

The complaint

Mr A complains that Phoenix Life Limited (Phoenix) delayed his three pension transfers. He feels this led to a financial loss. He also feels that because Phoenix took some time to explain why his transfer values had fallen, it should compensate him for lost investment returns.

Mr A has been represented in his complaint by his financial adviser (FA). But I'll only refer to him in my decision.

What happened

Mr A had three pension plans with Phoenix. On 19 April 2021, his chosen new provider, who I'll refer to as provider A, issued a request to Phoenix to transfer all three of Mr A's pension plans to it.

Mr A's three pension plans included guaranteed benefits. So Phoenix wrote to Mr A on 21 and 22 April 2021 to tell him that it was a legal requirement for him to provide evidence that he'd received financial advice on the transfers. The letters also stated how to demonstrate that such advice had been received.

On 6 and 11 May 2021 Phoenix wrote to Mr A again about his three plans. It said he hadn't yet responded to its April 2021 letters with the information it needed so it could transfer his pensions.

Mr A's FA said that she called Phoenix on 11 May 2021 to ask it to send any requests to her as well as Mr A to ensure they could be processed quickly. She said she sent the written confirmation of the financial advice Phoenix needed the same day.

Phoenix has provided a copy of the letter it said it sent to Mr A's FA on 18 May 2021. This again asked for confirmation that Mr A had received the financial advice he needed. Mr A's FA told this service that she didn't receive this letter. She also said there were no follow-up calls from Phoenix to ask for the information it still needed. She said she'd been told by provider A that as Phoenix hadn't received a response, it had closed down all three transfer requests. Mr A's FA said Phoenix didn't call her or Mr A to ask them if they were happy for the transfer requests to be closed down.

Mr A's FA followed-up with Phoenix about his transfers on 16 June 2021. She said she'd called to confirm exactly what it needed. Phoenix then received the information it needed about the financial advice. And the transfers took place on 7 and 13 July 2021.

Mr A's FA said she'd called Phoenix on 14 July 2021 to ask why the transfer values had reduced. She said there were no Market Value Reductions and no transfer penalties. And felt that the fall in values had occurred during a time when market movements had generally been positive.

Mr A's FA said that Phoenix told her it would provide reasons for the reduced transfer values. But she said she'd called eight further times since 14 July 2021, and hadn't been

given any update. She said this was very distressing to Mr A.

As the amounts transferred were lower than previous quotes Mr A had shown, Mr A raised a complaint on 2 August 2021. He felt the delays Phoenix had caused had led to a financial loss. Mr A's FA sent further letters in August 2021 further detailing the complaint.

At the time of his complaint, Mr A still had a few days of the 30-day cancellation period available to him. So he could've cancelled his three transfers. But he said he didn't want to make any decision on this until Phoenix had investigated and confirmed the reasons for the changes in transfer values.

Mr A also said that he didn't feel well-enough informed at this time to invest the transferred funds in case the investment markets fell before he then took the decision to cancel the transfers. This was because he didn't yet know why his transfer values had reduced. So he felt he should wait until he had all the information before making the decision.

This led to Mr A holding the money that had been transferred to provider A in cash until Phoenix had explained the reasons for the fall in transfer values. Mr A felt that he had been penalised for not investing his pension funds before he knew what had happened. And felt that this had led to a further financial loss.

Mr A also asked Phoenix to consider if he'd lost out due to the delays it'd caused to the transfers. Mr A's FA said that the delay due to the wording on the confirmation of advice being incorrect could've easily been avoided if Phoenix had sent the request directly to her.

Mr A's FA wrote to Phoenix on 28 September 2021. She felt that Mr A had missed out on investment growth of 1.74%, which equated to a financial loss of £2,703.34. She also felt that Phoenix should've called her, or used the email address that had been stated on the letters of authority that had been issued to it, rather than a general email address for the business she worked for.

Phoenix issued its final response to the complaint on 28 September 2021. It upheld the complaint as it agreed it had caused a delay. It said it had incorrectly closed down provider A's request to make the transfers. It said if it hadn't closed the request down, it could've made the transfers on 17 June 2021. Phoenix apologised and offered Mr A £100 for the inconvenience it'd caused him.

Phoenix said that the transfer values were the same on 17 June 2021 as they were when the transfers actually went ahead. So felt there'd been no financial loss. It also said that the reason for the fall in values between the higher values Mr A had seen and the transfer values actually used was annuity rate changes. Phoenix also asked Mr A to provide documentary evidence if he felt it had caused him any financial detriment.

Phoenix replied to Mr A's FA on 12 October 2021. It said the transfer values had been correct.

Mr A's FA asked Phoenix to reconsider the complaint on 26 November 2021. She said that although she'd issued her letter of authority for Mr A's three pensions to Phoenix, it hadn't taken the opportunity when it had replied on 7 January 2021 to tell her about its requirement to receive written confirmation of financial advice. Nor had it explained the very specific wording it needed.

Mr A's FA also said that none of the 21 April 2021, 6 May 2021 or 11 May 2021 letters from Phoenix had told Mr A that confirmation of advice was outstanding. Nor had the letters asked him to take any action, or explained the implications of not responding. She also said that if

provider A had been copied into the correspondence, or contacted when a prompt response hadn't been received, the outstanding requirement for confirmation of advice would've been identified significantly sooner. She felt that Phoenix should've been responsible for providing a declaration for advisers to complete alongside the plan holder's instruction form.

Mr A's FA said that she had calculated that the transfers would've taken place on 3 May 2021 but for the delays Phoenix caused. She also said that during the period from 3 May 2021 to 11 August 2021 the portfolio in which Mr A was to invest in grew by 3.13%. So she felt that Phoenix should further compensate Mr A for £4,862.90 in respect of this loss.

Phoenix issued its response to Mr A's FA on 10 December 2021. It acknowledged the points that had been made, but said that it still considered the position it had outlined in its 28 September 2021 final response letter was correct.

Phoenix said it had corresponded appropriately with all parties and within reasonable timescales. It felt the content of its correspondence was in line with its regulator's guidelines. And that its letters hadn't lacked clarity. It also didn't agree that it had failed to highlight to either Mr A or his FA that financial advice would need to be obtained. It said its 7 January 2021 letter had highlighted this requirement.

Phoenix acknowledged that the letter of authority had noted a designated email address. But said that the covering letter the FA's company had sent alongside it had also included the email address it'd used.

Unhappy, Mr A brought his complaint to this service in February 2022. He didn't feel that Phoenix had fairly considered its actions and subsequent impact those actions had had on him. Mr A felt that he'd incurred a financial loss of £11,790.82.

Our investigator felt that the complaint should be upheld. She said that although Phoenix had agreed that it caused a delay and shouldn't have closed down the transfer request prematurely, it hadn't used a reasonable date to calculate financial losses. She felt that Phoenix's suggested date of 17 June 2021 didn't take into account that the transfers could've completed earlier if Phoenix had taken ownership of the situation and pro-actively attempted to solve it. She felt that any losses should be calculated based on a transfer date of 25 May 2021.

Our investigator didn't consider that Phoenix should be held liable for Mr A's decision to delay investing the transferred funds until Phoenix had explained why his transfer values had fallen.

Our investigator also asked Phoenix to pay the £100 compensation for the inconvenience it had caused Mr A to him if it hadn't already done so.

Phoenix agreed with our investigator. And said it would calculate the transfer values of Mr A's three pension plans as of 25 May 2021.

Mr A didn't agree with our investigator. Mr A's FA made the following points:

- She'd complained to Phoenix on 2 August 2021 due to concern that the cancellation window on the transfers was running out, while Mr A still didn't know why his transfer values had fallen. She said she was told on 10 August 2021 that the reduction in transfer values was due to changes in annuity rates. And that Mr A's funds were invested on provider A's platform on 12 August 2021.
- She said that Mr A had held off from investing until 12 August 2021 because Phoenix

couldn't confirm why the transfer values had dropped. And that the initial reason Phoenix gave her on 14 July 2021 was that the fall had been caused by market fluctuations. But that as Mr A had been invested in a with profits fund this explanation had caused concern. And Mr A hadn't felt comfortable investing his transferred funds until he had a proper explanation.

- Mr A felt that the reason Phoenix gave after it had reviewed the situation could've altered the suitability of the advice to transfer. And could've resulted in the transfers being cancelled. If the transferred funds had been invested into the market, and if the market had then fallen while Mr A waited for Phoenix's explanation, he could've suffered a loss.
- Mr A felt that Phoenix should be liable for this as he was unable to make an informed decision regarding the investment of funds until it had assessed and confirmed the reason behind the drop in transfer values.

Phoenix told this service on 19 August 2022 that it had carried out the loss calculations our investigator had recommended as if the transfers had taken place on 25 May 2021. It provided the detail of the calculations and said that these showed that Mr A hadn't suffered a financial loss because of the transfer delay.

Our investigator issued a second view on 1 September 2022. She hadn't changed her view of the complaint. She acknowledged Mr A's reasons for not investing the transferred funds until Phoenix had explained why the transfer values had fallen. But felt that it was always Mr A's decision to hold off on investing his funds. And that there was nothing practically preventing him from doing so. She felt that as there was no evidence that Phoenix's delayed response to the question about the reduced transfer values had prevented Mr A from investing his transferred pensions, Phoenix couldn't fairly be held responsible for Mr A's investment decisions.

Our investigator also told Mr A that as Phoenix had calculated that he wouldn't have been financially better off if the transfers had taken place on 25 May 2021, all that was left for Phoenix to do was to pay the £100 compensation, if it hadn't done so already.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm going to uphold it. But I agree with our investigator that Phoenix can't fairly be held responsible for Mr A's decision to hold his transferred funds in cash until after it'd explained to him why his transfer values had fallen. I'll explain the reasons for my decision.

Phoenix acknowledged that it caused delays to the transfer process. But considered that Mr A's transfers should've been carried out on 17 June 2021, rather than 7 and 13 July 2021.

Mr A felt that the transfers would've been carried out on 3 May 2021 but for Phoenix's delays. And our investigator felt that they would've been carried out on 25 May 2021.

So I first considered when the transfers should've taken place. I agree with our investigator that the crucial point was when Phoenix requested confirmation of advice but didn't receive what it needed for several weeks.

Mr A's FA said in her 26 November 2021 letter to Phoenix that: "...at no point do you tell Mr A that confirmation of advice is outstanding or ask for him to take any action, nor do you state the implications of not responding."

Our investigator felt that this wasn't correct. And I agree, because all three April 2021 letters from Phoenix confirming that a transfer request had been received included a notice that advice confirmation was required, as did all three of the reminder letters sent in May 2021. Each letter included the following section, or something very similar:

"How to demonstrate that advice has been received?"

The financial adviser must provide us with written confirmation of the following:

- *that advice specific to a transfer of a policy with guaranteed benefits has been given:*
- *that they have permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity in article 53E of the Regulated Activities Order;*
- *the Financial Conduct Authority reference number of the company or business the adviser works for authorising them to carry on that regulated activity.*
- *Appointed Representatives of a Principal Firm should provide their own Financial Conduct Authority reference number;*
- *your name, date of birth and policy number; and the name of the scheme/company in which the guaranteed benefits are held and in respect of which the advice has been given."*

The 18 May 2021 letter from Phoenix to Mr A's FA also stated:

In order that we can demonstrate compliance with the legislative requirements placed on us I ask that you confirm;

- *That you have provided advice specific to the transfer of safeguarded benefits to Mr A in relation to policies R35235, R41335 & R63326; and*
- *That your firm has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity in Article 53E of the Regulated Activities Order*

I look forward to receiving confirmation on these two points as soon as possible to allow the proposed transfer to proceed.

I acknowledge that Mr A's FA said she didn't receive this letter. But as Phoenix has provided this service with a dated copy of this letter with the correct address, I'm satisfied it did send the letter.

I'm also satisfied that Phoenix did make it clear to Mr A and to his FA that confirmation was required that the FA had provided the relevant advice needed for the transfers. And that it also explained why such information was needed. But I consider that Phoenix could've done more when it received wording on or around 12 May 2021 from Mr A's FA that didn't meet its requirements. And I agree with Mr A's FA that Phoenix's earlier letters didn't state that the confirmation of advice was outstanding.

As I've already noted, I'm persuaded that Phoenix did write to Mr A's FA about the missing information on 18 May 2021. I consider that it was reasonable for Phoenix to have taken a

few days after receiving the first wording from Mr A's FA before it wrote to her to explain it needed additional confirmation. But I agree with our investigator that it would've been helpful to have called or emailed Mr A's FA to explain what was needed. I'm satisfied that this would've avoided further delays. And I don't consider that closing the transfer requests was a reasonable thing to do in this case.

Mr A could also have helped to progress his transfers. While I acknowledge that his FA called Phoenix on 11 May 2021 to ask it to send any requests to her as well as Mr A so that they could be processed quickly, Mr A could also have shared any requests from Phoenix with her.

Phoenix has accepted that it shouldn't have closed the transfer requests. It felt that the transfers would've taken place on 17 June 2021, when it received the required details of the advice confirmation. But I agree with our investigator that this could've been provided much earlier if Phoenix had followed up by phone or email about the confirmation it needed, rather than closing the transfers.

On the basis that Mr A's FA usually responded to Phoenix within a day, I'm of the view that if Phoenix had followed up about the outstanding information with a call or email to her, she would've provided the correct advice confirmation by 25 May 2021.

Having concluded that I agree with our investigator's analysis of the situation, and that the transfers would've taken place on 25 May 2021 but for Phoenix's delays, I can now consider whether Mr A suffered a financial loss as a result of those delays.

Phoenix has carried out loss calculations as if the transfers had taken place on 25 May 2021. I'm satisfied that these showed that Mr A didn't suffer a financial loss because of the transfer delay. But I also need to consider Mr A's other complaint that Phoenix's delay in confirming why his transfer values had fallen led to him deferring the investment of his transferred funds.

I should first note that I've seen no evidence that Phoenix sent Mr A any incorrect transfer values at any time. Phoenix has also confirmed that the transfer values that it paid to provider A were correct.

Mr A didn't feel he was responsible for the investment growth he'd lost by delaying his investment of the transferred funds with provider A while he waited for Phoenix to investigate and confirm why his transfer values had fallen.

Mr A said he didn't feel he had enough information to invest the transferred funds. And was concerned that if he did so, he might lose out financially under the circumstances.

I understand why Mr A was concerned about investing his transferred funds. But I don't think Phoenix can fairly be held responsible for this. I say this because it's often the case that a consumer has more than one transfer value quote before deciding to transfer to another provider. And it's common for transfer values taken six months apart to be different, as all sorts of market factors affect the values. So I wouldn't normally expect a business to be held responsible for a consumer's investment choices while that consumer waited for an explanation about why the transfer value had changed. I say this especially in cases like this one where the quoted transfer values were correct.

I also agree with our investigator that it was Mr A's decision to hold the transferred funds in cash while he waited for Phoenix's explanation. And that it would've been reasonably clear to him that if Phoenix upheld his complaint, he would've been put back into the position he would've been in but for any Phoenix errors or delays. As long as Mr A took the investment

decisions he would've taken but for any Phoenix errors or delays any losses would've been put right.

Overall, I uphold this complaint, as I consider that but for Phoenix's delays, the transfers would've gone ahead on 25 May 2021. However, I don't consider that Phoenix is responsible for Mr A's decision to hold his transferred funds in cash until it provided him with the reasons for his transfer values falling.

I also consider that the delays caused Mr A some distress and inconvenience. Phoenix has previously offered £100 in respect of this. I consider that this is reasonable under the circumstances.

Putting things right

I agree with our investigator that the transfers should've gone ahead as of 25 May 2021. Phoenix has already carried out the financial loss calculations I would expect. These showed no loss. Therefore there is no financial redress for Phoenix to pay.

Phoenix offered Mr A £100 compensation for the inconvenience it had caused him. If it hasn't already paid this, it should pay it to Mr A now.

My final decision

I uphold this complaint for the reasons above. Phoenix Life Limited should take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 March 2023.

Jo Occleshaw
Ombudsman