

The complaint

Mr C complains that Phoenix Life Limited (Phoenix) hasn't been able to locate four missing pension policies he took out in the 1990s and has relied on insufficient evidence when saying they may not exist.

Mr C is represented in bringing this complaint. But for ease of reading, I'll refer to all comments and actions as Mr C's.

What happened

Mr C says he took out six personal pension policies with another firm, B, in the 1990s having transferred in other policies that he held. Those policies were subsequently transferred to Phoenix to administer. According to the documentation that Mr C holds, the details of the policies are:

Policy reference ending	Date of the product particulars schedule	Transfer value at the time	Retirement date
89A	14 June 1993	£24,185.59	August 2015
90H	14 June 1993	£1,159.36	August 2025
30A	25 June 1993	£1,159.36	August 2025
29E	25 June 1993	£1,375.59	August 2015
05B	13 July 1993	£1,159.36	August 2025
04L	13 July 1993	£1,375.59	August 2015

During June and July 1993, Phoenix sent Mr C covering letters with "product particular schedules" for all six contract numbers which state *"Please find enclosed the product particulars for your pension transfer plan. You should read this information carefully since it contains vital information regarding your contract with this company"*.

On 13 July 2023, Phoenix also sent Mr C two acceptance letters for policies 05B and 04L. Those said *"I am pleased to inform you that your proposal dated 24 May 1993 to effect a pension plan has been considered and the company is prepared to grant the proposed benefits on the terms set out attached"*. Phoenix also confirmed that two single premiums of £1,375.59 and £1,159.36 had been received.

Mr C moved overseas in 1993 and left the policy documents with a relative for safekeeping. Phoenix didn't have his updated address during that time, so wasn't able to send further correspondence about the policies.

Mr C didn't take his benefits for those policies that were due to mature in 2015. And in 2022 he contacted Phoenix about claiming the benefits from each of his policies. However, Phoenix told him it could only trace two policies in his name - 05B and 04L.

When Mr C contacted Phoenix's Glasgow office about the policies it hadn't been able to trace, it told him they were administered in Peterborough. But the Peterborough Office

suggested otherwise and told Mr C to contact its Glasgow office. In response to further contact from Mr C, on 10 February 2023, the Glasgow office told him that the four missing policies were 'Alba Corporate' policies that were administered in Peterborough. So, Mr C needed to contact that office.

Mr C complained to Phoenix as he wasn't happy with the responses he'd received and about being passed between offices.

In the meantime, Phoenix sent Mr C retirement packs in relation to policies 04L and 05B.

The Glasgow Office responded to the complaint on 28 April 2023. It accepted it hadn't provided the required level of service due to the way certain communication was handled. It offered £150 compensation for the impact that had. It again said the four other policies Mr C was concerned about were administered by its Peterborough Office.

Mr C wasn't satisfied with Phoenix's responses, so he approached the Financial Ombudsman Service for help.

One of our Investigators looked into things. She also asked Phoenix and Mr C for further information to help her investigate the complaint. Phoenix again explained that it hadn't been able to find the missing policies and gave some possible explanations about why that might be. Those included that certain policies may not actually have been taken out and later policy numbers may simply have superseded earlier policies of equal values. Another possibility was that some of the missing policies may already have been cashed in, which might also explain why it couldn't find records now. Phoenix also accepted that it was wrong to have told Mr C that the four 'missing' policies were 'Alba Corporate' policies administered by another office.

Taking account of the evidence, the Investigator concluded, on balance, that two of the policies were probably converted to new policy numbers once actually taken out (the other policy numbers relating to the earlier contracts produced). In arriving at that conclusion she noted that the values and other key information were exactly the same. So, she thought that probably explained why at least two of the 'missing' policies couldn't be found (as they'd essentially been replaced). She also ruled out the likelihood that Mr C had already claimed the benefits against other policies. She thought it more likely that they hadn't actually been taken out, especially as there was no record of Phoenix having ever received payments equal to the amounts given on those policies from other providers. In summary, the Investigator thought it likely that Mr C had only taken out two policies, especially when Phoenix's records showed it only received two transfer values. The Investigator explained that if further information came to light, for instance from Mr C's previous employers, to show they'd transferred values in, Phoenix was willing to look into the matter again. She thought that was a reasonable response in the circumstances.

However, the Investigator felt that Phoenix should have got to the bottom of things sooner and had caused additional confusion by telling Mr C that the four 'missing' policies were 'Alba Corporate' policies administered by another of its offices when that wasn't actually the case. She felt that, when the position was eventually clarified, Mr C would have had a loss of expectation. The Investigator recommended that Phoenix pay Mr C a further £200 compensation (on top of the £150 already offered) to recognise the impact of its actions. Phoenix agreed to pay this additional amount.

Mr C didn't agree with the Investigator's assessment and made a number of comments in response. He also said that Phoenix hadn't actually paid the compensation, it had only offered it. Mr C indicated that he'd lost trust in Phoenix.

The Investigator asked Phoenix for more information. However, having considered the responses she received, she explained that her opinion remained largely unchanged. As a resolution couldn't be reached, the matter's been passed 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.

I can fully appreciate Mr C's strength of feeling here. Given the documentation he has, he doesn't feel it's acceptable for Phoenix to say now, more than thirty years later, that four of those policies *may* not have existed at all or *might* have existed at some point even if they don't now. Mr C doesn't think the evidence Phoenix has relied on is particularly strong either. Understandably therefore, the resolution he's seeking is for Phoenix to find the other policies and pay him the remaining benefits he believes he's entitled to.

It's important to explain that I'm limited by the evidence which is available to me. I'm not in a position to forensically examine Phoenix's systems in order to determine whether the other four policies definitely existed and what's likely to have happened to them since. And even if that was a viable option, given the passage of time, the migration of data as systems are updated and the limited availability of evidence now, means I still might not be able to say with certainty what actually happened.

It's against that backdrop that I've considered Mr C's complaint. Given that there are clear gaps in the evidence and some of it is contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened taking account of the available evidence and the wider surrounding circumstances. If I conclude that Phoenix hasn't dealt with Mr C fairly and reasonably, I'll say what it needs to do to put things right now.

I start from the position that a pension provider is unlikely to withhold benefits that are due to a policyholder. And the fact that Phoenix issued retirement packs for two policies suggests it would have done exactly the same with the other four if it had located the policies and determined that Mr C was entitled to claim benefits from them. But Phoenix's records only show that two policies still exist.

Mr C disputes this. He thinks the 'product particulars' schedules he has under six different contract numbers is sufficient proof. They're all dated in June or July 1993 and contain information such as the amount to be transferred from Mr C's other pension policies and his expected retirement date. He's suggested that the use of the word 'contract' could in itself prove the policies were taken out. Mr C's also given me covering letters for each contract number which are dated after the dates on the product particulars schedules. Those letters state *"Please find enclosed the product particulars for your pension transfer plan. You should read this information carefully since it contains vital information regarding your contract with this company"*.

Looking at what's contained within the documentation I've referred to above, I'm satisfied it suggests that, at the very least, Phoenix was minded to offer Mr C six policies of various values on various dates under different contract numbers. That might also explain why it wanted Mr C to check the details carefully. That's fairly typical in these kinds of situations.

But for reasons I'll now explain, I'm less persuaded that the existence of those documents alone means that six different policies were definitely taken out and should still exist.

It might help if I explain that it is and was quite common for consumers to approach providers like Phoenix to establish whether they could provide the type of pension product the consumer wants. Providers would then gather the relevant information from the consumer and produce illustrations of the types of pension plan they can offer and what those pension policies might be worth to the consumer in retirement. And the consumers can use that information to decide if they want to actually take that pension policy out or not. But the production of such documentation doesn't mean the pension policy has actually been set up or that the provider has received the monies to invest in the policy.

Phoenix said whenever it sets up a policy, it produces a schedule, which appears to be a different document to the 'product particulars' schedules Mr C has. It's been able to produce copies of schedules in relation to four policies (those ending in numbers 30A and 29E which were produced in June 1993. And for policies 04L and 05B which were produced in July 1993). The dates on those schedules broadly correlate with the dates on the product particular schedules Mr C has.

But Phoenix doesn't have a schedule for policies 89A or 90H. I can't say exactly why that is. And, of course, I do have to keep in mind that it doesn't automatically mean that policies *weren't* set up under those contract numbers. But the fact that Phoenix has been able to produce schedules for the other four policies does suggest that it would have been able to do the same for the other two if they existed, especially given what Phoenix says about producing such a document when a policy is taken out. So, I think the absence of those schedules, is evidence that those policies, 89A and 90H, weren't ultimately taken out.

I accept the above doesn't explain why Phoenix wrote to Mr C about policies 89A and 90H in June 1993 (after the date the product particular schedules were produced) and asked him to check the policy details carefully as it did for the other policies. But there could be numerous reasons to explain why those letters were sent. For example Mr C might have decided he didn't want to set those policies up, but Phoenix issued the letters in error. And I think another relevant factor suggesting these policies may not have been taken out is that Phoenix's systems don't appear to show that payments equivalent to the amount of the policies were received from other providers.

I appreciate that Mr C may not agree with me on that point. And he's made comments along the lines that the very fact these letters were sent is evidence in itself that monies were transferred. Again, whilst noting Mr C's comments, for the reasons I'll set out, I don't agree. Following the normal sequence of events, if benefits from another pension policy had been transferred in, I'd expect to see a payment on Phoenix's systems. But I've seen no such evidence. For that reason too, it seems unlikely that the policy had been cashed in if there's no persuasive evidence to show that the policy value was received in the first place. Taking all of these factors together, on balance, I think policies 89A and 90H weren't actually taken out. That is, I conclude that Phoenix most likely didn't ever receive payments of pension funds to be invested in those policies.

Bearing in mind that Phoenix's systems show it only received two payments – of £1,159.36 and £1,375.59 respectively, I'm also inclined to agree with its explanations regarding policies 29E and 04L and 30A and 5B. I think that they are duplicates of each other. In other words, while four policies might have been setup, I think two of those – 05B and 04L – replaced the two earlier policies: 30A and 29E. And it's those two policies 05B and 04L that are the ones that still exist and Mr C is entitled to claim against now.

In coming to the above conclusion, I've noted that schedules for 04L and 05B were issued in July 1993 a few weeks after the earlier schedules for 30A and 29E. But the other information

contained in them is almost identical including the intended retirement dates. However, there is one key difference relating to the likely surrender values in years one to five. Initially, policy 29E was deemed not to have a transfer value if surrendered in year one. Whereas in policy 04L that's been corrected to £1,387. Bearing in mind all of the other details are identical, I'd generally expect those figures to be the same. That tends to suggest that the zero figure cited in policy 29E was probably an error. So, it seems Phoenix corrected any errors and having done so, issued new policies. And that might explain why updated schedules were issued in July 1993 with a different surrender value and all other details remaining unchanged.

Also, Phoenix sent two acceptance letters in respect of policies 04L and 05B around the same time. But I've seen no evidence of acceptance letters for the other policies. Mr C has made the point that just because Phoenix can't evidence similar acceptance letters in respect of the other policies doesn't mean they weren't produced. I agree. But there's equally no evidence that they were produced. And when this is considered in the context of the other evidence I've referred to, on balance, it seems more likely that, regardless of the fact Mr C has six different product particulars, only two policies were correctly set up meaning he's only entitled to claim from two policies as things stand.

I think another point that's worth making here is that when Mr C did get in touch with Phoenix in December 2022, that was some years after the earliest retirement date cited on his policies. It appears that, when he first took the policies out, he'd indicated he might take some of the benefits in August 2015 when he reached age 55. Or, at least it seems Mr C would have been entitled to take some of the benefits at age 55 if he'd wished to. And although Mr C didn't contact Phoenix until 2022, some seven years after his earliest retirement date, it appears that Phoenix had kept his funds secure and was able to access the policy details relatively easily for the two policies it's confidently traced. It seems reasonable to assume therefore that it would have been able to do the same had other policy funds been held on its systems.

In summing up, I can fully appreciate why Mr C is concerned. But I'm satisfied that, overall, Phoenix has taken reasonable steps to check for the existence of other policies. And in the context of the evidence I've seen, I've concluded that it was reasonable for Phoenix to say it's likely that only two policies exist. It's those policies against which Mr C can claim benefits. Further, I've noted that Phoenix said if additional evidence comes to light, it's willing to revisit the matter. I think that's a fair and reasonable response in the circumstances.

All of that said, as Phoenix has itself since recognised, I don't think some of its earlier communication to Mr C would have helped matters – especially when it told him the 'missing' policies were 'Alba Corporate' policies administered by another office. That clearly caused more confusion and inconvenience to Mr C when he had to contact different offices. And he'd have been further disappointed to find that Phoenix's information wasn't right. Phoenix has already agreed to increase its compensation offer to £350 in line with our Investigator's recommendation. I think that payment fairly reflects the inconvenience caused to Mr C. Phoenix should pay that amount now if it hasn't already done so.

My final decision

Phoenix Life Limited needs to settle this complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 February 2024.

Amanda Scott
Ombudsman