DRN-5169895

The complaint

Mr W complained about advice he was given to transfer the benefits of a deferred defined-benefit (DB) pension scheme to a type of personal pension. He says the advice, which was provided in December 2017, was unsuitable for him and believes this has caused him a financial loss.

Origen Financial Services Limited is responsible for answering this complaint. To keep things simple therefore, I'll refer mainly to "OFS".

What happened

The pension in question here related to a DB scheme with Mr W's then employer. The Trustees of the deferred DB scheme had invited OFS to present to Mr W and his co-workers on the benefits / options with the DB scheme. And if a member wished to take regulated financial advice from OFS, this was being paid for by the Trustees.

Mr W was passed to OFS for regulated pension advice. Information gathered about his circumstances and objectives was broadly as follows:

- At the point of recommendation, Mr W was 57 years old.

- Mr W had been with his employer for some years. As a consequence of this, he had a 'older' deferred DB pension scheme related to when the site on which he worked was owned by a large British manufacturing company in the aviation sector. This pension is *not* the subject of any complaint.

- When the site was taken over by a US owned firm, Mr W was enrolled in a 'newer' DB scheme – this DB pension *is* the subject of this complaint.

- My understanding is that the 'newer' DB scheme then closed on 31 December 2013 with existing members such as Mr W then placed into a defined contribution (DC) scheme. This meant Mr W's 'newer' DB pension scheme was placed into deferment. This DB scheme had a normal retirement age (NRA) of 65 and Mr W was being offered a cash equivalent transfer value (CETV) of around £120,576 if he transferred away.

- As of 2017, Mr W's DC scheme had an existing fund value of £22,614.

- Mr W was not married and had no financial dependents. He owned a property in which he lived which had a £15,000 mortgage remaining on it with 5 years left to run. He anticipated that he would use some of his savings to pay this mortgage off completely quite soon.

- Mr W had also expressed a desire to stop working relatively soon – around the age of 59. He said this was his preferred retirement age.

- Mr W had around £14,842 saved in a combination of savings accounts and shares and a further £121,085 in a bank account. Mr W had no other financial liabilities.

OFS set out its advice in a recommendation report on 8 December 2017. In this it advised Mr W to transfer out of his more recent deferred DB scheme and into a personal pension plan with a large and well-known UK pension provider. He was further advised to invest into a 'governed portfolio' fund. OFS said this would allow Mr W to achieve his early retirement objectives. He accepted this advice and so transferred the next month, January 2018.

In 2023 Mr W complained to OFS about its advice via a claims management firm. On Mr W's behalf, it said he shouldn't have been recommended to transfer out to a personal pension. In response, OFS said it hadn't done anything wrong and was acting on the retirement objectives Mr W had at the time.

Disagreeing with this, Mr W referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a 'view' saying he thought that Mr W's complaint should be upheld.

I issued a provisional decision about this case on 19 November 2024 where I comprehensively explained that I wasn't minded to uphold the complaint. I said that I thought Mr W's specific circumstances showed the transfer-away was probably right for him. I gave the parties some time to respond. Both have now done so and have made no further comments, so I'm now issuing 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 also 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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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

The below is not a comprehensive list of the rules and regulations which applied at the time of this advice, but provides useful context for my assessment of OFS'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1. that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, OFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests.

I've used all the information and responses from the parties involved to consider whether transferring away from the DB scheme to a personal pension was in Mr W's best interests.

I'm not upholding Mr W's complaint.

Introductory issues

I started by considering carefully the points brought by the firm representing Mr W. It says that the advice to transfer his DB pension was inappropriate and has resulted in significant losses. It further alleged that Mr W wasn't experienced in these matters and that he had a low attitude to risk (ATR) and that the transfer was unlikely to benefit him in any way. Finally, it said that it was only the adviser who had benefitted from the advice process whilst Mr W, who was wholly inexperienced in these matters, had incurred unnecessary costs.

I do understand the point about there being a potential loss incurred. However, I've not seen any evidence that a loss has happened in this particular case. That's not to say a loss isn't possible, but as I'll explain below, the financial analysis of the time did show that investing in a personal pension in Mr W's then circumstances, did produce a reasonable chance of achieving growth rates that made transferring viable.

I'm afraid that I'm also not persuaded that Mr W lacked the financial knowledge assumed by the firm representing him or that he had a low ATR; the evidence suggests otherwise. His ATR was recorded as "medium" and it doesn't seem to have been challenged at the time. More so, I think the evidence I've seen does strongly imply that Mr W, whilst certainly not a financial expert, had a reasonable knowledge of his pension products, a good grasp on the different types of scheme available, and some personal and recent experience of investing. I've seen evidence, for example, of him being a careful saver, prudent in the management of his own financial affairs, and having current and previous experience of owning shares. From the conversations noted down on paperwork completed at the time, I think the "medium" ATR categorisation was broadly correct.

On the issue of incurring unnecessary costs by transferring from a DB scheme to a type of personal pension, I accept Mr W incurred more costs. However, I think it's fair to say that the platform provider chosen – and the funds allotted within the new personal pension plan – were at the lower end of the then industry standards. Nevertheless, with his deferred DB scheme there were effectively no charges levied on Mr W to be in the scheme. On fees for the actual pension advice, OFS was contracted by the Trustees to provide this and so Mr W himself was not charged anything.

Financial viability

OFS explained in its recommendation report and supporting documents the relevance of 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

As I've explained, Mr W told the OFS adviser that his plan was to retire early. This aspiration wasn't long away and I think the evidence is persuasive that at that point in time Mr W intended to stop working relatively soon. He had recently turned 57 and his preferred retirement age was specifically listed on the report as being on his 59th birthday. Elsewhere a retirement in approximately 18 months was noted on the documentary evidence which I think was allowing him flexibility in choosing the right time. So I think the adviser was justified in accepting Mr W's retirement aspirations as being in the short-term, realistic and planned for.

The transfer analysis[1] set out a number of different critical yield figures relating to retiring from the scheme at different ages. However, as I've said, the facts were clear that Mr W wanted to retire at or around the age of 59; the important critical yield figures were therefore the ones pertaining to that age. On a strict like for like comparison the critical yield figure was 11.4% but this was for a joint life personal pension plan where death of the member would result in ongoing payments to a spouse. As a single person, I therefore don't think that using the critical yield comparison for a single life plan was unreasonable in these particular circumstances. The yield for a retirement at 59 in these circumstances was only 2.8% per year. The critical yield (single person) for a retirement at 65 was 2.2%. In my experience, these are low critical yields and therefore they raised the prospect – if not the certainty – that getting very close to them might be possible.

On the other hand, the relevant discount rate - which is a measure of how much an investment is likely to grow by - was 2.5% per year if assuming a retirement at 59. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. I've also kept in mind that the regulator's upper growth projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

With all these projections and critical yield figures in mind, I don't think it would have been unreasonable to assume there was at least a meaningful chance of the transfer being viable on financial grounds. However, I think the OFS adviser erred on the side of caution when they were advising Mr W on this issue. For example, they told Mr W that achieving the 2.2% annual growth rate (retirement at 65) was achievable but that 2.8% growth (retirement at 59) probably couldn't be considered as achievable.

I think what the adviser was following here were their own firms 'guardrails' in respect of DB pension transfers. I also think these procedures were relatively strict and so the adviser didn't want to take any chances by suggesting a growth projection which might not occur. At around the time the advice was being sought by Mr W, financial markets had previously received a shock relating to certain current events and political instability. We were also still in a period of sustained ultra-low interest rates and the Bank of England had only recently voted to increase the bank rate to 0.5%.

So I think it was very much against this backdrop that the recommendation report said, *"*[OFS] *would not normally recommend a transfer if the critical yield was equal to, or more than, set values based on the anticipated medium return"*. But I think the outcome of the analysis here showed that whilst erring on the side of caution, this was a very marginal call indeed. We do often see a great many cases where the critical yield is markedly higher than even the most optimistic projected growth rates. But given what I've said above about *this particular* case, I think reaching close to 2.8% was a possibility. As with all projections, they can undershoot or overshoot assumptions but the discount rate here was 2.5% and the regulator's assumption for a "medium" risk investor was higher. So, although this argument was never used by the adviser at the time to promote transferring away, I don't think realistically targeting, say approximately 2.5 -to- 4%, in future growth over two years or so would have looked excessive.

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[1] "[Mr W] *Pension Transfer Analysis* [report] *23 November 2017"*

I accept that DB schemes typically include other benefits, a favourable one being death benefits for a surviving spouse. But as I'll explain more about later, this feature wasn't one which really related to Mr W. So, whilst beneficial to others, giving up normally valuable death benefits wasn't a defining feature for him.

All this means that in financial comparison terms, transferring could quite reasonably have been portrayed as a very 'close call' depending on how optimistic one was being about future growth assumptions. However, it's important to say here that OFS's recommendation that Mr W should transfer out to a personal pension was not predicated on the financial comparisons with his current scheme alone. Rather, OFS said he had quite different reasons to transfer away.

The crux of the matter here was Mr W's clear and stated desire for an early retirement which was imminent. I've therefore thought about this and the other considerations which might have meant a transfer *was* suitable for him.

I've considered these below.

Other reasons to transfer

Looking at the features of Mr W's wider situation, it's important to start from the point that OFS's recommendation to transfer away was essentially based on him being able to retire at around the age of 59. The evidence, in my view, is very clear that this is what he told the adviser he wanted to do. But if achieving this, then he needed to have access to money on which to live on until he reached the age(s) of 65 when his other DB pension 'kicked in' and to a lesser degree, the age of 66 when his state pension started.

Mr W and the adviser clearly discussed how this could be done in a fairly detailed way; this is evident from the documentation I've seen from the time. On 'current' prices, Mr W was forecast to receive an annual pension of £12,491 at the age of 65 in the DB scheme he wasn't considering transferring. In addition to this, his annual state pension was forecast as £7,091 per year. Given there was no indication of these benefits being moved or otherwise changed, this was a guaranteed and inflation proofed retirement income of around £1,500 per month (net) from the age of 65 until Mr W passed away. With this £1,500 per month guaranteed income in mind, I then considered whether his own estimation about what he needed to live on during his retirement from around the age of 65, was credible.

Mr W was single and he appeared to live a moderate lifestyle in financial terms. I think this is evident with reference to his then income and expenditure disclosures made at the time these pension matters were being discussed. The records show that Mr W had current outgoings of around £1,220 (net) per month. And by way of a simple comparison, Mr W told the adviser that he estimated a requirement for around £1,500 (net) per month in retirement. I think this was a prudent and well-calculated income assumption being put forward by Mr W. It was also entirely realistic covering as it did the likely need for some additional spare capacity due to life's uncertainties.

So, to be clear, Mr W's estimations of what he needed to live on after the age of 65 were therefore fully covered by the 'old' DB scheme and his state pension together. And so this only left the years 59 -to- 65 income 'gap' left needing covering if he stopped working as he clearly hoped to do.

Of course, Mr W had the option to do nothing and just keep his 'newer' DB scheme where it was for now, aged 57. He could then crystallise (commence) it more or less straightaway and begin to start drawing an income, at the point of him retiring. Retiring early in this way was allowed under the scheme rules and he could have either generated an annual pension of £3,656 at the age of 59, or he could have drawn £2,784 annually and taken a tax-free lump sum of £18,557. Mr W could have also combined this scenario by adding the existing *DC scheme* he held through his employer which in 2017 had around £22,614 invested within it. I think it's also fair to point out that even the short period of time which would pass until he reached 59 would have additionally seen this DC scheme grow because his monthly contributions to this scheme were around £400 per month. We can therefore assume this meant the DC scheme could potentially grow to reach over £30,000 in value by the time he stopped working, aged around 59.

I completely accept that these options coupled together aren't insubstantial amounts of money. In many ways they could seem a reasonable sum with which to start your retirement journey. However, the period which Mr W was attempting to 'bridge' was between stopping working at the age of 59 - and then taking his other (guaranteed) pensions at the age of 65 (and 66). And if assuming he needed £1,500 per month to live on, he likely needed to amass around £120,000 (allowing for some inflation) to achieve the certainty of making his plan work. But in my view, whether used independently or combined together, the above options fell considerably short of the amount he'd need to retire at the age of 59.

I therefore considered another scenario. Mr W could also have been recommended to just use the independent cash savings he had to either supplement the above, or just to draw down entirely from. This could have had the advantage of him not needing to use any of his pensions at all until he reached the age of 65.

But this would have effectively used up nearly all his cash savings particularly as Mr W had also stated his intention to pay off his mortgage completely. To do this would have required around £15,000 which he'd have needed to take from those savings. Obviously this would have reduced his cash holdings somewhat as a result, thus leaving less to draw from to meet his living expenses.

I think Mr W wanted to pay off his mortgage completely. In my view, reducing one's final financial liability like this could be viewed from a positive perspective and I'm satisfied this mattered to Mr W. So I think retaining his DB scheme and relying on just using his cash holdings to live off for six or seven years would have caused uncertainties for Mr W. It would have also meant that he would effectively be entering his mid-sixties with almost no cash. It's true that at 65, he would have eventually had more money than he actually needed in annual pension because he'd retained the newer DB scheme. And I accept that having more income is a relatively 'good problem to have' - but it came with a cost. This is because overall this option would have left Mr W facing old(er) age with a very much reduced cash savings contingency than he'd been used to for several years. Admittedly, as a 'pay off' he'd have a small taxable pension *surplus* each month. But this was something which he didn't really appear to need. I don't think Mr W would have wanted this and I don't think it really met his needs.

- *Other issues*

Death benefits - death benefits are also an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. I don't think this issue affected the rationale for him transferring in any *major* way, but as Mr W himself knew, the DB scheme in question contained certain benefits payable to a spouse and children if he died. However, these weren't relevant to Mr W and he'd specifically expressed a wish during the advice sessions to leave any remaining pension to named relatives.

In his late fifties and in apparently good health this shouldn't have been a defining feature of the transfer advice – and it wasn't. Nonetheless, it shows, in my view, that Mr W understood his pension and I think it probably provided a small degree of comfort that in the event of anything unforeseen happening in the short-term, a part of his fund might be passed on tax-free to his brother as part of his wider estate. With the DB scheme, this wasn't possible.

Tax-free lump sum – by transferring to a personal scheme Mr W was able to receive slightly more tax-free cash or utilise this feature in drawdown over a number of years. Again, whilst not a defining feature or major reason to transfer, I think Mr W probably liked the idea of having this flexibility available to him as he started on his retirement journey at what was a relatively young age.

<u>*Summary*</u>

I have considered this case with great care.

Upon assessing the evidence, I first took note of the regulator's position that transferring from a DB scheme should start from the position that it is likely to be unsuitable. Genuine concerns have been raised that transferring away from DB schemes has taken place without proper advice or careful thought about the consequences. Other dangers have been that money has been removed from DB schemes irresponsibly, for example with plans to withdraw funds at unsustainable rates. I've therefore factored-in all these concerns and issues whilst also assessing the specific facts present in Mr W's complaint. I have also considered that the government, in 2015, enacted substantial changes to pension legislation known as 'pension freedom' designed to promote flexibility for those who really require it.

I began by explaining why I don't think the allegation made on Mr W's behalf that the adviser predicated their recommendation on him transferring away 'at all costs', is a fair one.

Then, in terms of the financial comparisons posed by the transfer, I have explained how I think the OFS adviser adopted a cautious and sensible approach. In my view, this set the broader scene for the advice, which was that the adviser considered Mr W's best interests but also his strong desire to retire early. In fact, the financial comparisons between remaining in the DB scheme or transferring away showed the differences were marginal. But the adviser told Mr W that transferring on this basis alone wouldn't be the right thing to do.

However, Mr W had a number of pensions including a larger DB scheme which wasn't the subject of any recommendation to transfer away. Overall, the advice properly recognised this and together with his state pension these provided certainty for Mr W's future that he could sustainably meet his retirement income needs from the age of 65.

With his longer-term pension strategy sorted, this allowed focus to be concentrated on his shorter-term retirement needs. Mr W's major priority in entering the advice process with OFS was that he wanted to stop working at the age of 59. And this is what the adviser rightly focussed on. There were some options open to Mr W to try and achieve an early retirement without leaving the DB scheme in question or using his cash savings to fund his monthly living costs. But essentially, these mainly failed to bridge the income gap between the ages of 59 and 65 caused by Mr W's intention to stop working early. In my view, these other options weren't in his best interests.

On the other hand, the transfer of this one pension left Mr W, in my view, in an agreeable situation: he achieved the flexibility he wanted from the age of 59, whilst still retaining two guaranteed and index-linked schemes beyond the age of 65.

On this basis I don't think the advice was unreasonable. Transferring to a personal pension *in this particular case* provided the freedom and flexibility for Mr W to effectively compress these funds to use over a more limited period of about six or seven years. Doing this allowed him to retire with relative financial comfort at his preferred age. He was in good health and the evidence shows he'd thought this through and had planned his retirement carefully.

I'm very sorry to disappoint Mr W. But in my view this was a situation which Parliament would have had in mind when designing the greater flexibility for those with pensions.

For the reasons given, I am not upholding this complaint.

My final decision

I do not uphold this complaint.

I do not require Origen Financial Services Limited to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 December 2024.

Michael Campbell
Ombudsman