

The complaint

Mr K complains that Phoenix Life Limited unnecessarily delayed processing his request to take the benefits from his pension. He went on to say that he is unhappy that his pension fund has dropped in value and feels that Phoenix sought unnecessary information from him and needlessly told him to speak with Pension Wise.

Mr K would now like Phoenix to recompense him for the investment losses that he says he incurred because of their delays in processing his request.

What happened

In June 2021, Mr K contacted Phoenix to explain that he was considering taking his pension benefits as a lump sum. Later that month, Phoenix provided a benefits option letter, explaining that his fund was worth c£32,600. The letter also recommended that Mr K should contact Pension Wise (the independent government information service) to ensure that he clearly understood his options.

Mr K spoke with Pension Wise but didn't find the interaction beneficial as they were unable to provide tailored advice, specific to his circumstances. In August 2021, Mr K decided that he wished to take his entire pension as a single lump sum, so he completed the benefits option form and returned it to Phoenix.

However, as Mr K's pension was worth over £30,000 and contained safeguarded benefits, the following month Phoenix wrote to him, explaining that he would need to speak to a financial adviser and ask them to complete and return a pension advice declaration (PAD) form to them. In September 2021, Mr K complained to Phoenix about the need to seek financial advice. However, on 15 September 2021, Phoenix responded to his complaint explaining that it was a regulatory requirement rather than a rule which they had put forward.

In November 2021, Mr K called Phoenix to discuss his pension and during that discussion, he was reminded that he'd need to speak to a financial adviser to have them complete the PAD form.

In March 2022, Mr K contacted Phoenix, explaining that he'd been suffering from ill health following an accident. He asked Phoenix to send him a medical retirement form. Mr K was also advised that the PAD form was still required if he wanted to take his benefits as a lump sum. Phoenix issued the ill health retirement pack to Mr K the same day.

Twelve months later, Mr K contacted Phoenix again, to question the ill health form that he'd previously asked for. Following a conversation, Mr K asked Phoenix to send him another options letter. The options letter that Phoenix sent to Mr K explained that his pension fund had fallen in value since June 2021 and was not valued at c£25,500.

Shortly afterwards, Mr K decided to formally complain to Phoenix. In summary, he said that Phoenix had made him speak with Pension Wise and told him it was necessary to have a

meeting with a financial adviser before taking his benefits. He also felt that Phoenix delayed sending out the necessary paperwork for him to complete, and their actions overall had resulted in his pension falling in value which he wanted them to recompense him for.

After reviewing Mr K's complaint, Phoenix concluded they were satisfied that they'd done nothing wrong. Phoenix also said, in summary, that as his fund was over £30,000, they were required by the Regulator to obtain evidence that Mr K had taken advice from a financial adviser before accessing his pension fund. However, to say sorry for the length of time they took to answer his complaint, Phoenix offered Mr K £50.

Mr K was unhappy with Phoenix's response so he referred his complaint to this service. In summary, he repeated the same concerns, those were that Phoenix could have acted more promptly in sending out the necessary paperwork for him to complete and that it wasn't necessary for him to have been directed to Pension Wise or a financial adviser and that he was unhappy that his pension had fallen in value. After referring his complaint to this service, Phoenix explained that their explanation of why Mr K's fund had fallen in value could have been clearer, so they offered him a further £150 to say sorry. Mr K rejected the £150, explaining that it didn't cover his investment losses which he felt were the fault of Phoenix.

The complaint was then considered by one of our Investigators. She concluded that Phoenix had treated Mr K fairly. She felt their letters only signposted the benefit of speaking to Pension Wise rather than suggesting it was a mandatory requirement. In addition, from what she'd seen, she felt that Phoenix had acted promptly and fairly in their dealings with Mr K and the delays were in the main attributable to Mr K rather than Phoenix. She also didn't feel that Phoenix could be held responsible for the fall in value of Mr K's pension.

Mr K, however, disagreed with our Investigator's findings. In summary, he said that as Phoenix had not heard from him in twelve months, they should have been regularly chasing him for the paperwork and updates to his instructions. He felt that Phoenix could have been clearer about Pension Wise, particularly as he felt that the process wasn't beneficial for him. Mr K also stated that he feels that Phoenix should also be responsible for paying his accountant's fees. That's because, he says, he's had to use an accountant to organise his tax affairs because of when they eventually made the payment.

Our Investigator was not persuaded to change her view as he didn't believe that Mr K had presented any new arguments that she'd not already considered or responded to. Unhappy with that outcome, Mr K then asked the Investigator to pass the case to an Ombudsman for a 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.

I have summarised this complaint in less detail than Mr K has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Phoenix have acted promptly when dealing with Mr K's requests and been clear in their dealings with him.

I can fully understand Mr K's concerns at seeing his pension fall in value, particularly at a time when he was considering taking the benefits from his plan and at a point when he had health concerns. I've looked very closely at all of the submissions provided by both parties and I very much sensed how strongly Mr K feels about the issue at hand here. And, whilst I fully appreciate that Mr K will be disappointed by my decision, I'm not upholding his complaint and it's largely for the same reasons as our Investigator - I'll explain why below.

Having looked at the various letters that Phoenix sent to Mr K about his pension, I've not seen anything to persuade me that they insisted he use the government's Pension Wise service. From what I've seen, Phoenix's paperwork only signposts this service as a useful tool for consumers to obtain free, helpful, and impartial information about pensions; importantly, their letters only state "We recommend using Pension Wise" rather than stating that consumers 'must' use Pension Wise. Whilst I appreciate that Mr K may feel that he didn't benefit from their service, feedback has shown that many consumers do. But, I can't say that Phoenix did anything wrong by highlighting Pension Wise and I think it's good practice on their part to have done so. Therefore, I'm satisfied that whilst Mr K may have thought he had to use Pension Wise, any delays attributable to the time taken in using that service can not be associated with Phoenix.

Whilst Mr K has previously raised his concerns about Phoenix's requirement for him to obtain a PAD form from a financial adviser (in September 2021), I understand the point has come up again. Ordinarily, I wouldn't be able to consider a complaint point more than six months after the firm had issued their final resolution letter to the consumer. However, it seems the issue has arisen again, and Phoenix have addressed the concern in their May 2023 complaint resolution letter, so I will also address the issue. Mr K's pension contained something called safeguarded benefits. Given how valuable these features typically are combined with the fact that once any transfer or withdrawal has taken place and the decision is irrevocable, the regulator, the Financial Conduct Authority, insists that all pension providers direct consumers to take financial advice where the value of the pension pot is over £30,000. This is covered under Section 48 of the Pension Schemes Act 2015. So, whilst Mr K may have felt that he already knew what he wanted to do with his monies (take the whole pot as one lump sum), the legislation that's been put in place is designed to ensure that consumers fully understand the implications of any course of action that they take before entering into a decision that could have long term implications on their retirement. Importantly, Phoenix don't have any discretion around this requirement. Therefore, in asking Mr K to seek financial advice about his pension, I can't conclude that Phoenix have done anything wrong or acted unreasonably.

I've looked at the chain of events leading up to Mr K eventually taking his benefits in April 2023. Mr K says that Phoenix unnecessarily delayed sending out paperwork to him and should have chased him when he didn't send forms back to them, but I don't agree. When Mr K initially contacted Phoenix in July 2021 about starting the process of taking his pension, they sent out the options letter to him the same day. Two months later they received back his completed form where he'd selected that he wished to take all of his benefits as a single lump sum. Whilst there was a delay of just over a month between Phoenix receiving his claim form and them telling him that he needed to obtain financial advice, I don't believe that delay made a material difference in the wider context of the overall chain of events. I say that because despite being told on multiple occasions by Phoenix that they couldn't proceed with his request until they'd received the PAD form back, Mr K failed to act and seek advice.

And, when Mr K then progressed down a different path, attempting to access his benefits through ill health, when he asked Phoenix in March 2022 for the ill health application form, they sent it to him the same day. Ill health retirement is typically utilised by consumers who need to access their pension benefits prior to normal retirement age (of 55) when it's

unlikely they'll be able to return to employment through major illness. It's also used to by individuals to access their pension pot in full (tax free), when medical evidence demonstrates the individual is unlikely to live more than 12 months. As Mr K was 70 years old at the point he asked for the form, it's only the latter (serious ill health retirement) that would've been relevant to him. I've thought about whether Phoenix could've been clearer with Mr K at that point to filter out the likelihood of him being able to claim his pension as a full tax-free lump sum given the nature of his illness that he's shared with this service. However, looking at the letter that Phoenix sent to him on 10 March 2022, it clearly sets out the differences between the two types and places the emphasis on the consumer to provide the necessary evidence if they wish to apply for either option.

But, it wasn't until the following year, in April 2023, that Mr K decided not to proceed down the serious ill health access route and eventually sent his completed application form into Phoenix to access his benefits. At this point, his pension fund had fallen below the £30,000 level that required him to seek advice. So it seems to me that Phoenix have been clear with Mr K with what they needed in order to process his requests at the various stages that he got in touch with them. In addition, whilst Mr K may be of the view that Phoenix should have telephoned him when they didn't hear anything back from him, I don't agree. That's because Phoenix aren't Mr K's financial adviser and their responsibility is to act as the custodian of his monies and act on his instructions when he provides them. If Mr K had wanted someone to prompt or guide him, he should have engaged a financial adviser – which is what Phoenix recommended.

Mr K has submitted a detailed copy of his medical record to demonstrate how ill he's been since suffering his accident. I don't doubt for a moment how challenging Mr K's circumstances have been and I am sorry that he has found himself in the situation he has, but from the timeline I've seen, he has always been in a position to make his wishes clearly known to Phoenix.

Mr K also stated that he feels Phoenix should be responsible for paying his accountant's fees. That's because, he says, he's had to use an accountant to organise his tax affairs because of when they eventually made the pension payment to him. However, I don't agree and that's because it seems to me that when Phoenix did eventually receive Mr K's fully completed benefit options form on 26 April 2023, they processed the request promptly, paying the claim on 29 April 2023. As Mr K's fund had fallen below £30,000 at that point, there was no longer a requirement for him to have sought financial advice. Had Mr K wanted his payment to be made in an earlier tax year or been structured in a different manner to aid with his tax planning, he should have either sent the form in sooner or made Phoenix aware of his wishes.

As I've already explained, I do sympathise with how Mr K must have felt seeing the value of his pension fall in value so close to the point at which he wanted to draw his funds. However, I also think that it's important to acknowledge that Phoenix have no control over how investment markets perform and unfortunately, Mr K's pension, like those of many other consumers, have been impacted by significant world events. And, whilst I can consider complaints about investment performance, in most instances, I would need to see evidence that Phoenix had done something wrong and I can't just rely on actual or perceived poor performance. That's because, even if the fund has underperformed compared to the rest of the market, we don't usually think this proves the fund was mismanaged. Many consumers have seen the value of their pension funds fall over the last 24 to 36 months given the economic conditions not just across the UK, but wider financial markets too. So, to be clear, this isn't just a Phoenix issue, and it's something that many other consumers are having to face at other businesses too. So, I can't conclude that Phoenix have done anything wrong in respect of Mr K's investment.

Phoenix say that they have already paid Mr K £50 to say sorry for the delays in dealing with his complaint. In addition, they offered him a further £150 to proactively settle his complaint as on reflection, Phoenix felt that they could have provided a better explanation to Mr K about why his fund had dropped in value in their complaint resolution letter. As complaint handling isn't a regulated activity, I haven't reviewed how the business have carried out their investigation but, I see no reason to alter or amend the £150 that Phoenix have offered.

My final decision

I'm not upholding Mr K's complaint and as such, I won't be instructing Phoenix Life Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 March 2024.

Simon Fox
Ombudsman