

The complaint

Mr E is unhappy with the advice received by Origen Financial Services Limited (Origen) about transferring his employer's defined benefit (DB) pension benefits to a group personal pension.

What happened

In 2010 Mr E was offered an enhanced transfer value offer with a cash incentive by his employer if he transferred out of his DB scheme. Mr E's employer paid Origen to provide Mr E with free, independent advice on his pension options.

Origen reviewed Mr E's circumstances and recommended him to retain his DB benefits. In the suitability report of 7 February 2011 he was given information about the benefits he would receive in retirement from the DB scheme.

In their reasons for their recommendation to keep his DB benefits they explained that this was his only pension with a "benefit promise". Based on his term to retirement and attitude to risk they didn't consider that his benefits in a personal pension would match his benefits from the DB scheme in retirement. Mr E had told them increasing his pension was important and based on the critical yields set out in the report, they didn't think this was feasible. The risks of transferring to a personal pension (investment, longevity and annuity risk) were also explained.

Mr E received his suitability report with the transfer analysis and various other documents on 7 February 2011 by email. He responded the next day and said he wanted to go against the recommendation and accept his employer's enhanced transfer offer, *"the rationale being that a short term gain outweighs the longer term benefit."*

He asked for the necessary paperwork to be sent to him. The next day Mr E sent another email asking if everything could be sent to him by email to speed up the process. He had also spoken to his HR department who had told him the cut off date for the offer was the 14th February.

In response Origen sent Mr E a further letter on 9 February. They reiterated that their recommendation to retain his DB benefits was made after careful consideration of his circumstances, attitude to risk, objectives and financial viability of transferring his pension. They told Mr E their advice remained unchanged that he shouldn't transfer and if he decided to do so anyway there was every chance his eventual pension benefits would be lower than if he had remained in his DB scheme.

They stressed that they didn't agree with his decision to transfer, but understood that he had the right to ignore their advice and so the next step would be to provide a suitable product and product provider to transfer to.

However, they urged Mr E to read the report and their recommendations again and offered to discuss anything with him or answer questions he might have. They ended the letter by saying (in bold):

It is very important that you fully understand the implications of the action that you are proposing to take (and the reasons why I consider it to be inappropriate for you) because once you proceed with a transfer you cannot reverse it.

In a separate letter (issued the same day) they reiterated the same warnings again. They said if despite their recommendation to retain his benefits he still wished to transfer, they would recommend the Legal and General Worksave Pension Plan as his new pension and to invest into a cautious managed lifestyle fund. The annual management charge was 0.33%.

He was also provided with the necessary discharge and application forms and information about what other documents he needed to provide. Again the letter was finished off in bold stressing the importance that he understood the implication of his actions and why Origen thought it was inappropriate for him to transfer.

Mr E went ahead with the transfer.

In 2024 Mr E complained about the advice he received. In summary his representatives said:

- he wasn't adequately informed about the benefits he was giving up and the advantages and disadvantages of a transfer. If Origen had done so, he wouldn't have transferred his DB benefits.
- Mr E's email that he was going against the recommendation was sent just a day after the suitability report was sent to him and so he wouldn't have had the time to understand and digest the information. He was also given a deadline to respond of only five days (by 14 February).
- Origen recommended against the transfer but then subsequently made a product recommendation. This would have been misleading to Mr E.
- No proper insistent client process was followed. In any event Origen could have explained to Mr E that they couldn't assist in certain circumstances and refused to facilitate the transfer.

Origen rejected the complaint and also explained that they didn't think our service could consider the complaint as Mr E's new pension was also an occupational scheme and before 2015 the transfer between two occupational schemes was not regulated.

When Mr E referred his complaint to us, one of our investigators found that Mr E's Legal and General Pension was in fact a group personal pension and not an occupational scheme and therefore the transfer was a regulated activity we could consider.

Origen continued to disagree that we had jurisdiction to consider this complaint. One of my ombudsman colleagues previously issued a decision in which he explained that Legal and General had clearly confirmed that Mr E transferred to a non-occupational scheme. He also considered possible time limit issues, but found that Mr E had complained within the time limits set out by the FCA. His decision was that we could consider Mr E's complaint.

The investigator subsequently issued a view not upholding Mr E's complaint. He didn't think Origen had treated Mr E unfairly in the advice process.

Mr E's representatives disagreed and so the complaint was passed to me for an ombudsman's 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 firstly independently considered whether I have the power to consider the complaint and I agree with the findings of my colleague that this is a complaint I can consider.

Having reviewed all the available evidence on this case I have come to the same conclusion as the investigator that Origen didn't do anything wrong here.

They gave Mr E suitable advice not to transfer and explained what benefits he would be giving up (in monetary terms as well as telling him this was the only pension with a benefit promise.). They also pointed to the risk of a personal pension in comparison. And they told him that he wouldn't be able to match the benefits of his DB pension in retirement if he transferred out. I think the recommendation not to transfer and why was clear.

I also consider Mr E's email response on 8 February clearly shows he understood that he was going against Origen's recommendation and that he was consciously choosing a short term gain (I assume he was referring to his employer's cash incentive) over long term benefits.

Origen explained again that they didn't recommend him to do so and urged him to read the report with their reasons why it was inappropriate for him to transfer. And they offered to discuss anything with him if he wanted to. So I think they gave Mr E opportunity to rethink his decision and take more time to consider the recommendation. Origen did point out that if he still wanted to transfer he should return the paperwork no later than 14 February. This was obviously the deadline given by Mr E's employer to accept the offer. Mr E was already aware of this deadline as he had spoken to his HR department about this. However, he still had several days to review the advice as recommended if he chose to and speak to Origen again. Overall, I don't agree that Mr E was rushed or pressured by Origen to transfer. I think their communications throughout made clear that they wouldn't recommend this and that he should rethink his decision.

Origen did provide a product recommendation to Mr E where to transfer to. They simply understood that if he still decided to ignore their advice, as he had already indicated he wanted to, he would benefit from a suitable receiving scheme recommendation. There is nothing untoward about this. I think it remained clear from their letters that this didn't mean they supported his transfer decision. And they only provided him with a way to proceed once Mr E had told them that he wanted to go against the recommendation.

So I don't agree their advice was misleading. I also note that the Legal and General Worksave Pension and the recommended funds were suitable for Mr E. It was a plan with reasonable charges invested in line with Mr E's recorded low to medium attitude to risk.

I've carefully considered the 'insistent client' process Origen followed here. At the time an insistent client wasn't defined in COBS. However, the common understanding has always been that it was a client who was given a recommendation, decided to go against it but still wanted the firm to facilitate the transaction.

COBS 2.1.1R required a firm to 'act honestly, fairly and professionally in accordance with the best interests of its client' and COBS 4.2.1 stipulated that any information provided needed to be 'clear, fair and not misleading'.

The regulator doesn't require businesses to generally refuse acting for clients after a

negative recommendation. It's possible for clients to proceed on an insistent client basis.

Although a few years after the advice, I've also taken into account that the regulator issued a factsheet to advisers in 2015 to provide a "helpful reminder" of the regulator's position on advising insistent clients. This followed a thematic review it had conducted on advice for insistent clients in 2014.

The key steps to take in the regulator's view were:

- To provide suitable advice for the individual client and this advice must be clear to the client
- To be clear with the client about the risks of their chosen course of action
- It should be clear to the client that their actions are against the adviser's advice.

All of the above happened here as already explained.

Previous regulators as far back as 1994 had also set standards of what they would generally expect to see as evidence for an insistent client transaction with one of the common themes being evidence that the consumer had decided to go against the adviser's recommendation and that they had told the adviser why they wanted to do this in their own words, rather than for example sign a templated form.

Mr E's email of 8 February did explain that he wanted to go against the recommendation and why he wanted to proceed. I accept he didn't provide a detailed explanation and his representatives think Origen should have robustly challenged Mr E on his rationale and understanding. However, I think Origen did enough here. They clearly told him again that the transfer was inappropriate for him and that he likely would receive lower benefits in retirement and I think Mr E understood this. And Origen urged him to review the advice again and the reasons why they thought he should retain the DB benefits.

So I think Origen did treat Mr E fairly. They gave him a suitable recommendation not to transfer and explained what he was giving up and why they thought retaining his DB benefits was in his best interest. And they didn't pressure him or gave him the impression that they supported his decision.

.My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 10 July 2025.

Nina Walter
Ombudsman