

## The complaint

Mr S says Phoenix Life Limited (Phoenix) is responsible for the failure to pay his annuity over a period of nearly a year. After he first raised the problem with the firm it assured him matters would be resolved, but this didn't happen. He says this caused him considerable stress and inconvenience.

Mr S is represented by his daughter (Mrs X).

## What happened

Mr S had an annuity with Phoenix which commenced in January 1991. He received a gross monthly payment of around £5,000. Mr S is a gentleman in his 90s.

Unfortunately, from October 2021 a problem occurred with Mr S's annuity payments. It seems he changed his banking arrangements but hadn't informed Phoenix. It told him that:

*"Our records confirm we received confirmation from your bank your annuity payments due in October and November 2021 hadn't been paid and we put a stop on all future payments, so they weren't returned also, we needed confirmation of the new bank details in order to re-start payments and we wrote to you asking for a copy of your bank statement. I also understand you were in the process of moving address at this time."*

I've reviewed the case notes provided by Phoenix. They are not as clear as they could've been. But the following timeline of events is constructed.

Mrs X contacted Phoenix on 4 May 2022 on behalf of her father stating that he'd not received his annuity payments since October 2021. She made a further call on 20 May 2022, when it's recorded Mr S confirmed he would speak to his bank about why it had returned his annuity payments. And Phoenix says it sent a letter the same day setting out the position.

On 14 June 2022 Mrs X called Phoenix saying her father really needed access to his funds. On 21 June 2022 it appears to have requested a copy of a bank statement for his new account. It received this on 29 June 2022.

On 14 July 2022 Mrs X requested confirmation that the back payments of her father's annuity had been made. They hadn't been. Further calls were made by Mr S and his representatives chasing payment over the following weeks. It seems payment wasn't made until 8 August 2022.

Mr S complained to Phoenix about what had happened. In its final response to him of 12 September 2022 it said:

*"We spoke with your daughter about the process and what we needed and we received your bank statement on 29 June 2022. However, we didn't make all the missed payments until 8 August, which is unacceptable. We did speak to your daughter around this time, but gave her incorrect information about when the payments would be made."*

*"I have looked at the process and the forms we issued and can appreciate we have delayed the process as well as giving your daughter incorrect information. As a result, I have upheld*

*your complaint and feel we should have been in a position to pay the backdated premiums from October 2021 to May on 29 June, rather than 8 August. I also feel we would be in a position to have made the June and July payments on time had we acted on the bank statement, so I have also paid interest on those payments as well, from the dates they were due to 8 August when they were paid."*

Phoenix offered Mr S compensation of £325.87 (net of tax) for interest on his missed annuity payments from the point it accepted responsibility for a delay (29 June 2022) until it paid his missing annuity instalments. It also offered him £100 for the poor service it had provided. In a subsequent letter to Mr S addressing matters related to his annuity payments from September 2022 which it had failed to respond to previously, it offered him a further £150 for its handling of his case.

Mr S wasn't satisfied with Phoenix's offer to settle his complaint. His representative brought his case to this Service and said that as £60,000 had been withheld from her father for a year, he wanted £6,000 compensation. She said it had been an extremely anxious time for him and that his annuity was his main source of income.

An Investigator considered Mr S's case and upheld it but not to the extent he wanted. She thought Phoenix had done enough to make up for the delay it had accepted responsibility for in paying his missed annuity instalments. But she thought in the circumstances, it should pay him a further £150 for the trouble and upset it had caused.

Mr S didn't think this was sufficient. His representative said:

*"Mr S would like the figure of £6,000 due to 12 months of non-payment of his pension. This figure represents what he feels is a fair figure taking into consider interest rates. The amount owing to Mr S was £60,000 and this was a huge problem managing without such a substantial payment over a year. The compensation offered is totally unsatisfactory for the anguish caused to Mr S."*

As both parties couldn't agree with the Investigator's findings and conclusions Mr S's complaint was passed to me to review afresh. I issued my provisional decision last month. Despite my request for further information, neither party has responded substantively. So, I will base this final decision on the information available to me.

### **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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr S's complaint. I'll explain why.

I've considered the extensive regulation around transactions like those performed by Phoenix for Mr S. The FCA Handbook contains eleven Principles for businesses, which it

says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Phoenix. As such, I need to have regard to them in deciding Mr S's complaint.

I asked the Investigator to approach both parties for more information – there were gaps in the positions each had advanced.

Mr S seeks £6,000 compensation. This appears to have been based on missed annuity payments for a year, and seeking 10% interest on this sum. In actuality, he missed annuity payments for ten months – which I accept is still a very long period. The Investigator has also explained our usual approach to awards of interest provides for 8% simple annual interest.

An important question arising here is which party was responsible for the missing annuity payments between October 2021 and July 2022? As we know, Phoenix accepts it was responsible for the delay in making payments from 29 June 2022 when it was informed of his new bank details. Mr S thinks it should be responsible from October 2021.

I sought confirmation from Mr S about why his bank had stopped accepting his annuity payments. Phoenix had asserted he'd changed his banking arrangements. Despite my request for information neither he nor his representative has confirmed this is what happened. In the absence of information to the contrary, I've assumed Mr S changed his bank account details. And that he failed to let Phoenix know about this.

However, we also know that Phoenix stopped making payments to Mr S's old bank account from December 2021 because two of his prior payments had been returned. So I sought confirmation from it about how and when it had tried to contact him. It said:

*"Our file note says the customer had changed banks which was why he didn't receive his payments, it isn't for us to say why he chose to do so. He didn't provide a bank statement until 29 June 2022 to update. When we were made aware by telephone there was some issue with him not receiving his payments in May 22 we wrote to him, but I agree when we received returned payments from the bank we should have contacted him about this to ensure he could receive his money even if by cheque in the interim and I can't see that we did so until his next of kin called us in May 22. Prior to then there is no outbound correspondence since 2019 on record."*

I sought confirmation from Mr S about how he'd managed his expenditure given that he'd been without what Mrs X had told this Service was his main source of income for about ten months. Mr S says he borrowed money and paid interest on this.

I'm assuming that Mr S is in receipt of a state pension. If that's the case then his annuity wasn't his main source of income. I don't know what other household income he had access to either. He hasn't provided evidence to show he had to borrow money because he didn't have his annuity payments.

There's also an unanswered question for Mr S or his representative about why it wasn't until May 2022 that enquiries were made about his missed annuity payments. If he was incurring costly interest on borrowing it's reasonable to assume he would've sought to resolve matters more quickly.

On the other hand, I'm also mindful Mr S is a gentleman in his 90s who has acknowledged his memory isn't perfect in terms of what happened and when, over the period concerned.

It seems to me both parties have some responsibility here in what happened. Mr S should've informed Phoenix about changing his banking arrangements. But it knew something had gone wrong because of the annuity payments which had bounced back for October and November 2021, indeed it put a stop on his payments so that wouldn't happen again. But it's confirmed it did nothing to enquire about the situation. This is a failing on its part.

Had Phoenix communicated with Mr S in December 2021, I think it's more likely than not he'd have informed it about his new banking arrangements in time to make sure his January 2022 annuity payment, together with his missing instalments, were paid on time.

In my provisional decision I said there was one important caveat to my conclusion here and a question for Mr S or his representative to respond to with evidence. I needed to know whether he had also changed his address. In its final response to him about his complaint, Phoenix suggests this was the case. I needed to know when he changed his contact address and when he notified his pension provider about this. He's not provided me with any information about this.

### **Putting things right**

When a firm gets something wrong, it's the role of this Service to return the complainant to the position they would've been in now had it not been for its failings.

As I've identified, both parties must take some responsibility for what happened. It seems Mr S failed to inform Phoenix about his new banking arrangements. But by December 2021 it was aware something had gone wrong and it did nothing to communicate with Mr S. I don't know whether Mr S also changed his address without informing Phoenix. Neither he nor his representative has provided evidence on this point.

If Mr S's contact details remained unchanged, or if they had changed and he'd informed his pension provider of his new address, and he can provide Phoenix Life Limited with that evidence (or it is already in possession of such), it will need to assume following the contact it should've made around December 2021, then he would've informed it of his correct banking details in time for his back payments and his ongoing annuity to have been reinstated from January 2022 (the relevant date). And it will need to calculate 8% simple interest on those payments between the relevant date, or when payments subsequently became due, until it paid him the outstanding annuity instalments in August 2022.

On the other hand, if Mr S had changed address and hadn't updated Phoenix with his details, then even though it failed to try to make contact with him between cancelling his annuity payment and the contact it received months later from Mrs X, a further award of interest on top of what it has already offered wouldn't be appropriate. I say this because had it tried to contact Mr S any such contact would more likely than not have been unsuccessful.

I've decided to base any award for interest on our standard approach of 8% simple annual interest. That's because I've seen no evidence from Mr S or his representative that he incurred any borrowing costs, and if he did what these were.

When I'm considering a complaint like Mr S's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Phoenix's acts and omissions were greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Mr S is a gentleman in his 90s. He was left without an important source of income for ten months. He's told us about the worry this caused him and the trouble he had getting things put right. In recognition of the distress and inconvenience its failings have caused, I require Phoenix Life Limited to pay him £400. It can take off from this award anything it has already paid Mr S for trouble and upset.

I also require Phoenix Life Limited to provide Mr S with a schedule of all the annuity payments due to him from October 2021 until the date of this decision, when they were paid and to which account. The purpose is to provide him with assurance that all contractual payments have been made.

### **My final decision**

For the reasons I've set out, I'm upholding Mr S's complaint and require Phoenix Life Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 September 2023.

Kevin Williamson

**Ombudsman**