DRN-3770354

The complaint

Mr P complains about the time taken by Phoenix Life Limited (Phoenix) to transfer his Personal Retirement Plan to a new provider. Mr P says Phoenix delayed matters by making several unnecessary requests for information.

What happened

On 17 March 2020 Mr P's new provider submitted a transfer request to Phoenix via an electronic system. Phoenix received the request on 19 March 2020.

Phoenix's initial checks flagged an issue with the new provider, so Phoenix asked its technical department for further advice.

On 26 March 2020 that department advised that further information should be sought from the new provider and a pension transfer questionnaire should be sent to Mr P.

On 8 April 2020 Phoenix issued the questionnaire and sent an information request to the new provider.

Those documents were received by Mr P and the new provider on 13 and 14 April respectively.

On 16 April 2020 Phoenix received the information from Mr P and the new provider.

Following advice from its technical department, Phoenix wrote to Mr P on 28 April 2020 and asked him to get in contact to discuss the transfer.

Mr P contacted Phoenix on 1 May 2020 and answered a number of questions about the transfer.

On 13 May 2020 Phoenix sent Mr P a summary of that conversation for Mr P to check and sign.

The summary was signed by Mr P and witnessed on 18 May 2020. It was received by Phoenix on 20 May 2020.

In May 2020 Mr P made a complaint about the delay in administering the transfer.

Phoenix then contacted the new provider on 3 June 2020 to ask it to re-send the transfer request. It was re-sent on 4 June 2020.

On 11 June 2020 Phoenix tried to contact Mr P. Mr P called back on 12 June 2020 and Phoenix asked him about a loyalty bonus provided by his existing plan, which he would lose if he transferred before a certain date. Mr P confirmed he was happy to go ahead with the transfer despite losing the bonus.

The payment was processed on 12 June 2020 and the proceeds were received on 23 June 2020.

Phoenix didn't uphold Mr P's complaint. In summary it didn't accept that it had caused any delay in processing the pension transfer. It said that it adhered to the Industry Code of Good Practice which required it to put in robust standards for pension transfers.

Phoenix said it had processed the transfer within normal timescales. It noted that the Origo system was intended to facilitate efficient transfers, but Phoenix said it still had legal, regulatory, and statutory obligations to complete appropriate due diligence checks prior to completing a transfer request.

Mr P disagreed and referred his complaint to our service.

Our investigator considered Mr P's complaint and concluded it should be upheld. He noted the relevant guidance and considered that the pension transfer had taken too long. He also took into account the difficulties caused by the pandemic, but he still felt that the delays incurred by Mr P were unnecessary and avoidable.

The investigator agreed that Phoenix was entitled to carry out due diligence, but he said this had to be carried out appropriately and proportionately and weighed against its obligations to Mr P to carry out his transfer request in a timely manner.

The investigator noted what Phoenix had said about protecting Mr P against the risk of pension liberation or fraud, but felt it ought to have been clear on receipt of the pension questionnaire that these risks weren't present.

The investigator noted this wasn't a transfer of safeguarded benefits, so no financial advice was necessary. He said it was reasonable that Mr P would feel comfortable executing this switch of providers without advice from another party and it should have been clear that Mr P possessed a higher degree of financial awareness than the average consumer.

The investigator said it should have been possible for Phoenix to confirm the scheme administrator was a large UK based financial services firm authorised by the FCA, and that the intended investment was also a UK based FCA authorised firm. He said there was no need for Phoenix to engage with these other businesses to establish this as the information was freely available via the FCA register.

The investigator considered the additional checks carried out after receipt of the pension questionnaire were more about protecting Phoenix's position than Mr P. So, he said Mr P shouldn't be disadvantaged if these checks couldn't be carried out within a reasonable timeframe.

The investigator noted that each time Phoenix made a request of Mr P he responded immediately, but he said each response led to a further request. He said this process would've been far more efficient if it had been conducted via a telephone conversation.

The investigator said in his view the questionnaire and information requests should have been sent within 48 hours of the first ORIGO communication being transmitted on 19 March 2020. He said Phoenix would have been in receipt of the information necessary to process the transfer six working days later, on 27 March. The investigator said assuming it took a further 48 hours to finalise the transfer the funds would have been transmitted on 31 March. He said allowing four days for the bank transfer to complete, the funds would have been with the new provider on 5 April 2020.

Phoenix disagreed and said it had completed the transfer within its turnaround time. It also said it had increased its turnaround times in 2020 due to the COVID-19 pandemic.

Phoenix said it had the right to carry out full due diligence on any transfer requests that it received and it would be inappropriate for it to engage with other providers in respect of possible concerns, until it had been able to identify what its concerns were. It said this had been achieved by carrying out its full due diligence process.

Phoenix said where any concerns were raised that related to an individual's transfer journey or to the scheme they were transferring to, it carried out a full due diligence process. It said this involved asking the customer questions which were based on the guidance issued by the FCA, TPR, the Pensions Ombudsman and the industry's Code of Practice.

Phoenix said it had received the new transfer request on 4 June and processed the transfer on 12 June. It also pointed out that, pursuant to section 99(2) of the Pensions Schemes Act

1993, it had six months from the date the written transfer request was received, in which to process the transfer.

As no agreement could be reached the complaint was referred to me for review.

I issued a provisional decision where I upheld Mr P's complaint in part. I provisionally concluded that Phoenix should compare the transfer value he received, with the value Mr P would've received if his transfer had been processed at an earlier date, in April. I said if there was any financial loss, then that amount should be paid into Mr P's new pension plan. I also said Phoenix should pay Mr P £150 for the distress and inconvenience caused by the delay.

The following represents an extract from my provisional decision, and forms part of this final decision.

<u>*What I've provisionally decided – and why*</u>

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr P wanted to transfer his pension plan to a new provider. That process started on 17 March 2020 but unfortunately wasn't concluded until 23 June 2020 when the proceeds were received by his new provider. So, I can understand why Mr P was frustrated that he had to wait several months for his transfer to be completed. And I also appreciate that he was disappointed and concerned that he wasn't able to benefit from the investment return on his new pension plan during that time. I have to consider therefore whether Phoenix caused any unnecessary delays during this process and whether it acted within a timely manner.

As the investigator has already explained, the Association of British Insurers (ABI) statement of good practice from June 2006 states that requests relating to pension transfers should be completed within 10 working days.

However, the time it takes to complete a pension transfer will depend on the particular circumstances of that transfer. There may be transfers that can take place more quickly and conversely more complex cases, where understandably it will take longer.

I also note there is guidance issued by the Pension Scams Industry Group (PSIG) which advises providers on how to approach transfer requests and in particular how they should proceed where there are some concerns or flags raised, in relation to the transfer in general, or in respect of the receiving party.

In Mr P's case Phoenix's system identified a potential concern with the receiving provider when the transfer request was made. So, it asked for some advice from its technical department, which then led to it requesting further information from that provider, and from Mr P in the form of a pension transfer questionnaire.

To recap, the information requested by Phoenix was received on 16 April 2020. It appears that the information sent from the new provider was satisfactory as no further information was requested. And, we know the new provider was an FCA authorised firm.

However, as Mr P had indicated in his questionnaire that he hadn't received any financial advice in respect of the transfer, a further letter was sent to Mr P asking him to contact Phoenix to discuss his transfer request.

As the investigator has identified, because the transfer was less than £30,000 and didn't relate to safeguarded benefits, there wasn't a legal requirement for advice to be obtained. And it should also be noted that Mr P had indicated in his response to Phoenix that he was an independent financial adviser. I think the relevance of that was that Mr P didn't appear to *meet any of the criteria for vulnerability set out in the guidance.*

However, that is not to say that someone with financial knowledge and experience can't be the subject of a scam and it was noted by Phoenix, at the time, that Mr P wasn't authorised to give advice on pension transfers. So, there was nothing to indicate that he had specialist knowledge of pensions as opposed to general financial knowledge.

I don't think by that point there were any obvious or compelling concerns which needed to be addressed. But, I also don't think it was unreasonable for Phoenix to want to speak to Mr P to clarify the answers he had given in his questionnaire and make sure it understood the motivation for transferring his plan, and to also ensure he hadn't been given incorrect or misleading information or put under any pressure to transfer. It has explained it took this approach where any concerns had been raised. And I also don't think it was unreasonable for Phoenix to be cautious in its approach, given the potential ramifications for both it and Mr P if the transfer wasn't legitimate or suitable.

Having said that, I also consider Phoenix had to be proportionate in the way it dealt with the transfer given the circumstances. Just because the Pensions Schemes Act set out that such transfers might take up to six months, this doesn't mean it had to take that long or that it should take longer than was necessary in the circumstances. This wouldn't be treating Mr P fairly, and I don't think Phoenix itself would assert that it would expect its customers to wait six months to complete such transfers.

And I note the matter didn't end with the discussion with Mr P because after Phoenix had clarified those issues, it then wrote to Mr P asking him to sign a summary document of what was discussed.

I appreciate that Phoenix wanted a written record of the conversation it had with Mr P to demonstrate that it had raised its concerns with Mr P, but this added several days to the process. I think if Phoenix felt this was necessary then it should have ensured that the summary was sent out promptly to avoid unnecessary delay. I don't think it was, because it was sent some 12 days after the conversation took place.

In addition, Phoenix contacted Mr P in June to ask whether he was aware he would lose his 2% loyalty bonus. I think that was a valid question, but I agree with the investigator that the issue of the loyalty bonus should've been raised much earlier, at around the time Phoenix sent the pension transfer questionnaire. And I consider raising this later on delayed the transfer process unnecessarily.

Overall, I consider that the transfer process here took longer than it should have done.

<u>Time taken to process the transfer request</u>

As the investigator has indicated, the 2016 consultation paper issued by The Transfers and Re-registration Industry Group (TRIG) suggests a 48-hour (business day) standard for completing each step of a transfer.

That is guidance which I do take into account but clearly there will be occasions where the steps cannot be completed in those time frames. And I think I should also take into account that this transfer process took place in the early stages of the pandemic. This caused widespread difficulties with businesses receiving and responding to post because employees weren't in their offices for a significant period of time. But that has to be balanced against the provider's obligation to carry out the transfer in a timely manner.

I don't think it would be right for me to prescribe how long a pension transfer should take in *general. There will be different issues which may impact how fast various steps can take place, hence why there is guidance in place rather than a prescribed time limit.*

However, looking at this particular transfer I consider that overall, it took too long in the circumstances, notwithstanding that I think it was reasonable for Phoenix to seek further information and clarification. But I have come to a different conclusion to the investigator on what I consider is a reasonable timeframe overall, taking into account the particular circumstances of this case.

<u>Relevant steps and timeframe</u>

The transfer request was received on 19 March 2020 and I consider, broadly, it would have been reasonable in the circumstances for Phoenix to take about four working days to seek and receive advice and then send the request for information to the new provider and to Mr P.

Looking at what then happened it would have then taken a further six working days for Phoenix to receive that information from Mr P and the new provider.

Again, broadly, I think up to a further four working days to seek advice and issue a letter asking for contact from Mr P would have been reasonable in the circumstances.

Mr P responded three working days after the letter was sent and contacted Phoenix to discuss the transfer. I think the summary document could've then been sent out within two working days. So, I think it is reasonable to assume, taking into account how long it actually took at the time, that it would've then been back with Phoenix within five working days. I also think it is more likely than not that with this shorter time frame there would have been no need to re-send the request which also delayed matters.

So, overall I think this particular transfer could have been administered within 24 working days, which by my calculation means 24 April 2020 is the date the transfer would have been processed with the funds then being transferred in the same timescale as then actually occurred.

<u>Putting things right</u>

I consider a comparison should be carried out using the notional value of Mr P's replacement pension arrangements, as at the date of any final decision along these lines, had Mr P's pension transfer been processed on 24 April 2020 and comparing it to the actual current value of his replacement arrangement.

If there's a loss, the compensation amount should if possible be paid into Mr P's current pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr P as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr P hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

I also think Mr P was caused distress and inconvenience by the delay in administering his pension transfer. However, I don't consider the delay was as long as concluded by the investigator. So, I think Phoenix should also pay £150 to Mr P for the distress and inconvenience caused.

Both parties were given an opportunity to respond to the provisional decision with any further representations they may wish to make.

Mr P acknowledged receipt of the provisional decision and in summary he said the following:

- Mr P reiterated his view that there had been a duplication of forms and phone calls to discuss the same points on several occasions.
- He said the original form he returned to Phoenix clearly stated that he was an independent financial adviser, that his provider was a FCA regulated UK pension provider and that the fund value was under £30,000. He said those three factors should've been identified by Phoenix and allowed matters to run more smoothly than they did.
- Mr P also said he believed the forms he completed and returned were submitted online, so he said it wasn't necessary to allow several days for posting in the timeframe.

Phoenix also made further representations in response. In summary it said:

- It felt the turnaround times I had used in my provisional decision were unrealistic, because at several points during the transfer process it had to refer to other areas within its organisation, and it noted this all took place during the start of the pandemic.
- It said its turnaround times were increased as a result of the pandemic and it felt Mr P's transfer was processed in a reasonable time considering the circumstances.
- It agreed that it could have sought clarification in relation to the loyalty bonus earlier but said that it had no impact on the length of time taken to process the transfer because it was processed on 12 June 2020, the same day it received the response from Mr P on this issue.
- It noted that the transfer value of the pension plan was about £8,600, whereas if it had transferred with effect from 24 April 2020, as I had specified, a smaller amount would have been transferred - about £7,800. So, it said, in effect that there had been no financial loss as a result of the later transfer.

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, and noting the representations made by both parties, my decision remains the same as set out in my provisional decision, which is reproduced above and forms part of this decision. However, I acknowledge the points made by Mr P and Phoenix - and address them below.

<u>Issues raised by Mr P</u>

Mr P has said there was some duplication of forms and of questions he was asked by Phoenix. He has also said that at least some of the communication took place online, so no posting time was required.

I note the comments made by Mr P but the timeline I have outlined sets out (in broad terms) how long his transfer should've reasonably taken in the circumstances as they were then. In that outline I haven't included any duplication. However, I have concluded that Phoenix was entitled to check certain issues and as I have said, I don't think it was unreasonable for it to take a cautious approach.

I also note Mr P's comments about correspondence being communicated online. However, I have based my timings on what actually happened when Phoenix contacted Mr P or the new provider, and the length of time taken before his, or the new provider's communication in response, was received (whether that was by letter or otherwise). So, I have said that Phoenix should've acted more promptly, whatever form of communication was used, and I have then applied the time it actually took Mr P and his new provider.

Mr P has also said that there were issues, such as the value of the transfer, that should have made it clear to Phoenix that the transfer could proceed smoothly. I have referred to these issues in my provisional decision. As I said in that decision, I think Phoenix was entitled to clarify any issues of concern, but it had to act in a proportionate way and that should've been reflected in the time it took to address those issues of concern.

<u>Issues raised by Phoenix</u>

I've taken into account that this transfer request was started during the early stages of the pandemic and this had a knock-on impact on Phoenix's ability to carry out its administrative functions. I have acknowledged this was a difficult time for businesses, which is why I felt some extra time had to be built in to allow for that impact and that the 48-hour (business day) standard was likely unrealistic here.

However, I don't think 24 working days, more than a calendar month, is unrealistic given the lack of issues of concern after the initial phase, when further clarification was sought. As, I have said in my provisional decision, I think Phoenix had to take a proportionate response, taking into account all the factors involved here.

<u>Loyalty bonus issue</u>

I can see from the case notes that work was completed over a couple of days in June 2020 to check whether there was a loyalty bonus and then to contact Mr P to ask to discuss this point with him, with Mr P calling back the next day.

The case notes refer to the case being suspended for one day, which I think would suggest some delay. However, it is not entirely clear whether this impacted the processing date as it appears it was set up on the basis that the transfer would go forward if this wasn't an issue.

In any event, I don't think this really matters for the purposes of calculating redress as the timeframes I have identified look at what reasonably should have happened, rather than deducting days from the actual processing date in June 2020. I haven't deducted any time from the timeline for this specific issue. Instead I have looked at the timeframe overall and actions that I considered could've been progressed more promptly.

Putting things right

Phoenix has explained that if the transfer of the pension plan had been processed at the earlier date of 24 April, Mr P would've received a lower transfer value. So it has said, in effect, that the delay hasn't caused any financial loss.

However, I consider it should still formally carry out the comparison, as set out in my provisional decision, to confirm whether or not there is any financial loss and provide those calculations to Mr P for his information. Of course, if there is any loss that should be paid to Mr P as set out in my provisional decision.

In any event, Phoenix should pay Mr P £150 for the inconvenience caused as I set out in my provisional decision.

My final decision

My final decision is that Mr P's complaint against Phoenix Life Limited is upheld in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 January 2023.

Julia Chittenden
Ombudsman