DRN-4498495

The complaint

Mr R complains that Origen Financial Services Limited trading as Origen Financial Services (Origen) gave him unsuitable advice. He thinks this has led to a financial loss.

Mr R is represented in his complaint by a claims management company (CMC). But I'll only refer to him in my decision.

What happened

In 2013, Mr R had a stakeholder pension plan worth around £30,000. He was referred to Origen by his stakeholder pension provider. Origen said this was because he wanted to explore his Open Market Options (OMO).

At the time of the advice, Mr R's circumstances were as follows:

- He was aged 55 and married.
- He was unemployed.
- The household total income was £13,816 and the household total expenditure was £13,000.
- He owned his own home with a mortgage.
- He had medical conditions which could reduce his life expectancy.
- He wanted to start generating income from his pension. And to release the maximum tax-free cash from it so that he could reduce his mortgage and other debts.

Origen issued a Pre-retirement pack to Mr R in July 2013. This explained the scope of service it would provide him with. It said:

This report provides information covering conventional lifetime annuities and a brief overview of the alternatives which may be of interest to you.

Should you wish to explore any of the alternatives to conventional lifetime annuities we will be pleased to offer you financial advice.

The Pre-retirement pack also covered the advantages and disadvantages of choosing escalation within any annuity purchase. It also included an options decision tree to help Mr R decide on the shape of any annuity he might want to buy. And to help establish whether an enhanced annuity could be purchased.

In August 2013, Origen issued its annuity options report to Mr R. This recommended that after he'd taken his tax-free cash lump sum, he purchase the enhanced annuity with the best rates.

The Annuity options report stated the following:

This review of your annuity options has been carried out specifically to provide you with advice regarding your pension income and no other financial matters.

The report recorded that the fact find Mr R had completed had identified that his attitude to risk (ATR) was medium. The report then stated:

On further discussion, we agreed that the level of income needed to be secure and you did not want any volatility so we agreed that for this annuity recommendation we would consider your risk to be:… low risk.

The report stated that Mr R had decided on the following structure for his annuity:

- Joint life with 100% spouse's pension.
- Guaranteed fixed annuity. It was noted that Mr R should be aware that it would not keep pace with future levels of inflation.
- 10-year guarantee.

The report went on to state that Mr R could consider a drawdown pension as a suitable alternative to buying an annuity. But that this option had been discounted for the following reasons:

- *The size of your fund is too small to make a drawdown pension a viable proposition*
- *You require a guaranteed level of income*
- *The risks involved in a drawdown pension are above your stated ATR*

Furthermore, in relation to the annuity purchase itself, you confirmed that you simply want to get the maximum cash and income from your annuity. We agreed that we would therefore look at a Guaranteed Fixed annuity for the guaranteed and maximised annuity income that it provides. You also confirmed that you understood that it would not be protected against the effects of inflation. We discussed escalating annuities but we discounted this option due to the reduction in initial income and time taken for escalating annuity to return a total cumulative income equal to that of a Guaranteed Fixed annuity.

The report also confirmed that due to Mr R's medical history, enhanced annuity rates had been offered and were reflected in the quotations the report contained.

Mr R purchased the recommended annuity and it started in September 2013. However, in late 2022, he brought a complaint to Origen through his CMC as he thought it'd failed to consider whether he might be eligible for an enhanced annuity. He also felt that Origen hadn't adequately assessed his ATR. He said that a flexi-access drawdown arrangement would've been more suited to his needs.

Mr R also felt that Origen hadn't adequately explained the impact of inflation on his annuity income at the time of the advice. And felt that annuity rates had been low at the time of the advice. So it was poor advice to recommend an annuity purchase at such a time.

Origen issued its final response to the complaint in January 2023. It didn't think it'd done anything wrong. It said that at the time of the advice, it'd used a system which researched the whole of the market to obtain the most competitive annuity rates. It said that Mr R would've been fully aware of this. And felt that this was why he'd been referred to it by his pension provider.

Origen said that enhanced annuities had been discussed with Mr R. And he'd completed and signed a Medical Questionnaire, confirming that the information provided was accurate. It'd then researched enhanced annuities using the health details Mr R had provided. And the annuity Mr R had subsequently taken out was an enhanced annuity.

Mr R brought his complaint to this service in May 2023. His CMC said that it'd posted a new complaint about the suitability of the advice to Origen in March 2023. Origen said it didn't receive this. As our investigator had seen no evidence that the CMC had chased Origen for a response to the revised complaint, she gave Origen eight weeks from the time it'd received the new complaint to respond to it. She also withdrew the initial complaint the CMC had referred to this service.

Origen issued its final response to the new complaint in August 2023. It covered the following complaint points:

- Mr R felt that the suitability of the recommended annuity wasn't adequately assessed by the adviser.
- And that the benefits of a variable income hadn't been explained. Instead, he was merely presented with the drawbacks and benefits of a fixed income.
- Mr R felt that his adviser had forced him into the binary options of either low or medium risk categories. He didn't think this was an adequate assessment of his appetite to risk versus reward.
- Mr R felt that if he'd been given suitable advice he would've invested in a standard investment whilst still taking an income under a flexi-access drawdown arrangement.

Origen didn't agree that its advice was unsuitable. It said it'd provided Mr R with advice to purchase the annuity with the highest income available on the open market. It also said that the August 2013 report had explained why the annuity option had been recommended instead of a flexi-access drawdown arrangement. And that the report had clearly explained why Mr R's ATR had been assessed as it had.

Our investigator first considered whether Mr R's complaint was one this service had the power to consider. She felt that the complaint had been brought within the time limits which apply. She said she hadn't seen anything in the information provided which suggested that Mr R was aware, or ought reasonably to have been aware, of cause for complaint over three years before it was made. She asked Origen to let us know if it disagreed.

Our investigator then considered the merits of the complaint. She didn't think Origen's advice was unsuitable. Or that it'd done anything wrong.

Mr R didn't agree with our investigator. He still felt that he'd wanted a medium risk investment, but the adviser had persuaded him to go low risk.

Origen responded to Mr R's point. It said that he'd wanted security of income at the time of the advice. And that whatever his ATR had been assessed at, the need for secure income would've driven a secure – that is, low risk - outcome.

As agreement couldn't be reached, the complaint has come to me for a review.

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 first considered whether the complaint was bought to this service in time. In line with our investigator, I've found no evidence which suggests that Mr R was aware, or ought reasonably to have been aware, of cause for complaint over three years before the complaint was made. And, as Origen hasn't disagreed, or provided further evidence on this point, I agree with our investigator that the complaint was brought in time and that we can investigate the merits of it.

However, having considered those merits, I'm not going to uphold the complaint. I know my decision will disappoint Mr R. I'll explain my reasons for it.

I first considered whether Origen acted reasonably when it changed its assessment of Mr R's ATR from medium to low and recommended he purchased an annuity.

Was the ATR assessment reasonable?

Mr R felt he'd wanted a medium risk investment, but the adviser had persuaded him to go low risk.

Mr R's objective was to generate an income from his pension. And to release the maximum tax-free cash from it. He was unemployed at the time of the advice. And his household income was only just greater than his expenditure. So I can understand why Mr R wanted to generate income at this time.

I also understand that Mr R had debts and no savings at the time of the advice. So his capacity for loss was very low.

The August 2013 annuity options report stated that the fact find had identified that Mr R's ATR was medium, or Risk Level Three. This was defined as follows:

I regard myself as having a balanced approach to risk. I am therefore prepared to accept the risk that the value of my benefits may vary up or down. I require a broad-based approach for medium to long term investment, including exposure to equity based funds investing in the UK and major overseas markets. I am therefore prepared to accept the risk that the value of my income may fall in return for potentially good medium to long term rewards.

The report then said that the adviser had discussed this assessment with Mr R. And that they had agreed that because Mr R needed a secure level of income from his pension, and didn't want any volatility, they would consider his ATR to be low risk, or Risk Level One, for the purposes of the annuity recommendation Mr R had asked Origen to help him with.

Risk Level One was defined as follows:

I prefer guaranteed benefits or benefits known in advance wherever possible. I accept that this may result in higher costs or lower return but consider this a price worth paying for additional financial security. For investment funds security of income is important to me and I accept that this may mean low rates of return and that I may not be protected from inflation.'

While I can see that Mr R was originally assessed as a medium risk investor, I consider that Origen fairly amended that assessment, with Mr R's agreement, because of his overriding objectives and his financial circumstances at the time of the advice.

I say this because Mr R was unlikely to be able to tolerate investment risk – he had no other savings and his pension was therefore the only way of getting additional income at that time. I've also seen no evidence that Mr R had any investment experience other than that he'd gained from his existing pension investments.

Putting this another way, if the report had continued to assess Mr R's ATR as medium after his financial circumstances and objectives had been taken into account, I would've questioned the quality of the advice. Therefore I can't fairly say that the adviser acted incorrectly here.

I next considered whether the advice to buy an annuity was suitable. Or whether it would've been more appropriate to recommend Mr R took out a flexi-access drawdown arrangement.

Should Mr R have been advised to take out an annuity?

Mr R felt that the suitability of an annuity wasn't adequately assessed by the adviser. And that the benefits of a variable income weren't explained.

Mr R also felt that annuity rates were low at the time of the advice. So it was poor advice to recommend an annuity purchase at that time.

I first considered Mr R's point about low annuity rates. From what I've seen, I don't agree. I say this for a number of reasons.

First, I'm satisfied that given Mr R's objectives, and his low capacity for loss, an annuity was a reasonable recommendation. Second, Origen had no way of knowing whether annuity rates would increase or decrease over time. But I consider that it provided Mr R with full information about the income he would receive if he decided to purchase an annuity. Therefore Mr R made his decision on what to do with his pension fund with full knowledge of what he would receive during his, and then his spouse's, lifetime.

I also consider that Origen made it clear to Mr R that the decision to buy an annuity wouldn't be reversible and that it was possible that it would provide poor value. I say this because the cover letter for the July 2013 Pre-retirement report stated:

Once you have purchased an annuity with your pension fund, in most cases you cannot change your decision and you could be stuck with a poor value annuity for the rest of your life.

I next considered Mr R's point that if he'd been given suitable advice, he would've taken income from a flexi-access drawdown arrangement.

As our investigator noted, the Pre-retirement pack issued in July 2013 included some additional fact sheets outlining alternative products that Mr R could've been interested in, but which carried a greater degree of investment risk than an annuity purchase.

The pack also clearly explained how annuities worked, and listed the advantages and disadvantages of various choices Mr R would have to make about the structure of any annuity he went on to buy. The pack also contained a comparison list of different types of annuities and pension drawdown. It also stated:

In our recent conversation we also discussed that you could consider a drawdown pension as a suitable alternative to buying an annuity. However, this route has subsequently been discounted for the following reasons:

- *The size of your fund is too small to make a drawdown pension a viable proposition.*
- *You require a guaranteed level of income.*
- *The risks involved in a drawdown pension are above your stated attitude to risk.*

Based on what I understand to have been Mr R's circumstances at the time of the advice, I can't fairly say that Origen acted unreasonably here. From what I've seen, the first two reasons the report listed for the drawdown option having been discounted were completely accurate. I think the third point could've been worded better to reflect that Mr R's ATR had been agreed as low risk given his objectives. But overall I don't consider that Origen did anything wrong when it ruled out using a drawdown arrangement.

I agree with our investigator that Mr R wouldn't have been able to access a flexi-access drawdown arrangement in 2013 as they didn't yet exist. The similar alternatives that were available at the time of the advice carried various limitations and risks. This would've meant that it Mr R took a higher level of income in the early years of drawdown, his plan would've had to work that much harder to maintain its value.

I also agree with our investigator that although it may have been possible for Mr R to have received a higher level of income over time from a drawdown arrangement, depending on the limitations and risks noted earlier, I'm not persuaded that he would've been comfortable with not knowing what pension income he might achieve.

I'm satisfied that the reports Origen provided Mr R with in July and August 2013 show that it discussed Mr R's various options, the risks they involved and the likely impact of inflation on a level annuity. I'm of the view that the information Origen provided was enough for Mr R to understand the choice he was making. And I consider that he chose to buy an annuity because it was most important to him that he knew what income he would get from his pension. Therefore I don't consider that Origen did anything wrong when it advised him to take out an annuity.

I finally considered if Origen adequately explained the impact of inflation on the recommended annuity.

Did Origen explain the impact of inflation?

Mr R felt that Origen hadn't adequately explained the impact of inflation on his annuity income.

The July 2013 Pre-retirement pack covered the advantages and disadvantages of choosing pension increases. It said that if escalation was chosen:

…the effects of inflation are offset, or offset up to a known percentage each year.

If the annuity is in payment for a lengthy period, the total income payments may exceed those of a non-escalating (level) annuity.

But that choosing an increasing pension would lead to the initial income from the annuity being lower than that of a level annuity. And that it would take some time before the total amount paid from an escalating annuity exceeded that from a level annuity.

Additionally, Mr R received a similar warning from an illustration from his personal pension provider on 26 July 2013:

WARNING – this illustration has no cash in value at any time

Do not forget that inflation would reduce what you could buy in the future with the annuity shown.

Based on the evidence, I'm satisfied that Origen did adequately explain the impact of inflation on Mr R's annuity income.

In summary, I'm satisfied that Origen provided Mr R with suitable advice, based on his circumstances at that time. I say this because I consider that it discussed Mr R's objectives in sufficient detail before it made its recommendation. I also consider that the evidence shows that Origen discussed and considered other ways for Mr R to meet his objectives. But that it fairly and reasonably discounted those options in favour of the guaranteed annuity it recommended given Mr R clearly didn't want any income volatility and had no capacity for loss. Therefore I can't fairly or reasonably uphold the complaint.

My final decision

For the reasons given above I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 January 2024.

Jo Occleshaw
Ombudsman