

The complaint

Mr A complains about the contradictory information he says Phoenix Life Assurance Limited (Phoenix) gave him about the retirement options for his pension plan. He says this might have led to him making the wrong choice. He also complains that the payment of his benefits was made late because of Phoenix's poor service and says it was also late in making one of the monthly annuity payments.

What happened

In 1989 Mr A took out a pension plan with Phoenix which had been set up from the proceeds of a transfer from a defined benefit scheme. The plan was set up to a normal retirement date (NRD) of 13 December 2021 and included certain "guarantees" such as a Guaranteed Annuity Rate and a Guaranteed Minimum Pension (GMP). In this case the GMP was £3,370.64 per year at Mr A's NRD.

In April 1999 Phoenix wrote to Mr A to confirm that his plan had been included in the industry wide "pension review" and the advice to transfer from his scheme deemed to be unsuitable. Redress was paid into his pension plan at that point.

Phoenix wrote to Mr A in June 2021 – informing him of his NRD in six months' time. It sent out a pack setting out his retirement options in October 2021 and Mr A contacted Phoenix to discuss the matter in early November 2021. During this time I understand Mr A was told he could take his benefits as a lump sum although, after a review of the matter this information was deemed to be incorrect, and Phoenix said Mr A could only draw his benefits as an annuity.

Mr A said he would be speaking with Pension Wise about the matter and decided he would defer taking the benefits until December 2022 or until his complaint was settled – which it was in May 2022. Mr A contacted Phoenix at this time and was told to call back the following month which was six months prior to his new retirement date.

In June 2022 and November 2022 Mr A said he had to contact Phoenix several times as his retirement packs hadn't been received as promised. Eventually Mr A accepted Phoenix's annuity illustration dated 15 November 2022 which noted he would receive a yearly income of £3,601.80. Phoenix set up the plan with a start date of 15 November 2022 and confirmed this to Mr A on 1 December 2022.

But also in November 2022 Mr A had complained about the contradictory information he'd been provided with.

He said Phoenix had initially said he could take his benefits in the form of a lump sum but subsequently changed its mind and said he would have to take out an annuity instead. He also said this lack of clarity caused the payments to be made over a year late and during the process Phoenix had provided poor service.

Phoenix said it recognised it had provided a poor service and had delayed its complaint response to Mr A - so it paid him £300.

In February 2023 Mr A had cause to contact Phoenix regarding what he thought was the late payment of that month's annuity. Phoenix explained that Mr A's payments should be made as close to the 15th of each month as possible – allowing for weekends and bank holidays. But it accepted that it should have been clearer in confirming this payment date to him and didn't respond to this new complaint point as quickly as it should have. So it paid Mr A an additional £100.

But Mr A wasn't satisfied with the compensation he was paid, so he brought his complaint to us where one of our investigators looked into the matter. He said the question of whether Phoenix hadn't adhered to the terms and conditions of the policy when Mr A wanted to take his benefits as a lump sum or under the serious ill health option had already been considered, but broadly he agreed with our assessment of that point.

He said he accepted that Mr A might have been given conflicting information about the option to take a lump sum on the phone, but ultimately the written information Mr A was provided with did set out the correct options available to him.

He also considered that the compensation Mr A had been paid for the "poor" service Phoenix had provided and the other errors it made - such as not confirming the payment date of the annuity and not providing clear contact details of the person that issued the final response letter, was fair and reasonable in the circumstances.

Mr A didn't agree with the outcome making the following points in response:

- Phoenix shouldn't have been able to alter the term of the original policy to prevent him either taking his benefits at age 50 or as a lump sum. He agreed to those terms when he took out the plan.
- He'd lost 12 months' worth of payments from 2021 to 2022 because of Phoenix's "*incompetence*".
- He didn't think the compensation that had been paid – with an additional £100 now offered – was sufficient.

The investigator said he didn't think Phoenix had deprived Mr A of a years' worth of payments as he was given the opportunity to take his benefits in October 2021 using the option forms he'd been sent. But Mr A chose not to draw the benefits while he remained in dispute believing he should be able to take a lump sum instead.

As no resolution could be found the complaint's been referred to an ombudsman and it's been passed to me to 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.

I was sorry to learn of the ill health Mr A has been suffering. He's told us that the medication he is required to take for his condition has made it difficult for him to grasp some of the outcomes we've provided across his three complaints.

So I'll set out clearly below what complaint points I'm deciding upon here, but – as I've reached the same outcome as the investigator, I know Mr A will be disappointed by that. However, I hope that my explanation of things here will provide Mr A with some closure and some comfort that I think – based on what I've seen - that he's now been paid his benefits correctly and hasn't suffered any financial loss.

In May 2021 we issued a final decision about whether the options Mr A was offered in respect of taking his benefits was consistent with what he expected as set out in the original terms and conditions. This matter has been dealt with thoroughly and I'm not going to comment on it any further in this decision. And subsequently Mr A has raised a new complaint about life cover that he says was included within his pension plan and that has now been investigated separately.

So, what I'm looking at here is the question of whether Phoenix provided Mr A with misleading or conflicting information when he contacted it to discuss how to take his benefits and whether Phoenix has provided elements of "poor" service while paying Mr A's benefits and communicating with him during the process.

The conflicting information given to Mr A

As I've said previously, we've already considered separately Mr A's complaint about whether it was unfair that he couldn't access his benefits at age 50 or as a lump sum as was set out in the original terms and conditions. So I've started from the basis that, because of the need to provide the GMP, Mr A couldn't draw tax free cash (TFC) from his plan and simply had to take his benefits as a yearly annuity payment. This was set out in the retirement pack that Mr A received from Phoenix in October 2021 in advance of his original NRD. The pack noted the estimated plan value was £32,985 but stated that it wasn't possible for Mr A to cash in the pension, take the proceeds as a number of individual lump sums, or take TFC.

The annuity illustration on the penultimate page confirmed that Mr A could only take an annuity from Phoenix for £3,370.68 each year, with a spouses' pension that would pay half the annuity if Mr A died first. So, although the pack made numerous references to Mr A's opportunity to "shop around" with other providers and to speak with Pension Wise for further help, it did make it clear that – if he drew his benefits through Phoenix, he would only be able to take the annuity as noted above.

But Mr A has told us that, during various communications with Phoenix, it told him that he couldn't take TFC, then it said he could, before confirming eventually that he couldn't. He said this was wrong and could have led to him choosing the wrong option when it was made available to him.

So I've listened to the calls that Mr A had with Phoenix, and I've heard aspects of conflicting information that was provided to him – particularly during calls on 3 and 4 November 2021. I have taken into account that part of the confusion during the calls was because Mr A was also talking about another plan he held which I understand did offer the option of 25% TFC, but regardless I don't think Phoenix was clear about what it told Mr A he would be able to do. The call from 4 November 2021 was clear in its instruction that the previous adviser had "been wrong" and that Mr A could take 25% TFC from both his protected rights and non-protected rights plan – which the Phoenix "adviser" calculated meant that Mr A could be entitled to over £4,000 TFC.

So I think it was clear that Phoenix, at best, wasn't entirely clear with Mr A during the telephone calls and did provide him with conflicting information about whether he could take a TFC lump sum.

But Phoenix has accepted that it may have provided such unclear information and has paid Mr A £300 compensation for that - as well as the matter of Mr A not receiving retirement packs in June and October 2022. So I've gone on to consider whether Mr A was disadvantaged by the information and what would have happened if Phoenix had been clear from the outset.

In doing so I'm mindful that all the written documentation Mr A received was correct and did only set out the annuity option for him to choose. And I've also taken into account that was the correct annuity option in this case – so it's the only outcome Mr A could have received anyway. Even if he had chosen the alternative of withdrawing TFC if it were available to him during the telephone conversations, such an option still couldn't have been paid to him and when he received the documentation to confirm his choice it would have defaulted to show the annuity only option. So I don't think it would have been possible for Mr A to have made the wrong choice anyway, because he would always have ended up with the one available option.

So, even if Phoenix had been clearer in confirming the fact that TFC wasn't available from the beginning, I don't think it would have altered what happened in the end. Whatever Phoenix may have said which might have raised Mr A's expectations of receiving TFC, it simply wasn't available to him under any scenario. Of course I accept that the conflicting information did raise Mr A's expectations and would have caused him some degree of concern and worry about what exactly was available to him – although I think the written information Mr A received ought to have allayed his fears somewhat. But, in any case I think this would have impacted Mr A to some degree, especially as he's told us that his medical condition makes it difficult for him to understand these matters as well as he would like.

So I think an award of compensation should be made but, when taken overall, I think that the sum of £300 is within the range of what I'd expect to see for something like this.

The years' worth of annuity payments that were missed

Mr A says that because of its conflicting information he was unable to take his annuity until he had spoken to Pension Wise and also resolved the complaint with Phoenix. He says that this, as well as the delays in receiving his retirement packs in 2022, meant that he received his first annuity payment around a year after his NRD. So he thought Phoenix should make up those missed payments.

But I don't think Phoenix was responsible for those missed payments nor will I be recommending that it pays them. I say that because the October 2021 pack provided Mr A with everything he needed to access his benefits at or around his NRD. I know Mr A was then given conflicting information when he contacted Phoenix to discuss his options but that didn't prevent him from carrying on with the process of drawing the benefits. Phoenix didn't prevent Mr A from doing so – it was a decision that Mr A himself made - so I can't say Phoenix prevented him from taking the annuity and therefore receiving that years' worth of income. In such situations I would expect Mr A to have mitigated his position, which I think he could have done by continuing the process and registering a complaint if he thought the benefits had been paid incorrectly.

The other errors Phoenix made and the additional compensation offer

Mr A said he had to contact Phoenix again in February 2023 when his monthly annuity payment was made "late". He said he'd received his first two payments by the 13th of each month but in February it wasn't paid until two days later.

Whereas Phoenix said the due date for Mr A's annuity payment is the 15th of each month but where weekends or bank holidays affect that date it is obliged to pay on the nearest working day before. In this case that meant it paid Mr A on the 13th of the month.

I've seen the "commencement of benefit schedule" that Phoenix sent Mr A on 1 December which set out the "requested pension date" of 15 November 2022. So I think it's reasonable to assume that this would be the date of each month that payment would be made. And although, quite understandably, Phoenix has paid Mr A before this date on some occasions for the reasons given, there's nothing to support the idea that it has made his payments later than the 15th of each month. So I don't think Phoenix has done anything wrong there.

However, while there's no evidence to show that Mr A requested a specific date to have his annuity paid, Phoenix has accepted that it could have made the regular payment date clearer and has offered further compensation for that oversight.

Mr A also complained that Phoenix's final response letter to him from March 2023 omitted the complaint handler's name and provided a contact number that wasn't possible for him to get through to. I think it's likely that we all suffer some day to day inconvenience when dealing with businesses and I can understand that Mr A would have been frustrated at not knowing who to ask for when he contacted Phoenix and would have been disappointed not to get through to someone to discuss his complaint resolution.

But Mr A had been in communication with Phoenix to some extent up to that point so I think it would have been possible for him to have explored alternative lines of communication – even if that would have been frustrating for him. So I don't think the omissions from the letter prevented Mr A from being able to discuss his complaint with Phoenix in some way or other. But even if I am wrong in saying what Mr A might have been able to achieve, Phoenix has accepted that these errors would have caused him some degree of inconvenience and has offered to pay an additional £100 compensation.

As before I've thought about Phoenix's additional offer carefully and I do feel that it represents a fair and reasonable resolution to this part of Mr A's complaint. So I think that's what it should pay.

Putting things right

Phoenix Life Assurance Limited has already made an offer to pay £400 in total to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Phoenix Life Assurance Limited should pay any amount that it hasn't already paid Mr A from that total of £400.

My final decision

For the reasons that I've given Phoenix Life Assurance Limited should pay the outstanding compensation sum as set out above.

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

Keith Lawrence
Ombudsman