DRN-4723911

The complaint

Mr L complains about the fall in the transfer values of his three Self Employed Retirement Plans (SERPs), held with Phoenix Life Limited (Phoenix). He also complains that Phoenix didn't notify him that the plans' transfer values would fall.

What happened

Mr L had three SERPs which he took out in 1985 and 1988. They were invested in the With-Profits fund. He started the plans with a provider that is now part of Phoenix. The plans were originally intended to provide a guaranteed level of pension at Mr L's stated pension date. This was set at Mr L's 70th birthday (in 2017) when he started the policies.

Mr L's three SERPs entitled him to guaranteed pensions from age 60. The annuities themselves were guaranteed, rather than there being Guaranteed Annuity Rates (GARs) attached to the plans. The guaranteed pensions would continue to increase over time until Mr L reached his 75th birthday.

As all three plans were linked to the With-Profit fund, there was also the possibility of the addition of bonuses to increase the income that Mr L would receive at retirement.

As an alternative to taking his benefits with Phoenix, Mr L could transfer his plans to another pension provider. So that Mr L could compare the benefits that he would receive from different providers, Phoenix needed to provide a transfer value. This was calculated using Notional Cash Factors (NCFs), which I understand are frequently reviewed by Phoenix's With-Profits Committee and Board. The cash value at any time is obtained by multiplying the guaranteed annuity by the NCF then in force.

Phoenix said it provided Mr L with annual plan updates. It has shared copies of the updates from 2018 to 2022 with this service.

Phoenix issued an annual plan update on 5 September 2018. This stated that as Mr L's plan was a With-Profits plan, that meant it would share in any profits arising from the With-Profits fund. And that any available profits would be added to plans in the form of either annual or final bonuses. The update also explained that Phoenix's current approach wasn't to add any new annual bonuses, but to allocate a final bonus instead.

The annual plan update also stated that Phoenix produced an "*Annual report to with-profits planholders".* It said that Mr L could obtain a copy of the latest report from its website. The update also contained a section: *"Find out more about with-profits",* which said that the latest information on Mr L's With-Profits plan: "*such as final bonus rates and how these are calculated, how the fund is invested and investment returns*" could also be found on its website.

The update explained that it was possible for the current transfer value of the plan to be paid into another registered pension scheme. It stated that the transfer value was: "*the amount we would have paid (as at the valuation date) to another pension provider if you had decided to transfer the benefits. This figure is not guaranteed*." It also noted that if the benefits were transferred away, the guaranteed pension benefits would be lost.

Phoenix issued further annual plan updates on 15 March 2019, 24 March 2020, 9 July 2021 and 17 March 2022. A summary of the estimated transfer values shown in these and the 2018 update is as follows:

	2018	2019	2020	2021	2022
Plan A	£22,324.32	£22,400.82	£24,616.64	£24,869.06	£23,141.07
Plan B	£22,324.32	£22,400.82	£24,616.64	£24,869.06	£23,141.07
Plan C	£138,448.20	£139,015.78	£153,192.96	£155,257.60	£144,652.30
Total TV:	£183,096.84	£183,817.42	£202,426.24	£204,995.72	£190,934.44

Mr L asked Phoenix for details of the retirement benefits available to him. Phoenix issued a retirement benefit illustration dated 23 April 2020. This stated that the estimated pension savings in one of his plans – which I'll call plan A - was £24,650.84. The letter explained all of the retirement benefit options available to Mr L from either it or other pension providers. It also provided detailed information about the guaranteed pension benefit included with his current plans. And said that Mr L would lose the guarantee if he transferred his pension savings away.

After a further request from Mr L, Phoenix issued another retirement benefit illustration dated 13 April 2021. This stated that the estimated pension savings in plan A was £24,382.65.

Phoenix sent Mr L a response to an enquiry about his largest plan on 11 May 2022. It said that as the benefits in that plan weren't claimed by age 75, it had disinvested the funds. It said they would now attract interest for the period they were held, and specified what that would be. It also said that Mr L could buy a lifetime annuity at any time either from it or from another annuity provider through the Open Market Option. It also said that Mr L could transfer his plan to another pension provider. Phoenix said that the value of the plan as at the 11 May 2022 was £142,837.02.

Phoenix responded to a further enquiry from Mr L on 1 August 2022. It said that the value of plan A was £22,878.12 as of 1 August 2022, but that the value wasn't guaranteed.

I understand that Mr L made a complaint to Phoenix in 2023 about delays to the transfers of his pensions, which Phoenix dealt with separately when it issued its final response on 6 April 2023.

In March 2023, Mr L made a separate complaint to Phoenix. He said that between October/November 2021 and April 2022 the transfer values for his plans had fallen substantially without any appropriate notice from Phoenix, despite value increases for very many years. He felt that Phoenix hadn't provided him with an easily understood explanation about how likely such a significant fall in value had been. And that if it had, it would've enabled him to make an informed decision to protect his pension savings. Mr L wanted Phoenix to compensate him for the loss he felt he'd suffered.

Phoenix issued its final response to the complaint on 22 May 2023. It explained how transfer values were calculated using NCFs, which it said were based on the life expectancy of policyholders and the interest rates available on long-term fixed interest assets available in the markets. It said that the higher the interest rates, the lower the NCFs would be. And that the NCFs weren't guaranteed and would rise or fall in line with current annuity rates.

Phoenix said that recent changes in long term interest rates had led to the cost of providing the guaranteed pension to significantly decrease. And that this meant that even though the guaranteed pension had grown over the period in question, the cost of providing the bigger guarantee was smaller. It said that it couldn't predict such changes, and therefore it hadn't been able to notify Mr L about their impact. It also said that it wasn't required to take such steps. Phoenix also said that it had provided Mr L with pension values at regular intervals, including over the period being complained about.

Phoenix recognised that it had taken some time to respond to Mr L's complaint. So it offered him £50 compensation as a gesture of goodwill.

Mr L wasn't happy with Phoenix's response. So he brought his complaint to this service. He felt there was a lack of transparency about the fund values which meant he'd been unable to make an informed decision about his pension options. He said he'd suffered a substantial and material fall in the transfer values paid out because of this.

Our investigator didn't feel that Phoenix should be required to take further steps to put things right. He acknowledged Mr L's reasonable concerns about the fall in the transfer values of his three plans between 2021 and 2022. He felt that Phoenix had treated Mr L fairly and in line with the terms and conditions of the plans. He said that the transfer values hadn't been guaranteed. And that this had been made clear on the annual statements. He also noted that the guaranteed pensions available under Mr L's three plans hadn't been affected by the transfer value reduction.

Mr L didn't agree with our investigator. He felt that Phoenix was doing what it wanted. Mr L felt there was strong evidence that Phoenix had pushed its annuity option through its *"Your Personalised Risk Warning"* document. And that the way it had presented this was misleading. He felt it was beneficial for Phoenix, rather than its planholders, to take up its guaranteed annuity option. And that it was therefore wrong for Phoenix to weight its literature and correspondence in favour of its annuity option. Mr L felt that Phoenix had reduced the transfer values it'd paid him as a penalty for not taking up its annuity option.

Mr L felt that Phoenix should've known that his transfer values would fall between his 2021 and 2022 statements. And that it therefore should've made him aware that this would happen. His position is that if Phoenix had told him the transfer values would reduce, he would've been able to make an informed decision which would've led to him being better off by receiving higher transfer values.

Mr L asked our investigator if he had considered a mis-selling complaint about his three plans. Our investigator explained that he hadn't, as the complaint hadn't been about a potential mis-sale. He told Mr L that if he wanted to raise a separate complaint about that with Phoenix he could do so.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I'm not going to uphold it. I know this will be disappointing for Mr L. I'll explain the reasons for my decision.

I first considered Mr L's complaint that he felt that Phoenix should've warned him that transfer values would fall between late 2021 and 2022.

Should Phoenix have warned Mr L that his transfer value would fall between 2021 and 2022?

I can see that the annual plan updates from 9 July 2021 showed that the total transfer values of the plans was £204,995.72. And that the 17 March 2022 annual plan updates showed that the total transfer values had reduced to £190,934.44. Mr L had been used to his transfer values going up over time, so I can see why he was concerned by the reduction in his transfer values.

Phoenix felt that Mr L would've known from the start that the cash value of his plans could fluctuate and wasn't guaranteed. It said it had repeated this point in its Retirement Options Packs and every communication relating to the value of the fund.

Based on the evidence I've seen, I agree that Phoenix did make it clear in its documentation that the transfer values could go up or down, and that they were not guaranteed. As I noted in the background section, the annual updates said that any transfer value shown wasn't guaranteed. And all the documentation I've seen states that any transfer value provided is estimated or not guaranteed.

I can also see that the additional estimated transfer values information Mr L had received from Phoenix in April 2021 and in May 2022 showed that his transfer values had reduced from the figure shown in the latest statement.

For example, the 13 April 2021 retirement benefit illustration stated that the estimated pension savings in plan A was £24,382.65. This was lower than the figure of £24,616.64 provided in the 24 March 2020 annual update, and therefore showed that transfer values had decreased since that update. And the letter Phoenix sent to Mr L on 11 May 2022 about plan C showed that the transfer value of that plan was 142,837.02, which was much lower than the estimated £155,257.60 transfer value from the 9 July 2021 annual update.

Therefore I consider that Mr L had sufficient information from Phoenix to enable him to understand that transfer values could go up and down and that they weren't guaranteed.

In its final response to Mr L's complaint, Phoenix explained why the transfer values had gone down. And that it couldn't predict the events which had led to such changes.

I acknowledge that Mr L felt that Phoenix should've known that his transfer values would fall between his 2021 and 2022 statements. I can see that he feels he'd be better off now if it had known this. But I'm satisfied that Phoenix couldn't have known this. I say this because I agree that it wouldn't have been possible for Phoenix to have predicted the interest rate, and other economic and demographic changes that resulted in the reduction to the transfer values. I also agree with Phoenix that even if it had known this, it was under no obligation to notify its planholders.

Based on the evidence, while I acknowledge that Mr L had reasonable concerns about the reduction to his transfer values between 2021 and 2022, I'm satisfied that Phoenix acted correctly and that it calculated the transfer values in line with the terms and conditions of Mr L's plans.

I next considered Mr L's complaint that Phoenix pushed its guaranteed annuity option because it was beneficial for Phoenix, rather than its planholders, to take it. I also considered whether I agreed with Mr L that Phoenix had weighted its literature and correspondence in favour of its annuity option.

Did Phoenix push the guaranteed annuity option so that it could benefit?

From what I've seen, Phoenix included similar wording to other providers with similar products in its literature and in communications with Mr L. I'm satisfied that it did this so that its planholders were fully aware of the potentially valuable guaranteed pension that they would forfeit if they decided to transfer their benefits elsewhere.

I'm not persuaded that Phoenix did this so that it would benefit. Nor am I persuaded that it focussed so heavily on its guaranteed pension that planholders weren't made aware of all of their other retirement options.

I say this because the plans Mr L held had been taken out to provide guaranteed pensions at retirement. I'm satisfied that Phoenix provided enough information so that its planholders could make an informed decision about whether to take the guaranteed pension or whether to choose a different option.

I'm also satisfied that the annual updates included details about all possible pension options. And made it clear that it was important for a planholder to consider them all and to: "*shop around for the best deal*". The annual updates stated: "*The right one for you depends on your circumstances and retirement needs. Other providers might offer products more appropriate for your needs and circumstances and may offer a higher level of retirement income*." The updates also provided information about free guidance services, as well as suggesting that financial advice could be helpful. They also explained that while Phoenix couldn't give financial advice, it could answer specific questions about the plan.

Therefore, while I acknowledge that Mr L considers the information Phoenix provided was misleading, I can't reasonably agree. And I don't consider that Phoenix pushed its guaranteed annuity option so that it could benefit.

I next considered Mr L's point that there was a lack of transparency about the transfer values which meant he couldn't make an informed decision about his pension options.

Did Phoenix provide clear information about the transfer values?

As I noted above, Phoenix calculated transfer values for Mr L's plans using NCFs.

The NCFs are based on a number of complex factors. They are reviewed regularly to ensure that customers are treated fairly. I wouldn't expect the complicated calculation basis to be something which would be shared with planholders, as it would be commercially sensitive and potentially difficult to understand. But I am satisfied that it's reasonable for Phoenix to use NCFs in the way that it has.

I say this because, as Phoenix explained in its final response, changes in long term interest rates, amongst other factors, changes the cost of providing the guaranteed pension. Therefore Phoenix needs to be able to reflect this changed cost when providing estimated transfer values.

I do appreciate that it would be more transparent if it were simply possible to use a static factor for converting the guaranteed pension into the transfer value, but this wouldn't then be fair to different policyholders over time.

From what I've seen, I've no reason to believe that Phoenix applied the NCFs incorrectly or unfairly on Mr L's policies. And I consider that it did provide clear information about his transfer values.

I also acknowledge that Mr L felt that Phoenix had reduced the transfer values it'd paid him as a penalty for not taking up its annuity option. But there's absolutely no evidence that this is the case here.

Phoenix has offered Mr L £50 for the time it took to respond to his complaint. But based on everything I've seen, I've not found any evidence that Phoenix has done anything wrong here. Therefore I don't uphold the complaint.

My final decision

For the reasons explained above, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 June 2024.

Jo Occleshaw
Ombudsman