

The complaint

Mr T complains that Phoenix Life Limited (Phoenix Life) delayed the transfer of his personal pension plan (PPP) to another provider, despite him complying with all of its requirements. He says the value of his plan reduced during the delay. He wants compensation for the losses suffered.

What happened

Mr C wanted to transfer his plan to another provider called Fundment, who requested the transfer from Phoenix Life through the Origo transfer system on 18 November 2021. Phoenix Life wrote to Mr C on 22 November 2021 confirming the details and a transfer value of around £56,600. He says the transfer wasn't completed and reinvested with Fundment until 4 April 2022. Mr C felt this had taken too long and said the amount transferred was less than quoted in November 2021.

Between first requesting the transfer and it being completed Mr C and his financial adviser contacted Phoenix Life on several occasions and raised complaints about the delay. It said it required information from Fundment which it hadn't received until 13 January 2022. And it needed Mr C to complete a questionnaire for him to confirm he was aware of the risks of transferring his pension plan. This was completed over the telephone on 28 January 2022 and Phoenix Life advised a turnaround time of 7-10 working days.

When the transfer wasn't made Mr C complained again saying the delays had caused him a loss. And he referred his complaint to our service. We asked Phoenix Life to look into it and it sent Mr C a final response on 6 April 2022.

Phoenix Life agreed that there had been delays compared to its normal internal timeframes for processing each part of the transfer. It said if these had been met it would have sent Mr C a disclaimer for him to sign by 10 February 2022. But this wasn't sent until 2 March 2022. It said it received Mr C's response on 11 March 2022, so had it sent the form on 10 February it would have received it back on 21 February 2022. And would have then calculated the transfer value on the next day.

Phoenix Life said the transfer value on 22 February 2022 would have been around £52,400. But the actual transfer paid to Fundment and calculated on 19 March 2022 was around £53,236, about £831 more than the value on 22 February 2022. Because of this it said it couldn't agree Mr C had suffered a loss as a result of the delay. However, it said it had asked Fundment to send it information to establish whether a loss had been caused by the transfer not taking place at the earliest possible date of 7 March 2022 and that it would update Mr C about this.

Phoenix Life sent Mr C a cheque for £100 as compensation for the distress and inconvenience caused by the delays.

Mr C referred his complaint to our service and our investigator looked into it and he decided to uphold it.

Our investigator said the transfer value Phoenix Life had quoted in November 2021 wasn't guaranteed. But he said it had caused avoidable delays in processing the transfer. He said had it kept to its own internal service level agreements (SLA's) the transfer value should have been based on the investment fund prices of 22 February 2022 not the 19 March 2022. But he said Phoenix Life had confirmed the value on 19 March was higher than that on 22 February as it had stated in its final response to Mr C.

However, he said Phoenix Life hadn't carried out the comparison of investment returns between its own and the Fundment's funds assuming the transfer had been completed when it should. He said information provided by Fundment about returns between 9 March and 4 April 2022 showed that Mr C had a loss of £583.29 at that point.

Our investigator said to compensate Mr C fairly Phoenix Life should rerun the calculations again to update any loss amount from 9 March 2022 to the date it made settlement. And if there was a loss, then where possible pay this into Mr C's plan with Fundment, and if not then directly to him with an allowance for tax.

Our investigator said in view of the continuing delays in resolving Mr C's complaint Phoenix Life should pay him a further £200 in compensation for the distress and inconvenience caused as it had held the information from Fundment for some time without acting on it.

Mr C agreed with our investigators view of his complaint, but Phoenix Life didn't respond and because of that it has come to me to decide.

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 am upholding the complaint.

I think Phoenix Life did delay the transfer and it's fair that he be compensated for any investment loss he may have suffered as a result of the delay.

The transfer value of Mr C's plan wasn't guaranteed. And it isn't unreasonable that this only be calculated once Phoenix Life had received all the information from both Mr C and Fundment necessary to make the transfer. But as Phoenix Life accepts it caused delays in parts of the transfer process compared to the timescales in its service level agreements.

Mr C has been inconvenienced by the delays and had to make multiple complaints to progress his transfer. I don't know exactly when Fundment provided the information necessary for the potential loss to be calculated. But it is around ten months since Phoenix Life told Mr C it would obtain this information. And it is more than four months since our investigator said it should update its calculations and if these showed a loss to pay this into Mr C's plan with Fundment.

I think Mr C has been caused distress and inconvenience over a long period of time. So, I don't think the £100 Phoenix Life has already paid in compensation is adequate in the circumstances and it is fair that this be increased.

Putting things right

My aim in awarding fair compensation is to put Mr C back into the position he would likely have been in, had it not been for Phoenix Life's error. I think he would have invested with Fundment as he did when the transfer was actually completed.

The earliest Phoenix Life should have been able to make the transfer was 7 March, which Fundment would have invested on 9 March 2022. The funds were actually transferred on 2 April and invested on 4 April 2022. The difference in return achieved by the Phoenix Life and Fundment investment funds between those dates showed Mr C had suffered a loss of £583.29. Those calculations should be brought up to date.

What Phoenix Life must do:

- Phoenix Life should compare the performance of Mr C's investment again up to the date of settlement assuming the investment with Fundment had been made on 9 March 2022 to establish a *fair value*. If the *fair value* is higher than the *actual value* of Mr C's plan with Fundment, he has suffered a loss and compensation is payable. If the *actual value* is higher than the *fair value*, then no compensation is payable.
- The compensation amount should if possible be paid into Mr C's Fundment 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 C as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr C won't be able to reclaim any of the reduction after compensation is paid.
- It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr C would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Provide the details of the calculation to Mr C in a clear, simple format.
- Pay Mr C a further £200 compensation to give £300 in total for the distress and inconvenience caused by the delays in processing his transfer request and its failure to keep him updated. This amount is in keeping with awards our service would make in similar circumstances.

Actual value

This means the actual value of the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had the transfer taken place earlier.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from Mr C's plan should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, Phoenix Life may total all those payments and deduct that figure at the end to determine the *fair value* instead of deducting periodically.

Why is this remedy suitable?

I think this method is suitable as but for the delays caused by Phoenix Life, Mr C would have invested his transfer value in the Fundment funds earlier.

My final decision

My final decision is that I uphold the complaint against Phoenix Life Limited.

I direct Phoenix Life Limited to undertake the loss calculation as described above and if a loss is shown pay compensation for this to Mr C's Fundment pension plan or to him directly as explained.

I further direct Phoenix Life Limited to pay Mr C a further £200 in compensation for the distress and inconvenience it has caused.

Phoenix Life Limited must pay the £200 compensation for the distress and inconvenience caused within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Phoenix Life Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2023.

Nigel Bracken
Ombudsman