

The complaint

Mr K complains that Phoenix Life Limited hasn't paid him the full amount he was entitled to receive from his pension policies.

What happened

Mr K had two pension policies with Phoenix (policy ***153 and policy ***154). The policies were originally taken out in 1989 after Mr K transferred the benefits from his occupational pension scheme (OPS) to Providence Capitol. The policies were managed by Phoenix when he made his complaint and it is responsible for dealing with Mr K's complaint. So, I will refer to Phoenix in this decision.

Mr K says Phoenix told him on a number of occasions, and most recently in April 2022, that policy ***154 would be used to provide his guaranteed minimum pension (GMP) and provided he took the benefits from policy ***153 at the same time, he could take the full amount of policy **153 as a tax free cash sum.

Mr K says he decided to retire towards the end of 2020, in the belief that he would be able to access the tax free cash amount and the GMP when he reached his 65th birthday. He says he intended to use the proceeds from the two policies, once he reached age 65, to bridge the gap in his income until he reached the age where he could take his state pension.

Mr K contacted Phoenix in the months prior to his 65th birthday. Despite several requests, he did not receive his retirement options pack until a few days before his 65th birthday. He says he was shocked when the retirement pack only referred to the GMP payment he was entitled to. The value of policy ***153 seemed to have disappeared. He complained to Phoenix.

Mr K says that despite several phone calls and promises to call him back he got no response from Phoenix. He says he had to engage an independent financial adviser (IFA) in October 2022, to try to elicit a response.

Phoenix issued a final response letter at the end of October. It said the information in the letter it had sent to Mr K in April 2022 was wrong. It apologised for this error. It said Mr K was only entitled to the GMP payment. It acknowledged that he'd experienced distress and inconvenience as result of what happened. It sent him a cheque for £300 by way of compensation.

Mr K did not accept this. He asked Phoenix to provide him with a copy of the policy documents but Phoenix said it wasn't able to do this because of the passage of time.

Mr K referred his complaint to our service. He said he'd had to borrow money to bridge the gap in his income and he wasn't able to take the GMP pension from Phoenix because Phoenix required him to sign a document discharging it from all liability.

Mr K told us he'd been receiving separate benefit statements for the two policies and he didn't think Phoenix had any right to merge the two policies and deny him access to the tax free cash sum he believed he was entitled to.

Our investigator looked into Mr K's complaint. She said Mr K only had one OPS – which he'd transferred to Phoenix. She was satisfied, on balance of probabilities, that the two policies with Phoenix were in fact linked. Phoenix had acknowledged that the information in the letter it had sent to Mr K in April 2022 was incorrect.

When a business made an error, our investigator said our role was to try to put the consumer back into the position they would've been in if the mistake had not been made.

Mr K had been given the incorrect information in April 2022 – but Phoenix had corrected that error in September. She didn't think it would be fair to require Phoenix to pay Mr K an amount he was not entitled to receive. Phoenix had offered to pay Mr K £300 for the trouble he'd been caused. Our investigator thought this wasn't enough. She said Phoenix should pay him £500 (in total) for the distress and inconvenience he'd experienced.

Mr K didn't agree. By way of summary he said:

- There was no valid reason why he should have to forfeit his non-GMP benefits. In his view the policies were not linked. He'd always received two separate benefit statements. Furthermore his IFA had written to Phoenix in 2016 asking questions about the policies and it hadn't said, at that time, the policies were linked;
- He'd had to engage an IFA in October 2022 because Phoenix hadn't responded. This had cost him £750 and he thought he should be entitled to a refund of this money in addition to compensation for the trouble and upset he'd been caused.
- He was concerned he hadn't received any payments since his 65th birthday. He said he was also entitled to receive these arrears.
- He thought he'd been mis-sold these policies. He thought Phoenix may have looked into this in the past but he wanted this confirmed.

Because Mr K didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally 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.

At the outset, I've noted that Mr K has recently raised further, new, issues of complaint. He's raised a query about whether the sale of the policies to him in 1989 had previously been looked into. He's also raised a query about back payments of his pension which he thinks Phoenix should pay him. He will need to raise these issues separately with Phoenix.

So, in this decision, I'm only dealing with the complaint issues Mr K raised with Phoenix and which it responded to in its final response letter dated October 2022.

What is GMP (Guaranteed Minimum Pension)?

First, I'd just explain what GMP is. Mr K was a member of an OPS which chose to opt-out of the State Earnings-Related Pension Scheme (SERPS). SERPS was a top-up to the basic state pension payable at the employee's state pension age. Because the OPS opted out of SERPS it was required to agree to pay its employees a

minimum level of benefits at state pension age. This was known as the GMP and was to ensure that employees didn't lose out as a result of the OPS being contracted out of SERPS.

When Mr K transferred away the benefit of his OPS to Phoenix, it was obliged to agree to pay him an annual pension at least equal to the GMP when he reached age 65 years, irrespective of the value of his pension funds at that time. So, Phoenix is obliged to honour the GMP.

The Pension Bond

Phoenix has now provided our service with a copy of the terms and conditions for Mr K's policy. It was a buy-out policy (known as a Pension Bond). The purpose of the buy-out policy was to ensure that Mr K's GMP entitlement was appropriately secured.

I've read the terms and conditions for the Pension Bond. These state that the Single Premium paid into the policy could be segregated or divided as follows:

- Segregated Guaranteed Basis; and
- Non Segregated Guaranteed Basis

The OPS transferred £13,835.97 to Phoenix in July 1989.

I've been provided with a copy of the record made by the new business department at that time. This indicates that two policies were set up. This was in line with what the policy terms stated about how the premium would be segregated.

Part of the single premium (£5,317.77) was allocated to Policy **153 and a fund allocation for that policy was agreed. The balance of the single premium (£8,518.20) was allocated to Policy **154 on the guaranteed basis.

However, despite the fact that the single premium was divided between two policies, the terms and conditions stated that the Fund Value (available to provide the annuity benefits under the policy when Mr K reached age 65) was the value of all of the funds set out above (whether segregated or not).

That is also supported by the correspondence sent to Mr K at the time when he took out the policy. Mr K was sent a copy of the policy and a "Notice of product particulars." The notice stated as follows:

"Type of Contract

[We] will provide you with benefits under this single premium deferred annuity pension plan on or from your retirement age...

A pension equal to the Guaranteed Minimum Pension (GMP) which has been transferred in substitution for rights under the State Earnings Related Pension Scheme (SERPS) is guaranteed and will be payable from State Pension Age...

Contributions

We have received a single transfer contribution of £13,835.97 from your previous pension arrangement. No further contributions may be paid to this policy.

Investment Link

£8518.20 of the contribution received from your previous pension arrangement has been allocated to the Segregated Guaranteed Basis Fund in order to secure your GMP...

You have chosen to invest contributions in excess of those allocated to the Segregated Guaranteed Basis Fund in:

Managed

International Managed

Units will be purchased at the ruling offer price of the fund...

Retirement

At retirement the value of the Fund(s) will be used to provide a cash lump sum...an annuity for yourself and in certain circumstances an annuity for your spouse. Any pension paid to you from your State Pension Age... will be at least equal to your Guaranteed Minimum Pension...

The annuity will be purchased on the then current annuity rates..."

Having read the policy document and the correspondence sent to Mr K at the time, I'm persuaded, on balance, that although there were two policies, it was their combined value (the "Fund Value" as defined in the policy document or the "value of the Fund(s)" as referenced in the notice of product particulars) that would be used to provide retirement benefits. Both the policy document and the notice of product particulars referred to the GMP amount as being "guaranteed." There was nothing to indicate that any other retirement benefits were guaranteed.

*When Mr K reached his 65th birthday the Fund Value was made up of the segregated Guaranteed Basis Fund (policy ***154) and the Non-segregated Guaranteed funds (policy ***153). Under the terms of the policy Phoenix was required to pay Mr K a pension at least equal to the GMP. However, Phoenix says that even after combining the value of both of his policies there was an insufficient amount to do this. That meant Phoenix was obliged to top up his Fund Value to ensure Mr K got the GMP he was entitled to be paid.*

So, Phoenix has agreed to honour the GMP amount. The Fund Value has been fully used up - and there are no funds available to pay Mr K a tax free cash sum or a further annuity.

Having considered the terms of the policy and the Fund Value when Mr K reached his 65th birthday, I'm satisfied on balance, that Phoenix did not do anything wrong when it "merged" the two policies. It agreed to pay Mr K the GMP he was entitled to and there were no further funds available to pay him a tax free cash sum.

Was Mr K given misleading information by Phoenix?

*Mr K took out the policy in 1989. He says that since that time Phoenix has sent him information which caused him to believe that policy **154 would be used to pay his GMP benefits and policy **153 could be used to pay him a tax free lump sum. He says he believed, on the basis of the information he was given, that the two policies were separate.*

He's referred to several specific pieces of information he's been sent by Phoenix which he says were misleading.

- *Annual Statements*

It is the case that for some time, Mr K has been in receipt of two annual benefit statements.

*He received a statement for policy ***153 in July each year and a statement for policy **154 in December each year.*

I've looked at the information on each of these statements. Each statement provided a "non-protected rights" transfer value and also included the following statement:

"Your Annual Plan statement provides you with information about your Plan but is only a guide. You should not base any decision about your pension arrangements solely on this information. Other factors will need to be considered and you might need to seek advice before making a decision."

There was no mention of GMP on either statement. There was a reference to the fact that pension rights built up could remain in the plan or be used to provide pension benefits from age 55. It explained that these options were also available to former protected rights within the plan.

Although the issuance of two annual statements may have caused Mr K to believe they were entirely separate policies, I am mindful that when he commenced the policies he was sent a copy of the terms and conditions together with a notice of particulars which explained how the two policies were linked. And there was nothing contained in the annual benefit statements themselves which specifically contradicted the information he'd been given at the outset. He'd been told that the Fund Value was the combined value of both policies.

So, although I think Phoenix could have made this clearer in the annual statements, I'm not persuaded, on balance, that the annual statements themselves contained inaccurate or misleading information. When reaching that view I've also taken account of the fact that the annual statements stated they were only a guide and should not be used as the sole basis for decisions about pension arrangements.

- *Correspondence between Phoenix and Mr K's financial adviser(s) in the period 2012-2016*

In October 2012 Phoenix sent Mr K's financial adviser a letter in response to various queries that had been raised. The letter heading quoted both policy numbers. It stated:

"Our records show the GMP benefit to be paid at state pension age is £xxx. Our actuarial department has calculated the early retirement pension available for these policies and the pension is below the figure required to cover the GMP – therefore you will be unable to take early retirement benefits at this time"

The GMP amount stated in the letter was incorrect. Phoenix corrected this subsequently in or about 2014 and formally confirmed to Mr K that the correct figure was just over £6,500 in November 2016.

Although there was an error in the GMP amount quoted, I think the letter did make clear that both policies were linked and there was a shortfall in the amount required to cover the GMP.

Mr K appointed a different financial adviser who contacted Phoenix again in 2016. Phoenix responded to various queries raised at that time in its letter dated October 2016. Once again the letter heading included both policy numbers. The letter stated that both policies had originated from the same employment. It confirmed that policy

***154 covered the GMP – but noted that the transfer value available at that time was insufficient to cover the GMP liability.

It also stated that Phoenix would make up any shortfall in the fund value (my underlining added for emphasis) to purchase the GMP at retirement.

The letter then covered policy ***153. It stated that this policy could be used to provide additional benefits if taken at the same time as policy **154 and the combined value of both policies could be used to calculate 25% of the overall fund to use as tax free cash. The letter stated:

“This can sometimes mean that the whole of the non-GMP policy can be taken as tax free cash at retirement.”

The letter then covered various potential options including the option to consider taking the retirement benefits from policy **153 separately to policy **154. It also stated

“A Taxable lump sum will be available from this policy at retirement. This will be restricted to 25% of the value of this fund only.”

Having read the contents of this letter, I’ve noted that it included information about both policies. It made clear that the value of policy ***154 was insufficient to cover the GMP amount at that time. It then stated that the value of policy ***153 “could” be used to provide additional benefits. I think it’s fair to say that the information about policy ***153 wasn’t as clear as it might have been. It didn’t state clearly that where the total fund value was insufficient to cover the GMP there would be no additional benefits available.

However, I’ve noted there was further correspondence a few weeks later where Phoenix did make this clearer. On 25 November 2016 Phoenix wrote to Mr K’s financial adviser again.

This letter also included both policy numbers in the heading. It said:

“At Mr K’s retirement date ... he will be entitled to receive a pension of [just over £6,500] each year...”

There was no mention of any additional benefits.

Phoenix also wrote to Mr K on the same date. This letter confirmed the pension he’d receive on his retirement date. It also stated:

“The fund value of your policy ***153 is £xxx at 24 Nov 2016. Depending on the cash equivalent transfer value of your policy **154 on [Retirement date] it may be possible to take the whole of your policy ***153 as a tax free lump sum at that date.”

I think the letters dated 25 November 2016 did make clear to Mr K and his financial adviser that he’d receive the GMP amount at his retirement date. But it wasn’t guaranteed that he’d receive any additional benefits from policy **153 - since that depended on the total value of both policies at the retirement date.

So, I’m not persuaded, on balance, that Phoenix provided misleading information to Mr K during this period.

- *Correspondence in April 2022*

There is no dispute that Phoenix did provide incorrect information in its letter dated 7 April 2022. It had said:

*“However, if you delay taking the benefits from this policy until you take the GMP benefits from policy ***154 you will be able to take ALL the funds from this policy as a tax free lump sum.”*

*Phoenix accepted that this was an error in its letter dated 21 September 2022. At that date it confirmed to Mr K that the value of both policies combined was insufficient to cover the GMP. However, it acknowledged that it was obliged to pay him the full GMP entitlement and confirmed it would do that – but there would not be any additional benefits under policy **153.*

In its final response letter, Phoenix also acknowledged that Mr K had experienced distress and inconvenience as a result of the incorrect information he’d been sent. It apologised for this and sent him a cheque for £300 by way of compensation. I’ll comment further below about the compensation Phoenix offered to pay Mr K.

Did Mr K rely on the incorrect information and if so, did he change his position to his detriment?

Mr K told us he made his decision to retire towards the end of 2020 – so he took that decision before the April 2022 letter. For that reason, although Phoenix has accepted that the information in its letter dated April 2022 was incorrect, I’m not persuaded that Mr K changed his position as a result of receiving that letter. He told us he’d made the decision to retire towards the end of 2020. So, whilst he may have been disappointed that the information in the letter dated April 2022 was incorrect, I don’t think he suffered any financial loss as a result.

I’ve also considered whether he relied on any incorrect information he was sent prior to the date when he made his decision to retire. However, for the reasons stated above, I’m persuaded on balance Phoenix had done enough to make clear to Mr K, before that date, that the combined value of both policies would be used to calculate the Fund Value.

*I say that because Mr K knew that the policies represented his total entitlement under the OPS with his former employer. He’d been sent the original terms and conditions and the notice of product particulars when he took out the policies. In the last correspondence (November 2016) sent to Mr K prior to the date he made his decision to retire, Phoenix had indicated to both Mr K and his financial adviser he would receive his GMP entitlement when he reached age 65 - but the availability of additional benefits from policy ***153 would depend upon the cash equivalent transfer value of policy **154.*

So, having considered all of the information available to me, I’ve provisionally decided that Mr K didn’t experience any financial loss as a result of reliance on any incorrect information he was provided with.

Distress and Inconvenience

Although I’ve provisionally decided that Mr K didn’t experience any financial loss here, it is the case he would’ve been disappointed when Phoenix confirmed to him that the information in its letter dated April 2022 was incorrect. I’ve noted that Mr K

*spent a considerable amount of time and effort trying to get Phoenix to clarify what had happened to the tax free cash sum he thought he should receive from policy ***153. It took Phoenix around five months to correct the information it had sent in April 2022. And it only did that after Mr K raised his complaint.*

Phoenix has sent Mr K a cheque for £300 by way of compensation for the distress and inconvenience he experienced as a result of what happened. Our investigator didn't think that was enough. She thought it should increase this amount to £500 (in total). Mr K disagrees. He thinks he should be paid a greater amount of compensation and he's referred to the fact he had to involve his IFA.

When thinking about what is a fair and reasonable amount of compensation for distress and inconvenience, I've thought about everything Mr K told us including the length of time it took Phoenix to correct its mistake and the disappointment he experienced. But, although I know it will disappoint Mr K, having considered everything, including our general guidelines about compensation for distress and inconvenience, I agree with what our investigator said here.

I've provisionally decided that an additional £200 (being £500 in total) is a fair and reasonable compensation amount for distress and inconvenience caused to Mr K.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint about Phoenix Life Limited, in part.

I intend to require Phoenix Life Limited to pay Mr K an additional £200 (being £500 in total) by way of compensation for the distress and inconvenience he experienced when it sent him incorrect information in April 2022.

Phoenix responded to my provisional decision. It said it would accept the decision.

Mr K also responded to my provisional decision. He asked for copies of various documents that I'd referred to. He said Phoenix had not provided this information to him and had told him it did not have this information.

Our service provided the documents requested by Mr K.

By way of summary, in response to my provisional decision, Mr K made the following points:

- The correspondence to his IFA in October 2016 had stated clearly "policy **153 does not contain any GMP".
- There was not a single instance in any of the correspondence where Phoenix told him clearly he'd lose the total value of policy **153 if he left it until policy ***154 was due to be paid. He asked when his right to take the proceeds of policy **153 separately to policy **154 had ceased.
- The information provided by Phoenix had confused two separate IFAs - who Mr K says issued him with incorrect advice and information as a result.
- Had he known that policy ***153 was not going to be paid to him he would not have taken early retirement.
- He hadn't done anything wrong – he'd taken advice from PensionWise and two IFAs before retiring. He'd not been told that no money would be paid out from policy ***153. It was the equivalent of £35,000 disappearing from his bank account without trace.

So, I now need to reach a final decision.

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.

In my provisional decision, I reviewed all of the correspondence which had been provided and I specifically looked at the letters which had been sent to Mr K and to his advisers in 2016. I did think that the letter dated October 2016 was not as clear as it could have been concerning policy ***153. However, I thought on balance that the letters dated 25 November 2016 (just one month later) – one of which was sent to Mr K's advisers and a separate letter to Mr K – did clarify that whilst he would receive the GMP amount at his retirement date it wasn't guaranteed that he'd receive any additional benefits from the policy **153 since that depended on the cash equivalent transfer value of policy ***154 at the retirement date. So, I think the letters in November 2016 set out the correct position. There's nothing to suggest that Mr K or his advisers challenged the information in the letters dated 25 November 2016 at the time or that they asked for further clarifications.

The information in the letters sent in November 2016 was also consistent with other information about the policies which had been sent to Mr K prior to 2016 – including the original policy document, the notice of particulars and correspondence sent to his IFA in 2012. I'm satisfied on balance that this information was clear. The proceeds of Policy **153 formed part of the overall Fund Value and it was only where that amount exceeded the amount required to cover the GMP that a separate or additional payment would be made. The GMP was guaranteed even if there was a shortfall in the Fund Value.

When Mr K made his decision to retire, towards the end of 2020, he had previously been provided with the documents I've referred to above, which included the policy document, notice of particulars, correspondence in 2012 and correspondence up to and including November 2016.

It is also the case that when Mr K transferred the benefit of his OPS to Phoenix (in 1989) he paid a single premium - even though that premium was then apportioned between the two policies. He transferred the entire benefit of his OPS to Phoenix at that time. Because the OPS had opted out of SERPS it was required to agree to pay its employees a minimum level of benefits at state pension age (known as the GMP). Phoenix has agreed to honour the GMP.

In his response to my provisional decision, Mr K has reiterated that had he known the proceeds of policy ***153 would not be available to him, he would not have retired. He's referred again to the correspondence dated April 2022. But, he made his decision to take early retirement prior to April 2022. So, even though there's no dispute that the information in the correspondence dated April 2022 was incorrect, I'm not persuaded he changed his position to his detriment as a result of that correspondence or that he experienced any financial loss as a result of reliance on that correspondence.

Having considered everything again, although I know it will disappoint Mr K, I'm not persuaded, on balance, he suffered any financial loss as a result of the incorrect information Phoenix provided to him in April 2022. And I haven't received any new or different information which persuades me to change my view that, on balance, Phoenix had done enough, prior to the date when Mr K made his decision to retire, to make clear to him that the combined value of both policies would be used to calculate the Fund Value. I also haven't changed my view that it's fair and reasonable to require Phoenix to pay Mr K an

additional £200 (being £500 in total) for the distress and inconvenience he experienced as a result of what happened here.

My final decision

For the reasons given above I uphold this complaint, in part, about Phoenix Life Limited.

I now require it to:

- Pay Mr K an additional £200 (being £500 in total) for the distress and inconvenience he experienced as a result of what happened here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 February 2024.

Irene Martin
Ombudsman