

The complaint

Mrs P says Phoenix Life Assurance Limited (Phoenix) delayed in processing her pension benefits claim.

What happened

I'm not going to refer to everything, just what's central. Mrs P, who is resident abroad, had a pension policy with Phoenix. She contacted Phoenix on 27 July 2023 by email saying she wanted to withdraw the policy proceeds as a cash lump sum. Phoenix sent a Retirement Options Pack to Mrs P by post on 31 July 2023. It included a cash in lump sum quotation which showed the value of her pension savings was £13,607.26 and that she'd get a lump sum payment (after deduction of tax) of £10,572.86.

Mrs P emailed Phoenix on 9 August 2023, not having heard from Phoenix. In a second email she requested a Retirement Options Pack. Phoenix sent a second pack on 10 August 2023. Phoenix said Mrs P was '*eligible to cash in [her] plan online*' and that the online journey is often quicker than claiming using paper forms. The letter also suggested she call Phoenix's Customer Contact Centre. Mrs P contacted Phoenix again on 15 August 2023 to complain as she hadn't by then received anything. She also couldn't use the online service as she lived abroad. And the phone lines were busy and meant she'd been unable to get through.

Phoenix then spoke with Mrs P on 16 August 2023 and wrote to her on the same date with various documents, including details of what Phoenix needed to see to verify Mrs P's identity as a non UK resident. That involved completing and returning the Identity Verification form with the documents in support.

Phoenix provided their final response letter to Mrs P on 23 August 2023. Phoenix didn't uphold the complaint and said they'd responded to Mrs P's concerns in a reasonable timescale and had no control over how long the postal service took to get to her home. Phoenix acknowledged that, as Mrs P lived abroad, she couldn't claim her benefits online – the website's security system didn't allow IP addresses from abroad to be used. Phoenix said it was something it was considering but at present all customers abroad were advised to email or telephone to contact Phoenix. Phoenix acknowledged that sometimes its call centres were busier than others.

On 30 August 2023, Mrs P contacted Phoenix as she hadn't received the encashment forms. She emailed again on 31 August 2023, saying she'd been unable to get through on the telephone. She sent several email chasers. On 19 September 2023 Phoenix emailed quotations and the previously sent final response. The information about the overseas mandate and verification requirements wasn't included. Mrs P replied the same day, saying she wanted the payment to be made to a bank account held by her husband. She also referred her complaint to this service.

Mrs P chased Phoenix for a response to her email on 21 September 2023. The following day, Phoenix issued a letter requesting identification documentation before they were able to proceed. On 2 October 2023 Mrs P emailed, expressing concerns about sending sensitive

information by post and suggesting using password protected files. But she sent the relevant documents by recorded delivery on 6 October 2023.

A second final response letter was issued by Phoenix on 9 October 2023, upholding the complaint. Phoenix agreed it had caused delays in the process. Phoenix said it would conduct a loss assessment looking at the policy value on 3 August 2023 (five working days after Phoenix had received Mrs P's request on 27 July 2023 to cash in her plan).

Phoenix also offered £450 for distress and inconvenience. As well as delay, that took into account that Phoenix's letter of 10 August 2023 said Mrs P could claim online which wasn't the case as she lived abroad. Phoenix also acknowledged it had been difficult for her to get through on the phone to the Customer Contact Centre. Phoenix further noted that Mrs P had emailed several times saying she hadn't received the claim form. And, when it was sent to her, the overseas mandate and verification requirements hadn't been included.

Mrs P remained unhappy. One of our investigators considered the complaint. In summary he said Phoenix had acknowledged there'd been unnecessary delays and Mrs P's customer journey had been unsatisfactory. Phoenix had said they'd assess any losses Mrs P may have incurred, using 3 August 2023 as the basis to establish what late payment interest is due from then to the date of payment – 14 December 2023. If the value of Mrs P's pension was higher at the date it was encashed, then any gain would be deducted from the interest. The investigator thought that was reasonable subject to any late payment interest being at the rate of 8% simple pa.

Mrs P had correctly pointed out the double taxation agreement the UK has in place with the country in which Mrs P resides to ensure that expatriated citizens aren't subject to tax in both countries. But Phoenix had said that all pension payments made by them are taxed at source as often they don't know all the relevant tax information for a particular consumer. That was reasonable and Mrs P should be able to claim any tax that shouldn't have been taken from HMRC. The UK deadline for online tax returns for the 2022-23 tax year was 31 January 2024. Mrs P would've had time to complete a tax return following Phoenix's payment on 14 December 2023.

As to the identification documents Mrs P had been required to provide, security checks are necessary and were an important part of the encashment process. But Phoenix could've handled that far better. After Mrs P had chased the relevant forms, Phoenix issued them but without the relevant identity requirements that were initially sent – but not received – by post on 16 August 2023. Once Phoenix was aware of Mrs P's concerns about not receiving information sent by post, it would've made sense for Phoenix to communicate via email and forward electronically documents that had been mailed to Mrs P. Instead, documentation requests came in 'drips and drabs' from Phoenix which not only prolonged the process but added to Mrs P's distress and could've easily have been avoided.

But, overall and on balance, the investigator thought the sum offered for distress and inconvenience (£450) was fair and reasonable.

Mrs P didn't accept the investigator's view. In summary she said:

- Her request for the retirement pack on 9 August 2023 was intended as a reminder to Phoenix to send the release forms which had been promised by return of post.
- She hadn't received any communication from Phoenix by email and she wouldn't know if Phoenix had sent anything by post until she returned home.
- Phoenix knew she was out of the country until March 2024 on a pre arranged extended vacation. Had the funds been paid out in a timely manner she wouldn't have had to borrow money to complete the trip.

- She'd initially requested that Phoenix retain the sensitive documents until her return. But, given the problems she'd experienced, she'd made many requests (by email) for the documents to be returned to her immediately, along with the postal/tracking details, to enable her representative to accept and sign for them in her absence. Her requests were ignored and as yet the documents hadn't been returned.
- It wasn't the case that Phoenix didn't have her tax details. In any event, Phoenix could've asked for them. She'd provided a legally certified copy of her last year's (non UK) tax return which confirmed all of her registered details. She maintained the full amount should've been paid out to her.
- Phoenix didn't understand the tax laws between the country she lives in and the UK or chose to ignore them. It would've been impossible for her to have filed a self assessment form, because expats don't have access to online assessment (which has a cut off date of 31 January 2024) and so must complete and return the paper assessment before 31 October 2023, which was before she received payment from Phoenix. Any loss adjustment must be made on the total amount of the pension fund (including the amount Phoenix erroneously gave to HMRC) up to the date the remainder of the fund is recovered from HMRC.
- Phoenix could either instruct their accountant to recover the funds and pay her the remainder or compensate her for the cost of finding and employing a UK accountant to recover the tax deducted. She'd been out of the UK for a long time and she feared that getting the tax back would be problematic, time consuming and expensive.
- She fully understood the need for security checks but relying on the postal service cross borders was high risk. And there were means to electronically transmit personal data quickly and effectively.

Mrs P then told us she'd decided to cut short her holiday and return two weeks early. Her personal documents hadn't been returned.

The investigator reviewed Mrs P's comments. He maintained 3 August 2023 was a reasonable date to use as the basis for the loss calculation. He asked if Mrs P could provide evidence of borrowing. And copies of any emails asking Phoenix to return the documents. Although Phoenix had deducted tax, the investigator thought that was the usual approach. About what Mrs P had said about it not being possible to complete a tax return, the investigator said Mrs P might want to get in touch with HMRC about alternative ways to reclaim the tax. He forwarded a link to a section of HMRC's website (about tax refunds if living abroad). Although he understood Mrs P's strength of feeling on this matter, he didn't think the compensation award should be increased, even though Phoenix's service had fallen well below expectations.

There was further correspondence, all of which I've considered. Amongst other things, Mrs P reiterated she'd had to cut short her holiday and during which she'd been worried and hadn't been able to relax. She couldn't evidence the loan as it had been from family. She didn't have all the emails she'd sent asking for the documents to be returned but she did provide two emails as examples of others she'd sent. She wanted the whereabouts of the documents ascertained and for them to be returned to her immediately. She was grateful for the HMRC link and she'd started the process to recover the tax, although she maintained it would be time consuming and problematic.

Phoenix told us that the documents had been returned by Royal Mail International and had been received by the postal sorting office in the country Mrs P lives in on 21 March 2024 and were in transit to Mrs P. She later confirmed she'd received some of the documents but two were missing – certified proof of address and the tax returns. When we made enquiries, Phoenix told us they'd been unable to locate the documents. And that any original

documents would've been returned, but any copies they'd scanned onto their system would've been destroyed.

The investigator appreciated that would be concerning for Mrs P but explained, if she wanted us to look into it, a new complaint would need to be first raised with Phoenix. Mrs P has now done that – she copied us in on her email of 23 April 2024 to Phoenix.

I've also seen that Phoenix did calculate the redress - £201.33 – that Mrs P would receive in line with the offer for the delay in processing her lump sum payment and calculated as follows:

Phoenix paid £13,580.18 (gross) which was £10,554.18 (net) on 14 December 2023. Had Phoenix not caused a delay, £13,524.01 (gross) and £10,510.53 (net) would've been paid on 3 August 2023. Late payment interest at 8% simple pa from 3 August 2023 to 14 December 2023 was £305.97 (gross) and £244.78 (net). Adding the net interest of £244.78 to £10,510.53 made a total payment of £10,755.31. Deducting the £10,554.18 paid to Mrs P gives a redress payment of £201.13. When interest is paid, tax at basic rate had to be deducted. If requested Phoenix will send Mrs P a certificate (R185) which details the tax deducted and this can be sent to HMRC so that Mrs P can reclaim the tax deducted if she is a non taxpayer. Adding the £450 compensation for trouble and upset makes a total payment due of £651.13.

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've read and considered everything. But I'm not going to comment on each and every point, just what I see as key. I know Mrs P feels very strongly about what's happened and how she's been treated. But essentially I agree with the investigator and the reasons he gave as to why what Phoenix has offered is fair and reasonable.

The main issues are the time it took for Mrs P's pension fund to be paid out to her and the fact that Phoenix deducted tax from the payment. More recently Mrs P has been very concerned about the length of time it took for the identity verification and tax documents to be returned to her, the documents having been sent by post, although she says she'd have been prepared to pay for a courier. And because she was going to be away, she'd made arrangements for someone to sign for the documents. She also cut short her holiday because it seems she was worried and wanted to see if the documents had been returned. There's now a further problem in that, although Mrs P has got back the original documents she supplied, the certified copy documents haven't returned and, it seems, have been destroyed.

I do understand Mrs P's frustration. Especially if she'd been assured the certified copies, which took trouble and expense to obtain and which she needs for other purposes, would be returned. And why she's worried, if they haven't in fact been destroyed and have gone astray, there may be an identity fraud risk. But I agree with the investigator that, despite being linked to the current complaint, this is a new issue and one which arose after Phoenix had settled Mrs P's claim for payment of her benefits.

As I've noted above, Mrs P has now raised this as a further complaint with Phoenix. I'm not dealing with that issue as part of this current complaint. I can understand that Mrs P might've preferred everything to have been dealt with together. But that's not practicable, given the time that Phoenix has under the DISP (Dispute Resolution) rules to investigate the complaint

and give a final answer and which might resolve things anyway. If it doesn't, Mrs P can refer the matter to us as a further complaint.

As to Mrs P's current complaint, as I've said, a central issue is the time Phoenix took to pay Mrs P her benefits – she claimed them in July 2023 but payment wasn't made until December 2023. Phoenix accepts that the process was delayed and has offered compensation. In that situation, where a business accepts they were at fault, we'll look at what's been offered and if it's fair and reasonable and in line with what we'd have awarded.

Our aim, in awarding compensation for any financial loss, is to try to put the consumer back in the position they'd have been in, had things gone as they should've done. Here that means looking at what Mrs P's position would've been if her benefits claim had been settled promptly.

Phoenix has used a date of 3 August 2023. Mrs P claimed her benefits on 27 July 2023 so I think that's fair. As I've set out above, Phoenix has looked at what Mrs P's plan would've been worth on that date and added interest at 8% simple pa (which is the rate we'd expect to be used) from then to the date of payment (14 December 2023). Phoenix has then deducted what Mrs P was actually paid and has offered to pay her the difference which again I think is fair enough.

Phoenix's calculations are based on net interest – that is after basic rate tax has been deducted. Which brings me to Mrs P's other issue – that Phoenix deducted tax when paying out her benefits. But my understanding is that in a situation such as this, where Mrs P was taking the whole of her pension as a lump sum, the pension provider will deduct UK tax and the payee will have to claim that tax back. That's the case even though Mrs P is a non UK tax payer and despite her having provided evidence of her tax status in her country of residence and when there's a double taxation agreement in force between that country and the UK.

So it's up to Mrs P to claim the tax back from HMRC. I understand what she'd said about not being able to complete a self assessment form but she can contact HMRC direct, which I think she's now done. Although she's started the process, she's said claiming back the tax is time consuming and problematic. Especially as communications with HMRC are by post. So I can understand why she'd rather instruct a professional to deal with the matter for her. But it wouldn't be fair to say Phoenix should meet the costs she'll incur in doing so if I'm unable to say Phoenix has done anything wrong by deducting tax from the payment.

Mrs P has expressed some doubts as to whether the tax has been paid to HMRC and, if not, that she'll have to pay tax again. But I've no reason to think that Phoenix, having deducted the tax, didn't then account to HMRC in respect of it. And I can't see that Mrs P is likely to be subject to a fine or other penalty – the situation isn't one where she hasn't paid tax and so any payment will be late. Here the tax has been paid and Mrs P is seeking to recover it.

Mrs P considers the £450 Phoenix has offered for distress and inconvenience isn't adequate. She's said it doesn't cover the expense of an accountant or the stress and worry she's suffered. But, as I've explained, I can't say an accountant is justified so I'm not going to take that potential cost into account. And, given what I've said about Phoenix not being at fault for deducting the tax in the first place, it wouldn't be fair to take into account any stress and inconvenience Mrs P may suffer as a result of having to make a claim to HMRC for the tax to be repaid. I think that's a consequence of the situation Mrs P is in – she's resident abroad but has some (taxable) assets in the UK – and that's unfortunately led to extra administrative work for her.

Mrs P has also mentioned having to borrow money. But I understand that was from a family member and, as Mrs P accepts, without evidence of the loan, I'm unable to make any award.

All in all, I think £450 is fair and reasonable in the circumstances of this case to compensate Mrs P for the distress and inconvenience she's suffered as a result of what Phoenix did do wrong – not paying Mrs P's benefits promptly. I take into account that, as well as failing to send all the relevant information and forms together, Phoenix gave Mrs P incorrect information – Phoenix indicated she could claim her benefits online (which would be the easier route) and when, as a non UK resident, that service wasn't available to her. I also take into account that Phoenix accepts that getting in contact by telephone was sometimes problematic too.

As the investigator said, we give on our website some examples of the level of award for distress and inconvenience we might make, although we consider each case on its individual merits and taking into account the impact of what's gone wrong on the individual concerned. We say that an award of over £300 and up to around £750 might be fair when the impact of a mistake has caused considerable distress, upset and worry and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. I think that's consistent with the situation here.

Mrs P has said there's no recommendations to encourage Phoenix to improve their customer service standards and implement a more secure means of providing sensitive and private information. On that last point I note Phoenix did say, in its (second) final response letter dated 9 October 2023, that their usual requirements were that original documents or certified copies were sent by post. But Phoenix would accept scanned and emailed documents to speed up the process for Mrs P, although I think by then she'd already sent the documents using a secure postal service.

While we expect businesses to take note of any complaint that's made and consider if there's any learning that might apply more widely, we deal with individual complaints and our powers are limited to awarding redress or directing a business to take steps in connection with that particular complaint. A business' processes and procedures are operational and commercial decisions in which we can't interfere. I don't have any power to require Phoenix to change how it deals with customers who aren't resident in the UK.

It's a matter for Mrs P if she wants to contact the regulator, the Financial Conduct Authority (FCA) although my understanding is that the FCA won't necessarily respond substantively to individual referrals.

To sum up, and although I know Mrs P is likely to remain unhappy, I think what Phoenix has offered is fair and reasonable. As far as I'm aware the offer hasn't actually been paid so I've made an award below.

My final decision

Phoenix Life Assurance Limited has already made an offer to pay £651.13 to settle the complaint and I think this offer is fair and reasonable in all the circumstances.

So my decision is that Phoenix Life Assurance Limited should pay £651.13.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 22 May 2024.

Lesley Stead
Ombudsman