January 2018 Origen sent Mr M its recommendation report. This confirmed Mr M's objectives as outlined above and his targeted net household retirement income as £18,000. Origen recommended that Mr M transfer the DB pension, take £60,520 as tax-free cash and then buy an annuity paying him £8,571 per year for the rest of his life. Alongside the State pension Mr and Mrs M would receive, this would give a household retirement income of just over £25,000.

The advisor spoke with Mr M the next day. Mr M said he was pleased the recommendation increased the amount of tax-free cash he could take, although he wasn't so happy with the annuity as he wanted £10,000 a year. He nevertheless felt that having the extra lump sum cash payment up front made up for the lower annuity over the years. He therefore told the advisor he wanted to proceed with the transfer.

In 2023 Mr M complained to Origen about the advice he'd received as he felt it might have been unsuitable. He said:

- he didn't think the guaranteed, indexed linked payments of the DB pension had been properly explained
- he was confused by the paperwork (eg the TVAS) he'd been sent
- the lump sum payment wasn't urgent and he would have been happy to wait five years and get a higher tax-free cash payment and higher benefits from the defined benefit pension.

Origen looked into the matter but it felt its advice was correct and in line with regulatory guidance.

Our investigator thought the complaint should be upheld as she felt the recommendation to transfer the DB pension was unsuitable. She didn't think Origen had shown that transferring was in Mr M's best interests eg he had no urgent need for the tax-free cash and he could have achieved his desired retirement income from the DB pension.

Origen disagreed and asked for an ombudsman to review the complaint. It said part of its overall advice process was to consider Mr M's needs and objectives. And Mr M said he'd ideally want to combine his DB pension with the DC one to get around £60,000 in tax-free cash for home improvements and a pension of £10,000 a year. Origen said its recommendation provided Mr M with an additional £27,746 tax-free cash and a secure annual income of £8,571. It also said that as an annuity provides a guaranteed income it's suitable for consumers with a low attitude to risk and capacity for loss. Overall, Origen remained of the view that the advice was suitable.

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.

In my view there are two separate elements to the complaint. The first concerns the advice to transfer the DB pension. The second concerns the advice to buy a level annuity (as opposed to one that will increase in line with inflation) following the transfer.

Advice to transfer

There were various rules and regulations which applied at the time of the advice. I haven't listed all of them below but the ones I have provide 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.

Further, the Financial Conduct Authority, 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 transferring was in Mr M's best interests. Having looked at all the evidence available, I'm not satisfied it was.

An issue I usually consider in complaints like this is whether a consumer is likely to be better off in retirement if they transferred their DB pension and left the funds invested until their likely retirement date. A consumer's attitude to risk and their capacity to absorb any loss of their pension is a factor in deciding this. However, I don't think this issue is particularly important in this case because Mr M transferred the DB pension and bought an annuity straightaway. So I don't need to compare, for example, how much the new pension would need to grow by to match the benefit the DB pension would pay at age 65. I think what's more important is a comparison between what the DB pension would pay at the date of transfer and what Mr M would receive by transferring and buying the annuity.

In that regard the advisor highlighted in the recommendation report that by transferring and buying the annuity Mr M would receive £27,746 more tax-free cash and around £1,100 more annual pension compared to what the DB pension would pay at the same time. However, what he failed to highlight was that by transferring and buying the annuity Mr M would receive around £7,500 *less* tax-free cash and around £1,600 *less* annual pension compared to what the DB pension would pay him at age 65 (which was only a few years away). He also failed to highlight that the gap between the annual pensions would get wider for the remainder of Mr M's life.

It doesn't surprise me that Mr M might have found this extra income attractive – particularly given what he told the advisor about home improvements, a new car and some holidays. But the advisor's role wasn't just to recommend a course of action that allowed Mr M to do what he *wanted* to do – it was to recommend what would be in his best interests. And advice isn't deemed suitable just because it allows a consumer to do something they want – because what a consumer wants to do might be completely unsuitable or unaffordable.

In my view, the two main factors behind the advisor's recommendation were that Mr M would have immediate cash available and that he would have his desired retirement income at age 66. However, using the figures available, I think Mr M could have easily achieved his desired retirement income by remaining in the DB scheme – £10,217 from the DB pension and £16,640 from the combined State pensions. And, of course, all of that income would have increased every year to offset the effects of inflation.

It wasn't established whether Mr M merely *wanted* the tax-free cash or *needed* it. Most, if not all, of the discussion in this respect was based on what Mr M wanted to do. But I think the advisor needed to dive deeper into this in order to understand the situation fully and to make a recommendation that was in Mr M's best interests. But he didn't do so – there was no discussion, for example, about the precise nature of the improvements, whether they were a necessity, how urgent they were, whether they could wait or whether Mr M could use other funds available (eg his other pension) for whatever work was needed there and then.

The advisor made reference to Mr M saying that he might die in five years and therefore him wanting access to his pension benefits now. Reference was made in the recommendation report to a 'health scare' two years earlier, but as far as I can tell that was in respect of a friend dying of cancer and Mr M then changing aspects of his lifestyle. I haven't seen any reference to it being Mr M who suffered the 'scare'. In fact, his health was described as 'good' in the initial telephone conversation and recommendation report. And the advisor referred in the telephone conversation to Mr M's life expectancy to be around 85. So while Mr M dying within five years was obviously a *possibility* (as it is for anyone) it was *probable* given his life expectancy that he wouldn't. So the advisor should have discouraged Mr M from making any decision based on him thinking he might only live for a further five years.

I'm also not persuaded that Origen gave Mr M sufficient information that was clear, fair and not misleading. I've already mentioned above that the advisor highlighted how much Mr M would be better off if he transferred and bought the annuity but he didn't equally highlight how much he would be worse off by. I think another example is in respect of the crossover point (the point at which the annual DB pension would be more than the annuity) and breakeven point (the point at which the total amount Mr M would have received from the DB pension exceeded the total amount he received from the annuity). The advisor did say in the recommendation report that these points were six and 12 years respectively. But I think this should have been put into context by emphasising that Mr M's life expectancy was expected to be 85 years – which is many years after both the crossover and breakeven points.

I accept what Origen has said about an annuity providing a guaranteed income and therefore being suitable for someone with a low attitude to risk and being unable to afford to lose their pension. However, the same can equally be said about a DB pension. And the DB pension has the added benefit of the income increasing every year to offset the effect of inflation.

Overall, for the reasons outlined above, I don't think Origen has clearly demonstrated that transferring was in Mr M's best interests. It hasn't shown that Mr M had an immediate need for the tax-free cash at the time of the advice or, if there was a need, that it couldn't have been obtained by other means. And Mr M could have obtained his desired retirement income by remaining in the DB pension. I therefore conclude that Origen should have advised Mr M to remain in the DB pension. I think the advice it gave was essentially based on what Mr M wanted rather than on what was in his best interests.

I've considered whether Mr M would have transferred the DB pension anyway, against Origen's advice had it provided him with sufficiently clear information and advised him as I think it should have. I think it's unlikely he would have insisted on transferring out of the DB pension if Origen had advised him not to. I say this because most consumers are likely to follow professional advice given to them. And Mr M was an inexperienced investor with a very cautious attitude to risk. So if Origen had provided him with clear advice against transferring out of the DB scheme – including a clear comparison between his income at 65 (increasing for the remainder of his life) and the annuity income – explaining why it wasn't in his best interests I think he most likely would have accepted that advice.

Advice to buy a level annuity

As I've concluded that the advice to transfer the DB pension was unsuitable, I've not gone on to consider this issue because the redress I propose below is designed to place Mr M back into the position he'd be in now if he hadn't transferred the DB pension.

Putting things right

A fair and reasonable outcome would be for Origen to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would have most likely remained in the occupational pension scheme if suitable advice had been given. I can't turn back the clock and I can't unwind the annuity Mr M bought (he's now stuck with that), and I can't place him back into the DB pension scheme.

So Origen must undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

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

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Origen should:

- calculate and offer Mr M redress as a cash lump sum payment
- explain to Mr M before starting the redress calculation that
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his defined contribution pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum
- if Mr M accepts Origen's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Origen may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £190,000, 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 £190,000, 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 M the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Origen Financial Services Limited pays Mr M the balance.

If Mr M 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 M can accept my decision and go to court to ask for the balance. Mr M may therefore 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 M to accept or reject my decision before 20 December 2023.

Paul Daniel
Ombudsman