

The complaint

Mr P complains that Origen Financial Services Limited gave him unsuitable advice to transfer his employer's pension scheme to a personal pension arrangement.

What happened

I set out the background to this complaint and my provisional findings in my provisional decision dated 19 March 2024. I've included this below and this forms part of this decision:

'In October 2003 Mr P and Origen met to discuss his needs in retirement. In March 2004 Origen recommended that Mr P transfer his pension to a SIPP to meet his objective of providing him additional income. It was also recorded that Mr P wished to move his funds away from Equitable Life and give access to his wife to flexible death benefits should she survive him. Mr P's attitude to risk was recorded as low to medium.

More recently through a professional representative, Mr P complained about the advice to transfer his pension to a SIPP. The complaint was made on the basis that transferring out of an Occupational Pension Scheme to a personal pension was unsuitable for him.

Our investigator looked into matters but she said the pension transferred was in fact a defined contribution scheme and she had assessed the sale in line with that. She concluded that the recommendation was suitable. She said the charges of the new scheme weren't unreasonable and the guaranteed element of the pension had been secured by moving to a stakeholder pension rather than the SIPP.

Mr P's representatives responded to say it disagreed with the investigator's view. They said that the adviser had a large bearing on the route taken by Mr P who just accepted what he was told. And Mr P had not had the death benefits properly explained to him. And Mr P only had concerns with Equitable Life as his adviser had told them about the issues with it. They said had Mr P been made fully aware of the guaranteed benefits lost on transfer, he'd have used money from his savings rather than transferring his pension.

What I've provisionally 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.

At the time of advice Mr P was 55 and running a B&B from his home. He and his wife also had other forms of income coming to approximately £20,000. They had calculated they required an additional £5,000 in income to meet living costs and enjoy their semi-retirement.

It was also recorded that in the future Mr P would receive a state-pension and that before then he would likely give up his summer work. Therefore his requirements for income from the pension fund would alter across the stages of his retirement. It was also recorded that Mr P was strongly adverse to purchasing an annuity, although there was an added complication that a Market Value Reduction would be applied by Equitable Life to his fund if he transferred without immediately taking benefits.

To overcome this the adviser recommended transferring the Equitable Life policy to a phased withdrawal plan and the residual funds could then be taken flexibly utilising the remaining tax-free cash as and when Mr P made withdrawals. I think this broadly met the objectives that Mr P had when he sought advice.

Mr P also had protected rights in relation to the Guaranteed Minimum Pension held with Equitable Life and this couldn't be transferred to the drawdown product. But the adviser said due to Mr P's wish to no longer hold funds with Equitable Life, that part could be transferred to a low cost Stakeholder plan. It was believed that a proportion of the fund relating to the post 97 Protected Rights would need to remain with Equitable Life but it later confirmed these could also be transferred. And the adviser wrote to Mr P to tell him this and said Mr P had been delighted by this as his objective was always to move all his funds from Equitable Life.

The critical yield was calculated against the annuity Mr P could buy at the time from the best quotation received. This showed a yield of 6% was required to match benefits at age 75 (the latest age Mr P could refrain from buying an annuity), this included an underlying interest rate of 4.5% per annum in terms of the annuity purchased. At the time the standard industry projections were based on rates of 6%, 9% and 12% for the upper rate. It was clearly explained that matching the benefits given up should be the objective but this was reliant on investment returns and annuity rates in the future and couldn't be guaranteed.

Much of the complaint made by Mr P's representatives has focused on the guaranteed pension Mr P gave up on transfer. However, this only related to a small part of the fund, the GMP element. Of the transfer of over £200,000 this represented less than 10% and so I don't think this is an important factor in the advice. At the time Mr P required income and so his options were either to take a guaranteed income for life or utilise drawdown which would give him more flexibility going forward but introduce an element of risk to his retirement plans. I've looked at what the adviser said at the time, and I think he did make Mr P aware of these risks and gave him enough information to make an informed choice. There were potential advantages and disadvantages to the two courses of action, but I am of the view that the advice wasn't unsuitable after careful consideration.

If Mr P chose to use his savings instead and retain the pension fund, it would've meant leaving the funds with Equitable Life. And I don't think this is something Mr P would've wished to do at the time.

Whilst Mr P has since said this objective was introduced by the adviser, the evidence recorded at the time suggests it was important to Mr P. And at the time in 2004 Equitable Life were in the midst of an extremely challenging and uncertain period, so it seems reasonable that someone who had the majority of their retirement provision held by it would be concerned by this. To avoid the MVR which wasn't unsubstantial, Mr P had to crystallise those funds either as an annuity or through phased drawdown. Mr P also required funds to support his and his wife's outgoings in semi-retirement, so the solution provided by the adviser doesn't seem unreasonable to me.

In conclusion, I think it would be difficult to say that moving funds away from Equitable Life in the circumstances presented here was unsuitable advice. The yields involved in the transfer weren't unattainable and the advice met Mr P's other objectives. I therefore do not intend to uphold this complaint.'

In response to the provisional decision Mr P's representatives asked for evidence of my assertion that the GMP was only 10% of the fund transferred and asked why Equitable Life was mentioned as the pension transferred was an employer's scheme. We provided the answer and evidence for both of these questions. And I explained unless I receive a compelling argument that is supported by evidence as to why the advice was unsuitable I wouldn't be upholding the complaint.

In response Mr P's representatives said:

- He was told by the advisor that it was the '*best thing to do*' and he trusted this advice. Mr P had confirmed that the advisor was keen for the transfer to go ahead. Mr P was told that the SIPP was a good option for him, regardless of the fact that he had no idea how a SIPP worked or the risks of a drawdown pension.
- It is also important to add that at the time of the transfer, drawdown pensions were very rare and Mr P did not have any knowledge regarding drawdown. Mr P has confirmed that

they encouraged him to take the drawdown option despite him having little awareness and knowledge on how they worked. This further evidences that the advice did not suit Mr P at the time.

- At the time of the advice Mr P had around 10 years left before retirement. With reference to the £5,000 per year, Mr P only accessed this money for two to three years after the transfer which further supports that it was not necessary for him to give up his guaranteed minimum pension for this. There was no just reason for the transfer to go ahead.
- The provisional decision states '*however, this only related to a small part of the fund, the GMP element. Of the transfer of over £200,000 this represented less than 10%*'. I strongly disagree with this, £20,000 is a significant amount of money and regardless of the amount of GMP this does not discount that Mr P received negligent unsuitable advice overall.

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.

And having done so I see no reason to depart from the conclusions reached in my provisional decision – as set out above.

Mr P's representatives say that the advice wasn't suitable for Mr P and that it was negligent. However, I disagree, and its most recent points haven't been very specific in explaining why the advice was unsuitable for Mr P (bar the point about only accessing drawdown for a few years). It seems the complaint is largely based on the premise that transferring any guarantee is unsuitable advice.

Mr P's representatives have said he didn't understand drawdown and was told by the adviser it was a good option and he was encouraged to do it. The adviser encouraging a client to follow his recommendation isn't anything unusual or underhand – if the adviser believes it to be suitable for their client. In relation to the points that Mr P didn't understand drawdown, looking at the recommendation the adviser explained in some detail the product and set out the risks, upsides and downsides of taking drawdown in comparison to his other options. Mr P didn't need to be an expert in pension matters to make drawdown a suitable option for him.

At the time of advice Mr P told the adviser he needed additional income due to his semi-retirement. Mr P's representatives have said the fact that he only took income at the recommended amount for two to three years shows the advice was unsuitable. But having looked at the later suitability reports, it's clear Mr P's plans changed and he'd gone back into full time employment. And in actual fact it looks like he increased his withdrawal rate from the drawdown plan to £10,000 – and then later it is recommended that he moves back down to withdrawals of £5,000 per year. So, Mr P's circumstances had changed – and in any event the drawdown allowed Mr P to take income flexibly in line with these changing plans. This doesn't change my view that at the time of the advice the drawdown plan met Mr P's objectives and so I don't think the advice was unsuitable.

Mr P in transferring lost the guarantee applied to his GMP pension but this was explained to him and as I said this was less than 10% of the fund transferred. Yes, Mr P lost a guaranteed amount but this doesn't mean he lost that value, just that he could receive more or less than this on transfer – whereas before a baseline value was guaranteed. I am unsure of what basis that Mr P is complaining about this 'loss', no evidence has been supplied to

show that he is or will be worse off because of this. The complaint was made on the basis Mr P had lost a final salary pension scheme and given up valuable guarantees. However, it appears the only valuable guarantee Mr P had was the GMP which as I've said only applied to a small amount of his fund. And at the time the value of the plan was considered to be enough to support paying this GMP – i.e, the cost of providing the GMP was met by the transfer value.

For the reasons explained in my provisional decision, I've seen nothing to say that the advice given was unsuitable. It met Mr P's objectives at the time and Mr P was given detailed information with which to make an informed choice about his options. I recognise the make-up of his plan with his employer and the benefits within it wasn't easy to understand and that the drawdown plan transferred to also had some complexity to it. But this doesn't mean the advice was unsuitable.

In conclusion, I've considered the arguments made by Mr P's representatives and the evidence from the time but I'm not persuaded the adviser did anything wrong.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 May 2024.

Simon Hollingshead
Ombudsman