

The complaint

Mrs H complains that Phoenix Life Limited is unfairly intending to apply a 45% special lump sum death benefits ("SLSDB") charge to pension savings held by her late husband.

What happened

I issued a provisional decision on this complaint in January 2023. In that decision I explained why I thought part of the complaint should be upheld, and what Phoenix needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

The late Mr H held pension savings with Phoenix. Mr H sadly passed away in September 2021. At that time he was aged 77 but had not taken any of the pension benefits he held with Phoenix.

Shortly after Mr H's death, Mrs H got in contact with Phoenix and asked to be sent the forms she needed to complete in order to claim Mr H's pension benefits. Phoenix accepts that it didn't respond to that request as quickly as it should have, only sending the forms to Mrs H around six weeks later. At that time it confirmed that the benefits being paid would be subject to a taxation charge amounting to 45% of their value.

Mrs H complained to Phoenix. Phoenix apologised to Mrs H for the delay in sending her the claim forms. But it told her that it was bound by the scheme and HMRC rules and had no option but to deduct the tax charge. Unhappy with that response, Mrs H referred her complaint to us.

I can see that in the lead up to, and shortly after, his 75th birthday Phoenix had a number of conversations with Mr H about him taking his pension benefits. But I am satisfied that those discussions didn't result in a claim being made by Mr H. So it seems there is little dispute that, at the time of his death, Mr H hadn't taken any of his benefits from this pension plan.

Phoenix has said that Mr H's pension plan was opened in 1987. It says that the applicable terms for that plan are specific, in stating that, on death before taking benefits, the proceeds are payable to "...the executors, administrators or assigns of the Annuitant.." So it seems that Phoenix, as the scheme administrator, has little option but to pay the proceeds to the estate of Mr H, rather than directly to the sole beneficiary of the estate, being Mrs H.

Where payments of this nature are made, Phoenix is required to deduct tax according to rules set by HMRC. Those rules differ depending on whether payments are being made to an individual, or not. Payments to an individual are subject to the deduction of income tax. However otherwise payments are subject to the special lump sum death benefits charge. That charge is currently set at 45%.

So, it currently seems to me that Phoenix has little choice but to follow the relevant regulations and make a deduction of 45% from the proceeds of the pension plan that it pays to the estate of Mr H. Whilst I appreciate how disappointing that will be for Mrs H, particularly given the limited size of her late husband's estate, it doesn't appear to me to be something over which Phoenix can exercise any discretion.

But, as Phoenix will be aware, unlike the Courts, I am not limited to looking only at the issues a consumer has focused on in their complaint. Our approach is "inquisitorial" - rather than the "adversarial" procedures of the courts, where the lawyers for the two sides "fight it out". By law, I am required to resolve complaints fairly. This means I decide what questions to ask to get to the bottom of things. And it means I can concentrate on the relevant facts of the case, rather than the complaint as presented.

So here, I think it is also appropriate to consider what happened when Mrs H asked Phoenix to provide her with the forms she needed to complete to claim her late husband's pension benefits.

As I said earlier, Mrs H initially made that request to Phoenix just a few days after her husband's death. No doubt at that time Mrs H was making every effort to complete the necessary administrative tasks relating to her late husband's financial affairs at a time when she was experiencing great grief. So I think it would be reasonable for her to expect the organisations she dealt with to treat her compassionately, and deal with her requests as efficiently as possible.

But Phoenix failed to issue the required paperwork to Mrs H. I can see that, around three weeks later Mrs H needed to make a further follow up request to Phoenix. The claim forms weren't issued to Mrs H until almost three more weeks had passed. Phoenix has said that the delay was due to internal processing issues when calculating the value of the benefits, due to the circumstances of the claim. But it has apologised for the time it took.

I am pleased to see that Phoenix has apologised to Mrs H for that delay. But I don't think an apology is sufficient. As I've said earlier, this would have been a highly emotional time for Mrs H, and needing to make repeated requests for information would have been upsetting at that time. I think the delays caused her distress and inconvenience. So I intend to direct Phoenix to pay Mrs H the sum of £250 in respect of the upset its delays in issuing the paperwork to her would have caused.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both Mrs H and Phoenix have told us that they have nothing further that they wish to add.

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.

Given that neither party has provided me with anything further, or disagreed with any of my provisional findings, I see no reason to change the conclusions that I reached in that decision.

So my decision is that Phoenix has little choice but to follow the relevant regulations and make a deduction of 45% from the proceeds of the pension plan that it pays to the estate of Mr H. Whilst I appreciate how disappointing that will be for Mrs H, particularly given the

limited size of her late husband's estate, it doesn't appear to me to be something over which Phoenix can exercise any discretion.

But I think that the delays in providing information to Mrs H about the benefits due to the estate of the late Mr H caused her distress and inconvenience. So I direct Phoenix to pay Mrs H the sum of £250 in respect of the upset its delays in issuing the paperwork to her would have caused.

Putting things right

Phoenix should pay Mrs H £250 for the distress and inconvenience she has been caused.

My final decision

My final decision is that I uphold part of this complaint and direct Phoenix Life Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 April 2023.

Paul Reilly
Ombudsman