

## The complaint

Mr T complains that Phoenix Life Limited provided him with inaccurate information about his pension savings between 2011 and 2018.

## What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought the complaint should be upheld and what Phoenix needed to do to put things right. Both parties have received a copy of my provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*Mr T held two pension plans with Phoenix. He says that, in 2011, he understood that he had put one of those pension plans into payment, leaving the other plan to provide additional income later in his retirement. Phoenix's records indicate that both plans were put into payment in 2011.*

*But in 2011, due to an administrative error, Phoenix failed to record that one of the two plans had been put into payment, although it recorded the other plan correctly. As a result Phoenix continued to send Mr T regular statements showing the growth of his pension savings. As Mr T approached his 70th birthday in 2018 – the retirement age specified on the plan – Phoenix wrote to him to set out the pension benefits he could take. Mr T responded to those quotations asking to take a Pension Commencement Lump Sum ("PCLS" – otherwise known as tax free cash) of approximately £105,000 with the remainder of his pension savings being used to purchase an annuity utilising a guaranteed annuity rate.*

*Shortly before Phoenix put Mr T's pension into payment in 2018 it noticed that it had made an error in 2011. So it got in touch with Mr T to explain that he had no further pension benefits due to him – they had all been paid in 2011. But by that time, in anticipation of the PCLS that Phoenix's incorrect information had said he was due, Mr T had given away a large proportion of his savings to his daughters.*

*Phoenix accepted that it had provided incorrect information to Mr T between 2011 and 2018. But it told him that it was unable to pay the pension benefits he thought he would be receiving. Phoenix offered Mr T £3,000 to reflect the trouble and upset that he had been caused by its error.*

*Mr T didn't accept Phoenix's offer. He accepted that he wasn't entitled to the pension benefits that had been incorrectly offered to him. But he said that he was unable to recover the money he had given to his daughters as it had already been spent. So he thought Phoenix should increase the compensation he had been offered to reflect the depletion of his savings.*

*There is much of the background to this complaint that isn't in dispute. Mr T was paid benefits in 2011 in relation to both his pension plans. And Phoenix failed to correctly record that event on its systems meaning that it continued to provide statements for one of the pension plans showing the growth of those pension savings and the*

*benefits that would be available to Mr T in the future. So Phoenix clearly accepts that something has gone wrong here, and I can see it has apologised to Mr T for its errors.*

*In looking at what might need to be done to correct the impact of those errors, it seems that Mr T now accepts that he has no entitlement to the pension benefits that have been reported to him over the years as a result of Phoenix's error. And I think that is right – putting Mr T back into the position he would have been had nothing gone wrong, would clearly not result in him receiving additional pension benefits. But Mr T says that he has taken irrevocable financial decisions as a result of Phoenix's mistake – and it is those decisions that I should consider as his loss from Phoenix's error.*

*So to reach a decision on this complaint I think there are two aspects that I need to consider;*

- Was it reasonable for Mr T to not realise, in 2011, that Phoenix had paid benefits to him in relation to both his pension plans?*
- Has Mr T taken irrevocable financial decisions based on the incorrect information Phoenix has provided to him between 2011 and 2018? If I find that to be the case, then I need to consider to what extent it would be reasonable for Phoenix to compensate Mr T for any losses he cannot recover.*

### ***What happened in 2011***

*Mr T has told us that his plans in 2011 were to take the benefits from just one of his pension plans. He says that originally he had intended leaving both plans until the scheduled retirement age of 70 (in 2018) but that he had experienced a fall in his income so decided to access some of his benefits.*

*I've looked at the information Phoenix sent to Mr T in 2011. Those forms do reference both of Mr T's pension policy numbers. And they talk about "policies" rather than "policy" when referring to Mr T's benefits. So I don't think that information suggested that Mr T was only taking the benefits from just one of his policies.*

*But of course that doesn't mean that Mr T hasn't given us his honest recollections of what he thought happened in 2011. I appreciate those events took place almost ten years ago. And over such a long time even the most careful of memories can, and do, fade. But I think it would be entirely reasonable to accept that Mr T had intended to just take the benefits from one of his pension plans. And, since Phoenix continued to send him annual statements for the other plan, he had no reason to think that wasn't what had happened. I'm not persuaded that, when taking into account the addition of final bonuses and the like, I can reasonably conclude that Mr T should have noticed that the pension benefits he was paid in 2011 were higher than he might have reasonably expected.*

*So on balance I cannot attribute any blame to Mr T for not recognising the error that Phoenix made over the following years in continuing to send statements on his pension plan. And I certainly don't have any evidence to suggest that Mr T's actions might have in some way been dishonest – being aware of Phoenix's mistake and hoping it would remain undiscovered.*

### ***Mr T's more recent financial decisions***

*As I have accepted that Mr T would have been reasonably unaware that Phoenix had made an error, it follows that he had a reasonable expectation that he would receive pension benefits from his other policy when he chose to put them into payment. The selected retirement age on that policy was when Mr T reached 70 years of age in 2018.*

*Phoenix sent regular statements to Mr T between 2011 and 2018. I entirely accept that each of those statements simply presented the value of Mr T's pension savings at that time. They didn't provide him with any guarantee about what he would receive when he retired – those benefits, Phoenix explained, could only be determined at the time they were taken and could be affected by things such as changes in investment performance. But I think those statements gave Mr T a reasonable picture of how his pension savings were growing and the sort of level of benefits he might expect.*

*In early 2018 I can see that Mr T made a large payment to each of his three daughters. He has explained in some detail his daughters' circumstances and the use each daughter made of that money. Mr T says that means that, once Phoenix's error came to light, it would be unreasonable to expect him to ask his daughters for repayment of the money. And, on balance, I would tend to agree with what Mr T has said.*

*There is of course the obvious complication that Mr T made those payments before he received final confirmation from Phoenix of what his pension benefits would be, let alone actually receiving any payment. And Mr T himself accepts that, with the benefit of hindsight, he would have been better off delaying the payments he made to his daughters. But I don't think the payments he made were so reckless or unreasonable, given the stated value of his pension savings at that time, that I should allow the timing of the payments to influence my decision here.*

*Generally, where a consumer has made irrevocable financial transactions, based on a reasonable expectation of future receipts, I would consider asking the responsible business to make a payment equivalent to those payments. And that is what Mr T has asked that I do here to put things right. But I don't think that is a fair resolution to the specific circumstances of this complaint.*

*The payments that Mr T has made have been to his three daughters. So, considering a lengthy passage of time and I accept making assumptions about what might happen after his death, it could be argued that he has simply brought forward any inheritance that his daughters might receive. And there is a further argument that, by making the payments now, he might reduce any liability to inheritance tax that his estate might incur. So I don't think that Mr T's financial losses are as extreme as he has suggested.*

*But, and this is something I am very mindful of, making those payments now has placed Mr T, and his wife, into a far less stable financial situation than they might have envisaged for their retirement. They have effectively reduced the savings that they expected to provide a safe and comfortable retirement by approximately £70,000. I expect that alone would cause significant distress to most people.*

*But since the error came to light, Mr T and his wife have both suffered from ill-health. And I have seen letters from both their doctors explaining that they had been made aware of the problems the couple were facing due to Phoenix's error, and noting that the stress that has caused is potentially a contributing factor to their ill health. So I think that presents a strong argument that Phoenix's error has caused pain and suffering to Mr T as well as significant upset resulting from his wife's ill-health.*

*Mr T has explained that, due to his wife's ill health, he needs to carefully balance his need to raise additional funds from perhaps downsizing their house, or taking some form of equity release, against the additional distress that will cause. I am sure that is a difficult burden for him to bear. I don't accept the argument that Phoenix has presented that its responsibility for the problems faced by Mr T is mitigated by his decision to pay the monies to his daughters before they had been received from Phoenix.*

*I have thought carefully about what level of compensation might be appropriate here. There are very few comparative situations that might guide me in assessing what is appropriate. We have set out on our website some examples of the sorts of awards this Service might make in situations where consumers have suffered from distress and inconvenience. And I think the circumstances here would move my award towards the upper end of that scale.*

*As I said earlier, Phoenix has offered Mr T £3,000 in respect of that trouble and upset. I appreciate that offer is perhaps one of the larger offers the business would expect to make. But I don't think it is anywhere near large enough to reflect the disappointment caused to Mr T, the pain and suffering he and his wife have been caused, and the ongoing problems he will face. He had built an expectation over a lengthy period of time and no doubt made long term plans based on both the PCLS and ongoing income that he reasonably expected to receive.*

*So I think a payment of £7,500 would fairly reflect the distress and inconvenience Phoenix's error has caused, and that these problems might continue for a prolonged period of time. I understand that is far short of Mr T's expectations, but I cannot reasonably conclude that Phoenix should compensate him for the entirety of the payments he made to his daughters – I think doing so would unfairly enrich his family as a whole.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Phoenix has said that it doesn't want to provide us with anything further. Mr T has provided some additional comments. Although I am only summarising here what Mr T has said I want to reassure him that I have read, and carefully considered, his entire response.

Mr T has thanked me for my provisional decision and acknowledged that it thoroughly represents the events of the past years. Mr T has told us more about the health problems that have been experienced by him and his wife. He says that their doctors have recognised that their problems are caused by the stress of the situation they find themselves in as a result of Phoenix's error. Mr T still thinks that the compensation he receives should be higher. He says that he has irrevocably lost £70,000 of his savings. And my proposed award only amounts to around 10% of that loss.

### **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.

Both parties appear to have accepted my conclusions in relation to what happened in 2011, and in the subsequent years. It is clear that Phoenix incorrectly sent information to Mr T that gave him a reasonable expectation that he would receive additional pension benefits when he reached 70 years of age in 2018. So all that is left for me to reconsider is what compensation Mr T should be paid by Phoenix.

I have no doubts about the impact this error has had on Mr T and his wife, both in terms of the depletion of their savings, and the ill-health from which they continue to suffer. I cannot express how much sympathy I have for the position they have found themselves in. But I must reach a conclusion on this complaint that is fair and reasonable to both parties.

As I explained in my provisional decision, I think that the depletion of Mr and Mrs T's savings hasn't caused a loss to the wider family – it has simply redistributed that wealth in a similar manner to what might have been likely after Mr and Mrs T's death. So whilst I agree with Mr T's conclusion that he has suffered a loss to his savings amounting to £70,000, I don't think that loss is something that Phoenix needs to make good.

But it is the reduction in those savings, and the impact that this has had, and potentially will continue to have, on Mr and Mrs T's mental and physical health, that has led me to conclude that substantial compensation should be paid by Phoenix. But I don't think it is right to judge the level of that compensation against the reduction in the value of Mr T's savings – I think those are two very different causes.

I cannot return Mr and Mrs T to the position they, and their wider family, would be in had Phoenix not made any error in 2011, and in its subsequent communications. But I do think a substantial award is required to compensate Mr T for the pain and suffering he and his wife have been caused and the distress and inconvenience resulting from Phoenix's error. But I'm sorry to tell Mr T that I'm still of the opinion that £7,500 is a reasonable reflection of what should be paid.

### **My final decision**

My final decision is that I uphold Mr T's complaint. I direct Phoenix Life Limited to pay him the sum of £7,500 in respect of the distress and inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 April 2022.

Paul Reilly

**Ombudsman**