

## The complaint

Ms B has complained that Phoenix Life Limited provided incorrect transfer value figures to her over a period of time – 2017 to 2021. She says that she made financial decisions based on the incorrect financial information that she'd been given, and now has no savings as a result.

## What happened

Ms B's complaint was considered by one of our investigators. He sent his assessment of it to both parties in August 2022. The background and circumstances to the complaint were set out in that assessment. However in brief, the investigator referred to the statements that Phoenix Life had sent to Ms B from 2015 to 2021. They included information about her "Regular Benefits" and "Additional Voluntary Contributions" (AVCs).

The statements set out the annual member's guaranteed pension and the transfer values for both entitlements. The pension that could be provided for each section remained the same through all the years - £2,576.68 and £887.18 per annum respectively.

However, the transfer value figures said:

Date	Regular Benefits	Additional Voluntary Contributions
28 April 2015	£46,882	£7,906
28 April 2016	£47,904	£7,975
28 April 2017	£74,938	£10,519
28 April 2018	£86,442	£13,829
28 April 2019	£92,722	£15,677
28 April 2020	£93,084	£15,814
28 April 2021	£98,474	Not provided
30 November 2021	£49,237	£16,922

Ms B complained to Phoenix Life about the annual statements. She said it was only as a result of hiring a financial adviser that she became aware that there was an error and that the transfer values being given were incorrect. She also asked to fully withdraw her funds before April 2022.

Phoenix Life said there had been an issue with its system which had affected the transfer value, and this was the cause of the incorrect value it provided in the 2021 statement. But it said all the previous statements had been correct. Phoenix Life said it would arrange to send Ms B £200 by way of apology and compensation.

Ms B didn't accept the firm's offer. She said the matter had caused very serious problems; she'd made financial decisions over a several year-period based on the wrong information Phoenix Life had provided. She said she had made financial commitments to help out her son; including paying his rent from May 2018 (on average about £1,500 per month over the years) and paying a weekly allowance of £110. And she said that she had helped out other members of her family financially instead of saving up for her retirement. Ms B provided evidence to show some of the commitments she'd made. Ms B said the error had caused

her a great deal of distress and concern for her future as a retiree.

Our investigator set out his findings on the complaint in his August 2022 assessment. He said the statements clearly overstated the 'Regular Benefits' on five separate statements. And he said it wasn't clear why the first occurrence hadn't been identified earlier following Ms B's complaint.

The investigator explained that when an error such as this occurred, the policyholder wasn't usually entitled to the incorrect values. He said the basic position was that they were only entitled to the correct values - what the position actually was. But he then went on to explain that if someone had 'changed their position' as a result of incorrect information provided to them, they may have cause for compensation.

The investigator said annual statements were issued to members of the pension to enable them to keep an eye on their benefits. He thought it was reasonable to expect Ms B to have reviewed the statements and compared the values shown to those for the previous year. The investigator said he thought if Ms B had done this she would likely have spotted the sudden increase in the 'Regular Benefit' transfer values detailed for 2016 and 2017. And especially when compared against the much lower increase shown for the AVC benefits. The investigator said if this had been queried Phoenix Life would have had the opportunity to correct the information and provide Ms B with an accurate transfer value.

The investigator said the transfer value wasn't guaranteed, and it could therefore decrease at any time as well as increase. So, he didn't think the value could be relied upon when making potentially life changing decisions.

Ms B had said she had selected a more expensive financial adviser as she thought she could afford to pay for him given the higher value of the pension. However the investigator said he didn't think this was a plausible argument as Ms B would otherwise be paying more money for what would predominantly be the same service.

Overall, the investigator wasn't persuaded that the incorrect transfer value figures had caused Ms B to make different financial decisions. He said, in summary, that he thought Ms B was providing for members of her immediate family who needed her help. The pension income on offer from the scheme remained the same, and wasn't a significant part of Ms B's retirement income. And he thought that, on the balance of probabilities, Ms B would likely have prioritised her family over her savings and made the same financial decisions and commitments regardless of the incorrect values of the pension plan.

Overall, the investigator thought Ms B had suffered a loss of expectation and recommended that Phoenix Life pay Ms B £500 for the distress and inconvenience suffered.

Ms B didn't accept the investigator's findings. She said, in brief, that she wasn't disappointed with the conclusion that Phoenix Life had done something wrong and had not acted fairly. But she was disappointed at the compensation amount determined. She said it was nowhere near enough to address even the time and inconvenience involved in dealing with the matter, let alone the issue itself of having made financial decisions based on the wrong information provided.

### **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.

Having done so, I've come to the same conclusions as the investigator, and largely for the

same reasons.

I've only summarised the investigator's findings above and haven't reproduced Ms B's responses in detail. However I've considered all what she said in reply to the investigator's assessment of the case (as well as the other evidence previously provided). Ultimately, I've focused on what I think are the key issues in deciding the outcome of the complaint.

It's not in dispute that Phoenix Life provided incorrect values in the statements it sent to Ms B over the five-year period. And that Ms B only became aware of it when a financial adviser she'd employed in July 2021 highlighted the errors. It's also clear to me that Phoenix Life didn't deal with the matter in a timely and efficient manner when Ms B and her adviser raised it with them. So what needs to be decided is what compensation is fair in the particular circumstances of the complaint.

The starting position is that Ms B is entitled to the correct value of the plan. Generally, where a firm makes a mistake it can be corrected. Where an error is made and values are overstated, that doesn't usually mean that the customer is entitled to the higher, incorrect, figure. It won't usually be fair to say a firm has to pay something that the policyholder isn't entitled to as a result of it making a genuine mistake. However sometimes, where incorrect information is given, the person who received it may be able to show that they relied on it – perhaps by spending when they wouldn't have done had the correct information been given.

Ms B has said she undertook spending that she would otherwise not have made had Phoenix Life provided the correct values. Ms B has provided documentary evidence of some of the financial commitments that she made. And I'm satisfied that Ms B spent the money as she has claimed.

However Ms B has had the 'enjoyment' derived from spending the money that she has spent – albeit that may effectively be through the other people she helped out financially. Clearly Ms B will know what she would have done spending wise if the correct values had been given – weighing up what value she obtained by spending that money as she did, versus its value if she had saved it and spent/will spend it in other ways. Such decisions are matters of fine judgement, and very personal to Ms B. Clearly neither I nor the investigator can know for sure what Ms B would have done had she been given the correct values. So whilst I understand why Ms B considers it to be 'speculation', as the investigator explained, we have to consider the matter on the balance of probabilities; that is, what we consider was more likely to have happened on the balance of the evidence that is available.

Ms B's major financial commitment that she says she made on the back of the incorrect statements was in supporting her son. I haven't gone into details of why she was giving support here due to identification risks – albeit small that they are. However I think the key point is that Ms B had very good reasons for providing her son with that financial support. And it was ongoing support – in total it worked out to around £2,000 per month (likely to have been a bit more or a bit less over time).

Ms B has said that some of the financial decisions she made can't be easily reversed without serious consequences, particularly the arrangements for her son. She has acknowledged that she would always have given her son support. But said she would have taken less costly options.

As I have said above, I think only Ms B can really know exactly how she would/wouldn't have spent differently. Ms B's spending was on real needs. It wasn't, for example, on luxuries that it might be easy to decide she would have done without if she'd known the reality of her pension's value.

The financial arrangements made for her son were costly. Just taking that commitment itself, the additional money she thought was in her pension would only have paid for this for about two years. Even if the inflated value given by Phoenix Life was correct it would only have funded that commitment for about four years. So I think there were similar risks in terms of having to end that commitment at some point even if the higher value had been correct; albeit I accept the longer period *may* have meant the consequences weren't as severe if her son's situation had improved by that point.

However, Ms B had made a long-term financial commitment that would have effectively exhausted the additional pension she thought she had in around two years - irrespective of any other spending. Ms B has said she had other options available to her that were, if less ideal than the one she made, still suitable and far less risky to her financially. I accept this may have been the case. But given the importance of that provision for her son, I don't think I can reasonably conclude, on the balance of probabilities, that Ms B would likely have made a different decision. In my view it's more likely than not that she would have provided that same support irrespective of the incorrect values provided by Phoenix Life given its importance and the 'benefit' she effectively got from that spending.

Ms B said that she employed an expensive financial adviser as she thought she could afford it given her understanding of the higher value of the pension. She has also subsequently said the adviser reduced his fee when he realised that the value of the funds were considerably lower. And that he didn't charge her the additional costs of querying the incorrect information due to the need to query this information. So it's not entirely clear to me if she incurred additional costs. However in any event, I don't think any additional cost was necessarily incurred as a result of the incorrect transfer value. It was Ms B's decision as to which adviser she selected - I don't think it follows that higher cost means better advice.

Ms B has highlighted that Phoenix Life hadn't made a single mistake; it had provided wrong information for several years and when Ms B and her adviser had raised the issue it originally only accepted that it had made the mistake about the 2021 transfer value. As I've said above, I don't think Phoenix Life dealt with the issues that Ms B raised in a timely or efficient manner. But I've taken that into account in deciding the amount of distress and inconvenience caused to Ms B overall – and what fair compensation is in that context. I think the delays in dealing with the issues raised here were all part and parcel of this complaint. It's not clear to me whether Ms B is saying there were also delays in Phoenix Life dealing with her request to withdraw her funds. I haven't considered that matter in this decision, so if Ms B does have such concerns they will need to be considered in a separate complaint.

The rules that I am bound to follow require that I determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

As the investigator said, I think it was reasonable to expect Ms B to have reviewed her annual statements and the increase in value from almost £48,000 in 2016 to almost £75,000 would, I think, have been noticeable. I don't say that Ms B ought necessarily to have realised that a mistake had been made – I agree she wasn't an expert. But I do think that the jump in values was significant and *might* have suggested that something could be wrong.

With this in mind, I think it's also arguable whether it was reasonable for Ms B to have made significant spending decisions on the back of values which there might be some doubt about or, even if not, at least on the face of it to a non-expert, were subject to significant variation.

And whilst I realise that there are many arguments that can be made about what spending Ms B may or may not have made, like the investigator, I think the support for her family, but particularly her son, would more likely than not have taken priority. So I haven't been persuaded – on balance - that Ms B would have spent differently but for the incorrect values

provided by Phoenix Life.

So for the reasons I have outlined above, in my opinion it wouldn't be fair and reasonable to require Phoenix Life to pay Ms B the incorrect values - or part thereof. I think Ms B suffered a loss of expectation, as well as the distress and inconvenience caused by the matter overall. Taking all the above into account, I think the investigator's recommendation of £500 is fair compensation in the particular circumstances of the case.

I know my findings will be disappointing for Ms B. I've taken into account that Phoenix Life Limited sent a number of incorrect statements over a five-year period. And that it didn't deal with the issue in a timely and efficient manner when it was raised by Ms B and her adviser. However I think £500 is fair for the distress and inconvenience that Ms B has suffered overall.

### **Putting things right**

Phoenix Life Limited should pay Ms B £500 for the distress and inconvenience the matter has caused.

### **My final decision**

My final decision is that I uphold the complaint in part. I order Phoenix Life Limited to pay compensation to Ms B as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 14 March 2023.

David Ashley  
**Ombudsman**