

The complaint

Mr D complains that advice given by a predecessor business of Phoenix Life Limited to transfer the benefits of his occupational final salary pension to a personal pension wasn't in his best interests.

Mr D's complaint was originally brought by a representative, but that's no longer the case so I'll just refer to Mr D in the decision.

What happened

In 1991 Mr D was advised by a representative of Swiss Pioneer Life to transfer the preserved benefits of his mineworkers' final salary pension scheme to a personal pension.

Swiss Pioneer Life is now part of Phoenix Life, so Phoenix is responsible for answering the complaint. While much of the historic correspondence was with Swiss Pioneer Life, I'll mainly refer to Phoenix in the decision.

In April 2020 Mr D complained to Phoenix that the transfer from his occupational pension scheme (OPS) wasn't in his best interests. Phoenix didn't uphold the complaint, saying Mr D's policy had been reviewed as part of the industry-wide pension review. The calculation carried out at the time showed he hadn't lost out by the transfer, so no redress was due. And as the review was intended by the regulator to be a one-off exercise it wasn't obliged to review the advice again. Phoenix initially told Mr D they would've written to him with an outcome in November 1996, but as they couldn't provide evidence to confirm this had happened, they offered £200 for this.

Mr D referred his complaint to this service, saying he didn't recall receiving any correspondence relating to the review. One of our investigators looked into the complaint and was satisfied a review had been carried out at the time, so he didn't think it had to be reviewed again. But he thought it was fair for Phoenix to pay £200 for the trouble and upset caused to Mr D.

Mr D remained unhappy so asked an ombudsman to make a decision.

I issued a provisional decision on this case in August 2022 explaining why I'd reached the same outcome as our investigator.

My provisional findings

I started by saying that although the events at the heart of Mr D's complaint happened more than 25 years ago, Phoenix had consented to this service's investigation, so I was able to consider the merits of his complaint.

I set out that although it looked like Mr D had five policies, the majority of the pension review file related to three policies Mr D had with Phoenix as follows:

Policy A - ending **319B established in April 1992 to enable Mr D to contract out of SERPS. This policy was reviewed separately, and the outcome was communicated to Mr D in December 1997.

Policy B - ending **3991H established in September 1992 valued at just over £11,522 for the non-protected rights element of his OPS

Policy C - ending **3992A established at the same time valued at just under £2,033 for the protected rights element of his OPS.

From the fact-find completed at the time of the sale of policies B and C, Mr D's address showed he lived in a town I referred to as "D" and the first two letters of his post-code were recorded as "DN", which correctly represents that town.

I set out that Mr D was originally sent pension review invitation letters in November 1995, January 1996 and June 1996. But by then he'd moved to another address within the same town, but not advised Phoenix, so it seemed likely he didn't receive that correspondence. At the end of October 1996 Phoenix closed its review file as Mr D hadn't responded.

In early September 1997 Mr D rang Phoenix to update his address. But probably due to the call handler mishearing, his new postcode was recorded as starting with BN (which represents another UK town) rather than DN.

Phoenix subsequently sent Mr D a letter containing details of the three plans mentioned above, plus a separate pension review letter enclosing a copy of the review questionnaire. Both of these letters were correctly addressed except for the postcode. Mr D evidently received them, as Phoenix received his completed questionnaire on 3 October 1997. Mr D had included his address and correct postcode in the "*declaration*" section at the end, authorising Phoenix to carry out the review. But Phoenix didn't correct Mr D's postcode in its records.

On 3 October 1997 Phoenix wrote to the personnel department of Mr D's previous employer enclosing a questionnaire and a reply-paid envelope. And it acknowledged receipt of Mr D's questionnaire to his new address, (with the wrong postcode). It said the outcome would be provided as soon as possible, but it had received a large number of forms which all needed to be checked. In the meantime Phoenix recommended Mr D consider re-joining his OPS if he was entitled to, as it's almost always in the employee's best interests. The letter also provided a freephone telephone number for any queries Mr D had.

As Phoenix had been unsuccessful in obtaining the information from Mr D's former employer, they wrote to Mr D on 10 October 1997 to ask a number of questions relating to when he contracted out of SERPS. This letter also included the freephone number for queries. It sent a chaser 13 November 1997 enclosing a copy of the 10 October 1997 letter, saying the information requested "*is essential in order for us to review your pension arrangements*". Mr D must have received both of these despite the incorrect postcode, as Phoenix received his response on 27 November 1997, and the copy shows he'd hand-written his responses on the original letter.

I then went on to explain the pension review had been instigated and overseen by the then regulator the Securities and Investments Board (SIB), which set out the process firms had to follow in its past business review document dated October 1994. Mr D's policies were

included in phase two of the review, and individual case reviews were expected to take no more than two years to complete.

I said that from when Mr D responded to the review invitation at the end of November 1997 he was aware of the pension review, was put on notice the transfer may not have been in his best interests, he would've been expecting an outcome, the incorrect postcode hadn't prevented correspondence reaching him, and he'd been given a freephone number to use for queries.

I'd seen the calculation Phoenix carried out which was deemed to be "*no loss*" based on the fund value on 1 November 1996. Businesses were required to keep their pension review files indefinitely, but unfortunately Phoenix doesn't have the complete file from Swiss Pioneer Life. So it's not clear from the evidence whether the outcome was communicated to Mr D. Phoenix said the review process required an outcome to be issued but couldn't provide a copy outcome letter, and the system screenshot suggested the outcome hadn't been communicated. But it also said a "sweep-up" exercise would've been carried out some time later, but there's no evidence this happened. So either Mr D received an outcome (based on the assumptions applicable at the time) saying the transfer hadn't disadvantaged him. Or having given his permission for a review to be carried out, Mr D never received an answer and didn't chase Phoenix up.

I explained that where the evidence is lacking or contradictory as it is here, I'd base my conclusions on the evidence I do have, and what I think is most likely to have happened on the balance of probabilities. Although I couldn't confirm this from the evidence, I thought it was possible the "no loss" outcome had been communicated to Mr D.

Firstly the pension review methodology and process were prescribed and closely monitored by the regulator. The guidance said investors should be told the review file would be closed following a "no loss" outcome, unless they wished to raise a complaint, and the firm had to provide details of its complaints process. Firms had to submit returns showing their progress, and unless correspondence had been returned, I thought Phoenix would've had no reason not to send Mr D an outcome, to his updated address. And it was clear mail reached him despite the incorrect postcode, as he'd responded to it.

And secondly, Mr D was aware he had three policies with Phoenix, he'd asked to be included in the review, so he'd have been expecting an outcome. I thought given he'd phoned Phoenix to update his address, he could've phoned to chase up the response, particularly if he had access to a freephone number. Mr D had said in his complaint submission he didn't remember receiving any correspondence about the pensions review, which may not be surprising given it was so long ago. But the evidence shows he did receive correspondence which he'd responded to, so it's possible he had received an outcome but doesn't remember it now. And Mr D's SERPS policy ending **319 was subject to a review, for which he received an outcome in December 1997. If Mr D had still not received an outcome of the review of the other two policies it's reasonable to think this would've prompted him to make enquiries.

But even if Mr D didn't receive an outcome as the evidence suggests, I said I wouldn't require Phoenix to redo the review using the current redress methodology. The purpose of the Pension Review was to draw a line under the issue of past pension mis-selling. It was intended to provide finality for both parties, which was important for the stability of the industry and consumer confidence in financial services more generally. The process which was based on what the regulator at the time considered to be a fair methodology, using reasonable assumptions for future growth rates. Some of those assumptions, in particular relating to expected growth rates, didn't materialise which along with falling annuity rates,

had an impact on the benefits provided by personal pensions. But that's not a reason to undertake the Pension Review once again.

I'd seen nothing to suggest Phoenix didn't conduct the review in accordance with the regulator's guidance, so I said it wouldn't be fair to expect it to revisit it again. However as Phoenix hasn't been able to demonstrate it sent Mr D a review outcome, and had recorded his postcode incorrectly, albeit this doesn't seem to have prevented correspondence reaching him, I thought its offer of £200 is fair in the circumstances.

Responses to the provisional decision

Neither party responded to the provisional 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.

As neither party has made any further submissions or provided any additional evidence for me to consider I see no reason to depart from my provisional findings.

Which are that I'm satisfied Mr D's policies were reviewed as part of the industry-wide pensions review based on a fund valuation from November 1996. Due to the lack of evidence, I couldn't be sure the "no loss" outcome had been communicated to Mr D at the time. But even if it hadn't been, I didn't think it would be fair or reasonable to require Phoenix to revisit it using updated redress methodology.

But I felt Phoenix should pay Mr D £200 to reflect that it couldn't confirm he had received an outcome, and it hadn't updated his post code correctly.

My final decision

I uphold this complaint. Phoenix Life Limited should pay Mr D £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 October 2022.

Sarah Milne
Ombudsman