

The complaint

Mr W complained about advice he was given to transfer the benefits of a defined-benefit (DB) pension scheme to a personal pension plan, in 2019. He says the advice 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, I'll refer mainly to "OFS".

What happened

The pension concerned related to a DB scheme from previous employment in the 1990s and so Mr W was a deferred member at the point of seeking this advice.

Information gathered about Mr W's circumstances were broadly as follows:

- Mr W had been offered a cash equivalent transfer value (CETV) by his deferred DB scheme of £53,876. The normal retirement age (NRA) of this pension scheme was 65 and Mr W had already passed this age and evidently hadn't yet decided what to do with this pension.
- Mr W was 66 years and 9 months old at the time of the advice. He was married and retired. Mrs W was 63 and didn't work.
- Mr and Mrs W owned their own home outright, valued at approximately £600,000. They also owned an investment property which they rented out. The capital value of this property was around £170,000.
- The suitability letter and fact-find documents completed at the time of OFS's transfer advice show that Mr W had a number of other pensions which were already in payment. For example, he had two other DB schemes which both were paying him annual pensions, and he had an annuity plan in payment. These three incomes all paid out for the rest of Mr W's life and then paid Mrs W 50% if she survived her husband.
- Mr W also received state benefit of £4,157 per year and was deriving £8,400 (gross) annual rent income from his investment property. He had already reached state pension age. Mr W also had a private defined contribution pension in drawdown. The figures imply his total annual income was around £40,000 per year (gross). His outgoings / spending needs were estimated at around £22,800 although Mr W said he expected this to decline when he reached around the age of 72. He said this was because, due to age, he'd spend less.
- Mr and Mrs W also had savings on deposit of around £61,714. They had no debts other than car finance being paid down in the usual way.

It was a requirement to first get regulated financial advice if seeking to transfer away from his deferred DB scheme. OFS set out its advice in a suitability report in July 2019. In this it

advised Mr W to transfer out of his DB scheme and into a personal pension plan. OFS said that this was based upon Mr W already having more than enough current income to meet all his and Mrs W's spending requirements in retirement. OFS said that by transferring, Mr W would achieve greater flexibility and control over this part of his finances and be able to tailor future withdrawals to his needs. So, after transferring, the advice was to then invest the sum with a large and well-known fund manager in a governed portfolio which was commensurate with Mr W's attitude to investment risk.

Mr W says he's since realised he might have been poorly advised to transfer this pension. He is represented by a claims management company and first raised a complaint to OFS about its advice in April 2024, saying he shouldn't have been advised to transfer out of his DB scheme at all. In response, OFS said it was acting on the financial objectives Mr W had at the time.

Disagreeing with OFS, Mr W then referred his case to the Financial Ombudsman Service in June 2024. One of our investigators looked into the complaint and said it shouldn't be upheld. The investigator thought the circumstances did indeed show that Mr W had all the retirement income he needed and that if he wanted more flexibility, then this method of transferring it to another scheme, would provide it.

Mr W still didn't agree with this and so the complaint has been passed to me to make 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 Business (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 the 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 19.1.6 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 we have to carefully consider whether transferring away from the DB scheme to a personal pension arrangement was in Mr W's best interests. I have also considered the responses to the investigator's 'view'. And having done all this, I am not upholding Mr W's complaint. Like our investigator, I think it was in Mr W's interests to transfer.

Introductory issues

As I've said, Mr W is represented by a company in bringing his complaint.

I accept that these events are from 2019 and that there may be aspects of his circumstances at that time which Mr W now finds difficult to remember. However, there are a number of inconsistencies with the points of complaint that Mr W now raises which I do feel that I need to address.

In bringing the complaint, for example, a key theme focussed on Mr W's (then) circumstances as of 2019. His complaint refers to him being employed at the time as a driver, when in fact, everything I've seen shows he was already retired. At the point of the advice, Mr W was almost 67 years old, and the contemporary documentation repeatedly refers to him as being "retired". In my view, this information submitted in Mr W's complaint about him being employed is therefore likely to be incorrect.

Similarly, I've also noted that his complaint refers to Mr W's pension portfolio consisting only of the DB scheme now complained of. Again, this isn't correct. Mr W actually had several other pensions which consisted of two DB schemes, an annuity which he'd purchased, and his and Mrs W's state pensions.¹

The complaint also refers to Mr W not being told by the OFS adviser of the losses of guarantee he would suffer by transferring away from his DB scheme and of the potential protections afforded by the Pension Protection Fund (PPF). But as I explain more about further down, there's several pieces of evidence showing that these issues were highlighted quite prominently during the advice sessions(s) and the accompanying documentation Mr W would have been given to read. The evidence I've therefore seen, is that these issues were featured heavily in the discussions which took place between the parties.

I note that Mr W's representative says that as far as investment and general financial knowledge is concerned, Mr W wasn't experienced in these types of issues. Whilst I understand the point being made – and we do see many cases where some people find these things difficult to understand - I don't think the portrayal of Mr W as a somewhat inexperienced consumer is a fair one. Mr W was a property investor. He himself said he was confident enough to manage his transferred pension and the evidence tends to show he had some previous experience of managing funds in similar circumstances to this. He already had such a personal pension and I think the fact he'd purchased an annuity (which was currently in payment) is supportive of Mr W having a satisfactory level of knowledge around pensions. Of course, we also know that Mr W had two other *existing* DB schemes. So, I think he'd have probably known quite a few things about how these types of schemes worked, including that they paid a guaranteed pension for life and that if he passed away, then Mrs W would get a proportion of the pension as an income until she died too.

¹ Mrs W's state pension was due in 2 years. Mr W's state pension age had already been reached.

Finally, I noticed some apparent inconsistencies in what Mr W said he required as a retirement income: at the time of the advice his declared spending outgoings amounted to around £22,800. But upon raising the complaint, this appears to have risen to an income requirement of £30,000. I think some of the difference could be explained by the uncertainty of whether Mr W's outgoings were shown in either taxed or untaxed requirements. However, I don't think this discrepancy really matters since – as I'll explain below – the evidence is clear that Mr W's income comfortably exceeded what he needed to spend to maintain a reasonable retirement. It consisted of a personal pension in drawdown, the two DB schemes, the annuity, and the state pension. Mrs W's state pension was due in a relatively short time and the income from the property would continue for as long as they wanted, at which point I've assumed a significant capital gain would be released.

Therefore, in my view, there is comprehensive evidence showing that Mr and Mrs W had income which comfortably outstripped what they needed for all their current and future spending needs in retirement, including all their discretionary spending.

Financial viability

OFS referred in its transfer recommendation to a 'transfer value comparator' (TVC). The TVC is essentially the comparison of how much it would cost to purchase, on the open market, a guaranteed income for life, with what the DB scheme is offering. In Mr W's case, the suitability report was clear that £79,779 would be needed to buy a pension with equivalent benefits to his deferred DB scheme. This was substantially more than the CETV of £53,876. And so, in my view, this presented a revealing window into just how much Mr W could be giving up by transferring away from his DB scheme.

However, I'm satisfied that the data explaining how much it would probably cost to buy an equivalent pension was explained to Mr W and portrayed by OFS in a reasonable way. I can see that it told Mr W that he could retain higher retirement benefits by remaining in his DB scheme. So, considering these explanations and also the overall tone of the suitability report, I think any reasonable reading of this would have clearly shown that the basis for the recommendation to transfer was not based on him achieving more. Indeed, what Mr W was being clearly told was that the like-for-like financial viability of the transfer probably didn't 'stack up'.

I say this because I think Mr W was told that transferring away would likely produce lower retirement benefits in the longer-term. The suitability report also used some graphs and explanations to demonstrate that using a 'drawdown' to match the same level of income available from the DB scheme, the transferred funds could potentially be completely depleted before Mr W died. The suitability also said that "*by transferring your [DB] scheme benefits, you will be giving up the pension benefits provided by the scheme and the guarantees that you currently enjoy will no longer apply*". It also said, "*.... there will be no guaranteed income or guaranteed increases to your pension in payment, nor any guaranteed spouse's pension as there is under the current scheme*".

With all this in mind, I think Mr W would have known what he was giving up, and as I've said, he also had existing DB pensions in payment which would have most likely meant that he already understood how these worked.

However, the rationale for transferring in this particular case wasn't predicated on the financial comparisons alone. Rather, it was restricted to a quite different category which mainly related to Mr and Mrs W's lifestyle. This showed that the income they currently had comfortably exceeded their outgoings. So, Mr W wanted to use this particular pension in a more flexible way and draw money from it when most suited to his and Mrs W's requirements.

In my view, it was on this basis that I think the transfer was merited.

Other reasons given for the transfer advice

I've used the documentation from the time to help list some of the main themes which the recommended transfer-away was based on. The suitability report listed these, and I've summarised them as follows:

- Mr W already had an income of £39,230 which comfortably exceeded his retirement spending needs.
- The DB scheme otherwise paid an income of only £2,444 per year, which represented only a very small part of Mr W's overall income. By comparison, the CETV of £53,876 was of much more use in the circumstances.
- Mr W wanted flexibility and control of this part of his pension and although the TVC showed the transferring option was poor by using a strict financial comparison to projected life expectancy, Mr W didn't want to draw this small pension in a conventional way.
- His health was generally poor.

I accept that Mr W probably went to OFS with a somewhat preconceived idea about what he wanted to achieve. But I've also considered that the adviser's job here wasn't to simply transact the transfer on any grounds. It was OFS which was the regulated party and Mr W was being charged for regulated advice.

However, a key theme here is that at the time of this advice Mr W's income already exceeded what he and Mrs W needed to live a reasonable retirement on. I think this is also demonstrated in that Mr W, although entitled to have by then already crystallised this DB pension, had obviously decided that income from this DB scheme wasn't something that he currently needed, and wouldn't need for the foreseeable future. What I mean by this is that Mr W had already passed the NRA of 65 years old some 21 months before seeking this advice - and he'd not started drawing upon this pension even though entitled to do so.

I also agree that Mr W probably viewed the annual income from the DB scheme of £2,444 as only a minor part of his overall income; whilst the £53,876 CETV would have seemed a much more attractive sum with which to enjoy bespoke and discretionary spending. I think it was also reasonable for Mr W to factor-in that upon getting older – he gave the age of 72 – his and Mrs W's discretionary spending might fall slightly, making their existing and index-linked income even more able to meet all their spending needs.

Mr W also spoke at the time of concerns about his ailing health. How much of a real problem this was is hard to judge. But I do think his own health conditions – and those endured by Mrs W – were genuinely believed by Mr W as reasons to consider using this pension in a more flexible way now whilst they still could. I think this was expressed in Mr W's desire to have the flexibility to draw down sums from the transferred funds in a way which met these particular circumstances, rather than to receive a modest pension which he thought he could do without now, and even more so in the future.

I've also noted that the tax-free lump sum created by transferring to a personal pension plan would have been modestly larger than that available by remaining in the DB scheme. This could amount to around £2,000 more. Under normal circumstances, I'd have expected a warning against this because withdrawing tax-free cash from a pension only leaves less to live on in future years. However, in this specific case, Mr W didn't 'need' such an income and

so I once again think this shows that these types of flexible features were appropriate in this case and suited to Mr W's needs.

I can't say whether, or to what extent, the death benefits issue influenced Mr W's decision to transfer away. But the notes refer to Mr W considering that after his death Mrs W would have enough income to live from, if she survived him. This was due to the benefits found in his other two existing DB schemes and the annuity he'd bought. The evidence is also persuasive that Mrs W had her own state pension and a number of assets that could generate income or provide capital security.

I should stress that I certainly don't think that this issue alone would have warranted transferring, but it wasn't without merit to consider it in a positive dimension. Rules in place at the time enabled the tax-free transfer of the full fund value of personal pension benefits. So, I think this could have been justifiably seen in these particular circumstances as an area supporting the transferring rationale.

Summary

I've explained why, in this particular case, there were reasons for Mr W to transfer away from his DB scheme to a personal pension arrangement. Having considered all the circumstances, I do think transferring was in Mr W's interests.

I began by considering the financial comparisons. These showed that by transferring away, Mr W would not have a realistic and credible path to growing his pension to a position that would eventually provide higher financial benefits at the point of his retirement. In fact, the opposite was true. However, I don't think OFS ever sought to hide the fact that transferring on this basis alone wasn't recommended.

The crux of this transfer relates to Mr W achieving a degree of flexibility in his income moving forward. Mr W already had two DB pensions, a guaranteed annuity, and a state pension. Although these were all slightly different types of pension products, a common feature they all shared were that of a guaranteed income, a notable degree of inflation proofing, and death benefits which basically paid an ongoing pension to Mrs W if her husband pre-deceased her. However, Mr W also had considerable equity in his home, a relatively large cash savings element, and a steady and reliable income from an investment property based on an asset in which there was also equity. Against this backdrop, I think that by the standards of most, Mr W was in an agreeable financial position.

Many transfers of DB schemes to a personal pension arrangement are simply not suitable, and we do often see 'stock' objectives used as transferring rationale. But I think it's important to remember that this was Mr W's money. He was never told that he'd be better off in the longer-term by transferring, and the recommendation to transfer needs to be considered against the flexibility he wanted.

Mr W already had enough secured income. This income exceeded all his expenditure by some margin and was more than enough to meet his and Mrs W's full retirement needs. That income was also largely protected against inflation, being as it was, a combination of DB pension schemes, an index-linked annuity, and the state pensions guaranteed by the then government's 'triple lock'. Mr W already qualified for the state pension and Mrs W would shortly reach her pensionable age too.

Everything I've seen shows Mr W wanted more flexibility. The DB pension in question here was relatively small and represented only a minor part of his overall pension provision. By transferring, Mr W could achieve a modest uplift in the tax-free cash which he could withdraw and then put the remainder 'cash' to any uses he saw fit. I think Mr W understood

this would mean the eventual depletion of this particular fund - but given his other resources this fitted with his needs.

In my view, this is the type of situation Parliament had in mind when allowing DB pension transfers to become more flexible and tailored to individual needs. So, for these reasons, I'm not upholding this complaint.

My final decision

I do not uphold this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 April 2025.

Michael Campbell
Ombudsman