DRN-4607881

## The complaint

The estate of Mr A complains that Origen Financial Services Limited ('Origen') failed to carry out the late Mr A's detailed recorded investment instructions, which has resulted in significant unnecessary tax costs to the estate. The estate of Mr A also complains that Origen's commission fees were excessive and not reflected in the service it provided, and that the late Mr A was vulnerable in the later years, but it didn't take any action. The estate of Mr A is seeking a refund of fees and compensation for the extra tax incurred.

## What happened

The following is a summary of the background and circumstances leading up to this complaint.

In March 2011, Mr A received savings and investment advice from Origen. An 'Advice and Recommendations Report' recorded Mr A's circumstances and objectives as well as Origen's investment recommendation. In summary, the key things recorded were:

- Mr A was married, he was a high rate tax payer, he was semi-retired and he was in good health.
- His income more than covered his expenditure.
- His assets included his main residence, cash deposits, equity-based investments and investment bonds. He had no liabilities. Because of the value of his estate, he had a current inheritance tax liability.
- His objectives included producing a clearer investment strategy geared towards providing a tax-efficient income when he stopped working in around 12 months' time, and to provide closer attention and monitoring of the investment portfolio.
- Mr A's attitude to risk was assessed as being 'Medium.'
- Mr A wanted to invest a lump sum of around £160,000 made up of his existing investments and a lump sum from his cash reserves.
- Origen recommended Mr A encash/transfer his existing portfolio together with the additional funds into a bespoke portfolio using the services of a Discretionary Fund Manager ('DFM').

Origen recommended Mr A utilise his Individual Savings Account ('ISA') allowances for the current and next tax years, encash some investments to utilise his capital gains allowance, invest the balance in a taxable account and retain his investment bonds because of his high-rate tax payer status. Reference was also made to an 'auto-ISA' facility to enable Mr A to make easy use of his ISA allowance in subsequent years.

The report also set out the remuneration and fees including the fee for the advice. It also noted that for the ongoing administration and management of Mr A's portfolio, an annual management charge of 1.25% would be levied with Origen receiving 0.625% of this. Mr A accepted the recommendation. He also signed a 'Client Service Agreement,' which set out the agreed level of service provided for the fee charged. Between 2011 and 2015, this was 'Level 3', which included an annual review. Between 2015 and 2021, 'Level 2' was provided, which although this didn't include an annual review, Origen says it continued to offer Mr A one. Level 3 service resumed again in 2021.

Origen says that it contacted Mr A every year to arrange an annual review, but a review didn't always take place. The last documented review took place in March 2021. The review took place over the phone and this was followed up in writing with a 'Client Meeting Summary' as a record of the meeting. In summary this recorded the following key points:

- Mr A was offered a family member to accompany him at the meeting, but he declined as he felt able to conduct his affairs on his own.
- Mr A had a Will and a Lasting Power of Attorney in place if needed.
- Mr A wasn't looking to make any changes to his investments.
- Mr A had recently made gifts to his daughters, which prompted a discussion about IHT planning.
- It was agreed it would be advisable to have a further meeting to discuss the investments more fully as well as review Mr A's inheritance tax liability. It was recommended this should take place with family members and that there were a variety of measures that could be taken to mitigate IHT.
- Mr A was happy with a moderate risk approach to his portfolio and his current growth objective hadn't changed.
- No further advice was provided and there was no change to the current service level.

Origen says it attempted to contact Mr A in 2022 for his annual review, but it wasn't successful. Later on in 2022, Mr A died.

In 2023, the estate of Mr A complained to Origen about the unnecessary tax costs to the estate and the loss of ISA allowances to the beneficiary. It also said that Origen's trail commission was excessive and wasn't reflective of the service provided. It said Origen had failed to utilise Mr A's ISA allowances for several tax years, which was contrary to what it said it would do and for which it took a fee each year. It said if Mr A had withdrawn the maximum 5% from each of his investment bonds and invested the amounts in his ISA account with the DFM, the tax bill would have been lower. It also said Mr A's wife had permanently lost the ISA allowance that should have transferred to her, so she would incur extra tax.

Origen didn't uphold the complaint. Its final response of 6 June 2023 set out its position. In summary it said:

- Its recommendation in 2011 was for Mr A to utilise his ISA allowances for the current and subsequent tax year.

- Mr A's ISA allowance was then utilised using the DFM's auto-ISA facility for each tax year until 2015. But in 2015 Mr A's general investment account had been depleted, so the DFM wrote to Mr A to tell him that his full allowance for 2015/16 tax year had not been used and no further ISA investments could continue this way. Because Mr A didn't respond, no further action was taken.

- Annual review meetings were offered to Mr A every year.

- As far back as 2015, Mr A was made aware of his IHT liability and offered options how he could mitigate this as far as possible. He was warned that if he did nothing, his liability would be significant. Mr A chose not to engage further or seek Origen's advice.

- The ongoing servicing fee didn't cover advice. So any recommendation about bond withdrawals or ISA investment would have required Mr A's agreement that he wanted advice and was willing to pay for it. Because Mr A didn't engage further, it couldn't provide that advice.

- All the services provided under the Client Service Agreement Level 3 were provided to Mr A. While Mr A chose not to engage with every annual review, the were offered to him. In 2015 the service level was reduced to Level 2. While this did not include an annual review, it nevertheless continued to offer one.

- It believed the estate of Mr A's complaint about Mr A's ISA allowance not being utilised was time barred because it was more than six years from the event complained of and more than three years from the date on which grounds for complaint ought to have been known.

Dissatisfied with its response, the estate of Mr A brought its complaint to us. It raised the complaint points referred to Origen and also said that Mr A was suffering from ill health in his later years and was vulnerable, which Origen ought to have realised but took no action.

One of our Investigators considered all of this and they didn't uphold the complaint. In summary they said Origen's fees were made clear and what service Mr A could expect to receive. They said there was no evidence that Origen didn't provide the services agreed to, so they would not be recommending a refund of fees. In relation to tax mitigation, they said the evidence showed that IHT planning was discussed in the 2021 annual review meeting and that it was a topic to be discussed at a later date. They said the meeting notes from 2011 record it was discussed here too. They said because Origen's service was advisory and not discretionary, it couldn't provide advice unless Mr A agreed to it. Finally, in relation to the point the estate of Mr A raised about Mr A's deteriorating health and his vulnerability, they said there was no evidence Origen was told about this so they couldn't adapt in any meaningful way. They said nothing arose in the 2021 review meeting for Origen to make a note of.

The estate of Mr A disagreed. It highlighted the cause of Mr A's death and said it would have been obvious to anyone speaking to him in 2021 that he was very unwell. It said the Power of Attorney was active before 2021, so it is significant that Origen held the review meeting with neither his wife nor any other Power of Attorney holder present.

The Investigator wasn't persuaded to change their opinion. They said there was no obligation on Origen to seek ratification from a Power of Attorney; it was able to conduct a review meeting with Mr A in 2021; there was no duty for Origen to have proactively enquired about Mr A's health following the review meeting; and there was nothing to support Origen being told about Mr A's deteriorating health.

The estate of Mr A repeated that it would have been obvious how unwell Mr A was – Origen's failure to take action was negligent. It also repeated the point about Origen's trail commission being high and it should have been transparent. It said it had not been given a copy of the 2021 review meeting write-up and requested a copy.

The estate of Mr A provided further comment on the 2021 review meeting document. It pointed to a number of things it said was broadly correct including the values of Mr A's savings and investment portfolio. But it said there was no mention of the trail commission. And it said the reference to Mr A having made gifts to his daughters was false. It said the gifts were not made – it would not have been possible for Mr A to have withdrawn the money from his bank account and there is no record of a withdrawal from his investment portfolio. It said the recorded detail demonstrates Origen ought to have been aware of Mr A's deteriorating health and vulnerability, but it took no action.

Because things could not be resolved informally, the complaint was subsequently referred to me for a final decision.

Before reaching my decision, I asked Origen to provide a copy of the call recording of the annual review meeting conducted in March 2021 for my consideration, which it did. I then shared this with the estate of Mr A and I gave it the opportunity to comment on it.

The estate of Mr A replied. In summary it said the following:

- It repeated Mr A's cause of death and how his conditions deteriorated over time, which it said is widely understood.
- It appears Mr A intended to give his daughters a large sum of money when he was alive, but he failed to do so. Origen was aware of his intent.
- Because Origen could see that no withdrawals were made from the investment portfolio, it should have immediately seen something was wrong.
- Origen said Mr A was content with his investments, but it is misrepresenting the position – he did not intend to keep all the money invested. He intended to give money to his daughters.
- It wasn't for the Ombudsman to assess whether Origen had a duty of care to the late Mr A's daughters.
- Multi-way telephone calls have existed for many years and Origen should have employed this here, which would have avoided the situation – Origen's failure was negligent.

**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. 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.

Having done so, I've decided to not uphold this complaint for largely the same reasons as the Investigator. My reasons are set out below.

**ISA allowance utilisation and IHT planning**

Origen explained to the estate of Mr A that, following the original advice given in 2011, the late Mr A's ISA allowance was utilised using the DFM's auto-ISA facility up to the point his general investment account within the portfolio was depleted in 2015. It said because the DFM notified the late Mr A of this, a complaint about the non-utilisation of his ISA allowances is now out of time. And the estate of Mr A appears to have accepted this.

But the estate of Mr A has also made the point that 5% could have been withdrawn from each of the late Mr A's two investment bonds and invested in an ISA for tax-efficiency. It says that given the late Mr A was a level 3 service client from 2021, there are two tax years – 2021/2022 and 2022/2023 – where Origen failed to utilise the full ISA allowance so it could be inherited by the late Mr A's spouse.

Firstly, I think it's important to clarify that the late Mr A's investment bonds were not held as part of the DFM portfolio. So, the DFM had no discretion or authority to act on these investments. Any action in relation to Mr A's investment bonds would have required involvement from Origen. But importantly here, the service Origen provided to the late Mr A was an advisory one. So, it could not for example unilaterally make withdrawals from the late Mr A's investment bonds and invest the proceeds into an ISA, even if it thought it was the right thing to do. Origen could only act if the late Mr A wanted to and he agreed to it providing further advice, which is what an action such as this would have required. And in line with its service agreement, any formal advice and recommendation would have come at an extra cost.

The main opportunity for Origen to offer the late Mr A further advice was at the annual review meetings. Origen says these were offered to the late Mr A every year, but he didn't always accept the invitation. For the relevant tax years the estate of Mr A has referred to, I can see Origen did carry out an annual review with the late Mr A in March 2021. The review was carried out by phone, which was followed up in writing in a report titled 'Client Meeting Summary.' Having listened to a recording of the phone conversation and looking at the resulting report, it is clear that the subject of protecting the late Mr A's estate and IHT planning was discussed. It was clear that the late Mr A's estate had a significant tax liability and the adviser strongly recommended that he consider taking action to mitigate his likely tax liability. The adviser suggested that this should be reviewed at a further meeting to include the late Mr A's family members.

I think any advice concerning the late Mr A's investment bonds would form part of any broader advice about IHT planning and mitigation – I don't think this was a separate and distinct matter. In my view Origen made it clear to the late Mr A that advice was required here and that there were things that could be put in place to mitigate his IHT liability.

But as I said above, crucially this required the late Mr A to engage with the subject and agree to Origen providing that advice and recommendation. Origen could not force him to act – it could only set out what it believed required further attention. And I'm satisfied it did this. Protecting the late Mr A's wealth was discussed at the original advice meeting in 2011. Origen says it was also discussed in 2015.

Regrettably, it appears that the late Mr A did not seek or agree to Origen providing him with

advice on this subject. I can see Origen attempted further contact in February 2022, but nothing came about. And while it is unfortunate that no further advice on IHT planning and mitigation measures took place, this was not due to any failing on Origen's part. I'm satisfied Origen has done nothing wrong here.

**Fees / trail commission**

The estate of Mr A says that Origen's fees were excessive, they were not representative of the service it provided and it was not clear and transparent about them. It is seeking a partial refund of fees for as far back as allowable.

But like the Investigator, I've seen no evidence to suggest it is fair for me to direct Origen to refund any fees. I don't think Origen was unclear about its ongoing fees or that it was receiving a fee and not carrying out services in return.

Origen's ongoing management or servicing fee of 0.625% plus VAT (0.74%) was taken from the total annual management fee of 1.25% from the late Mr A's the portfolio value. And Origen's fee provided the services set out in the Client Service Agreement I referred to earlier on. Origen says the fee of 0.625% remained the same from 2011 onwards.

Origen's fee was in my view clearly set out in the 2011 advice paperwork in the section titled 'Charges'. The late Mr A also signed a Client Service Agreement in 2011, which at the time detailed that he was a 'Level 3' client, and in my view this clearly explained what services Origen would provide him with. In 2015, the late Mr A signed another Client Service Agreement when the level of service reduced to 'Level 2'. Again, I think it was clear what Origen would provide for its fee.

All fees and charges were detailed in annual statements issued by the DFM. I've also seen an example from March 2021 (at the same time as the annual review meeting) of the annual valuation report Origen produced, which I can see contained a section about costs and charges. Again, the ongoing adviser charge of 0.74% was clearly set out here both as a percentage and what that equated to in pounds and pence.

All of the above suggests to me that the late Mr A was aware or ought reasonably to have been aware of the ongoing fee he was paying to Origen. I've seen nothing to indicate that Origen did not provide the services it said it would under the respective service agreements. The late Mr A might not have always had an annual review meeting for example, but it appears he was offered one. And Origen seems to have offered one even when the service level reduced and it was not obliged to provide one.

I don't think Origen's fee was excessive as the estate of Mr A suggests. I think it was broadly in line with ongoing annual advice / servicing fees typically charged by advice firms in these circumstances. And as I've said, I think it was clear to the late Mr A what that fee was.

So, overall I've seen nothing to persuade me that Origen acted unfairly or unreasonably here, so I will not be directing it to refund any fees.

**The late Mr A's ill health – was he a vulnerable consumer?**

The estate of Mr A has repeatedly made the point that the late Mr A's health was poor, particularly at the time the annual review meeting was carried out in March 2021. It has provided evidence of the late Mr A's cause of death – a condition it says it widely understood to follow a pattern of deterioration. It says it would have been clear to anyone that spoke to

him that his health was deteriorating and that Origen failed to take action to treat him as a vulnerable consumer.

I think it is important to stress to the estate of Mr A that I am not disputing the late Mr A was suffering with ill health and that he had medical conditions at the time, which ultimately led to his death. But there is no evidence that the late Mr A disclosed to Origen the details of his medical conditions. And based on what's been presented, I don't think it was reasonable for Origen to have understood he was suffering ill health to the extent that he was vulnerable or not able to discuss his financial affairs himself such that Origen should've acted differently as a result.

A key piece of evidence I have relied on here is the recording of the telephone annual review meeting Origen held with the late Mr A in March 2021. I'm not going to share all the content of this phone call here – the estate of Mr A has been provided with a copy of this recording, so it is aware of what was discussed. But in my view, having listened carefully to the entire phone call, there is nothing here that ought reasonably to have prompted Origen to believe that the late Mr A was not willing or able to discuss his own financial affairs at the time.
I think the late Mr A appeared lucid, he was able to ask and answer questions and he had a good grasp of his overall financial position. At one point the late Mr A lost his train of thought, but this was well into what was quite a lengthy call. I don't think it is reasonable to conclude from this that Origen ought reasonably to have been on notice that something was wrong. The late Mr A did tell the Origen adviser that he had several medical conditions, but he did not discuss them in anymore detail.

At approximately 10 minutes into the call and then again at around 27 minutes, the adviser made it clear that the late Mr A could have a third party present on the call, including a family member. The adviser spoke about the advantages of this and the late Mr A referred to his Power of Attorney. But the late Mr A made it clear, in my view, that he was happy to continue and to discuss his affairs without anyone present. I'm mindful too that Origen was not giving advice here – this was a review meeting. And the write-up of the meeting was sent to the late Mr A and his wife, so the late Mr A could share this and discuss this with this family if he chose to do so.

Overall, I don't think Origen did anything wrong here. There is no evidence to support the assertion that the late Mr A was in a vulnerable position such that Origen should have taken additional steps and for example insisted on a family member being present at the meeting. I'm satisfied Origen did not act unfairly or unreasonably towards the late Mr A.

The estate of Mr A has repeatedly referred to the reference in the review meeting write-up about what it says is a false statement that the late Mr A gave each of his daughters a large sum of money. Most recently it has said that it appears the late Mr A intended to given them money but failed. It says because Origen could see that no withdrawals were made from the late Mr A's investments, it should have immediately realised something was wrong. It also says Origen misrepresented the investment position – the late Mr A cannot have been content with his investments because he intended to withdraw some and give it away. Furthermore it says it is not for me to assess whether Origen had any duty of care to the late Mr A's daughters.

Firstly, in the phone call, the late Mr A said that he had given cheques to his daughters. He had already made the gifts – not that he intended to given them money by withdrawing funds from his investments. This is what prompted the discussion about IHT and potentially exempt transfers. Origen did not have access to the late Mr A's bank account statements, so I don't think it had any reason to question what the late Mr A said or that it ought reasonably

to have been on notice that something was wrong.

Secondly and crucially, this decision is not concerned with whether the late Mr A did or did not make gifts to his daughters. The matter I am addressing here is whether Origen ought reasonably to have been aware of the late Mr A's ill health and/or vulnerability and if so, whether it ought to have taken appropriate action. The call recording is evidence I have relied on in deciding this point. And as I have set out above, in my view there is nothing here which ought reasonably to have alerted Origen that the late Mr A was ill to the extent that he was vulnerable or unable to conduct his own affairs at this time and it needed to act differently because of this. As I've already said, the adviser on more than one occasion offered the late Mr A the opportunity to have someone else present at the meeting and he said it wasn't necessary. In my view there was no reason for Origen to have questioned this. As I also said above, no advice was given at this meeting. And the suggestion that the late Mr A should consider advice about his IHT liability, was presented in the context that it should be held with family members.

So, for the reasons above, I don't uphold this complaint.

In closing I can see that the estate of Mr A has raised concerns about the late provision of the 2021 review meeting document and the call recording for its consideration. But this evidence has been shared and the estate of Mr A was given sufficient opportunity to comment on them before I reached my decision. So, I'm satisfied I've followed the rule of natural justice and the principle of fair treatment here.

**My final decision**

For the reasons above, I've decided to not uphold this complaint – so I make no award in the estate of Mr A's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr A to accept or reject my decision before 25 April 2024.
Paul Featherstone
**Ombudsman**