

The complaint

Mr B complains that poor service by Phoenix Life Limited when he wanted to take benefits from his personal pension plan has caused him a financial loss.

What happened

Mr B had a defined contribution personal pension with Phoenix Life Limited ("Phoenix") invested in the "with profits" fund, which means its value can fluctuate. It was made up of protected and non-protected rights, with a selected retirement date of Mr B's 65th birthday in 2029.

In May 2022 Phoenix sent Mr B a wake-up pack, which gave a non-guaranteed policy value of around £70,973, and an expected benefits date of Mr B's 60th birthday in April 2024. In January 2023 Mr B decided he wanted to access his pension early. He contacted Phoenix a number of times by phone and email with queries about how he could take his benefits. He wanted to release the tax-free pension commencement lump sum ("PCLS") ideally by the end of February to alleviate some financial pressure. He said he needed around £8,000 to repay a debt and pay for a holiday but didn't need to take an income so would prefer to leave the balance invested.

Discussions continued through February and March 2023 around Mr B's options, including any entitlement to an enhanced annuity. Mr B doesn't like to use the phone, so some discussions were with his wife. Phoenix issued various valuations and options packs, each of which made clear the values weren't guaranteed and were subject to change. Mr B was recommended to consult the free "*PensionWise*" service. Mr B was frustrated by the process and experienced some delays and poor service with lines being busy, calls not being returned, and information not being sent as promised. He was concerned the timescale was slipping and was unhappy at how long things were taking.

On 4 April 2023 Phoenix sent Mr B a retirement options pack which gave a non-guaranteed valuation of just over £64,353, saying Mr B would need to give instructions by 10 April. It reiterated the advice to consult "*PensionWise*" and set out his options, including that a drawdown plan would mean transferring to another provider. During April Phoenix issued quotations for various annuities (single or joint life, with or without escalation etc) which Mr B could purchase with the remainder of his fund after the PCLS.

On 23 May Mr B called to enquire about drawdown, whereby he'd be able to access his pension more flexibly. This wasn't an option available with Phoenix, so Mr B engaged a firm of financial advisers I'll refer to as "SFL".

SFL contacted Phoenix on 24 May 2023, but Phoenix didn't receive Mr B's letter of authority until 30 May 2023. Phoenix provided information about Mr B's policy to SFL on 30 May and on 1 June Phoenix sent SFL a transfer quote for Mr B's policy with a value of around £64,694. It said in bold that the quoted figures weren't guaranteed and would be recalculated before the transfer payment was made and explained the next steps.

On 6 June 2023 Phoenix sent SFL a retirement benefit illustration which valued Mr B's policy at around £65,004, which wasn't guaranteed. It also explained that any terminal bonus on the protected rights element of Mr B's plan would've been calculated and applied at his original retirement date in 2019 (his 55th birthday). The pack included some annuity quotations based on various options, and explained Phoenix doesn't provide enhanced annuities direct, plus a quote for taking the whole policy in cash and paying the tax.

SFL recommended Mr B transfer to a drawdown plan with Aviva, and submitted instructions via the electronic *Origo Options* system which were received on 11 July 2023. The transfer to Aviva took place on 8 August 2023, but Phoenix honoured the 11 July 2023 valuation of around £58,189.

Mr B made a number of complaints to Phoenix but the service, delays in providing documentation and in answering and returning his calls. SFL also complained on his behalf about the amount transferred to Aviva as it was lower than the quotation. Phoenix's first response in June 2023 offered compensation of £680 (£500 for the poor service, £150 for delays in responding to his complaint and £30 to cover his phone calls). The acceptance form asked Mr B to provide his bank details to make the payment. And in addition, once the annuity was set up Phoenix would do a loss calculation based on the value of 21 February 2023, the date it could've been processed in a "*best case scenario*", so ensure Mr B hadn't lost out.

Mr B signed and returned the compensation acceptance form in July, but omitted a digit in his account details, so the payment was returned. In August Phoenix rounded the compensation up to £700 but paid it into Mr B's Aviva pension instead. In relation to the valuation, on 16 August Phoenix told Mr B the amount was correct, being the valuation on of the date the transfer instructions were received. They paid Mr B a further £100 for the delay and had contacted Aviva to arrange for a loss calculation to be carried out. Aviva confirmed to Phoenix that the unit price on 18 July was £2.25 compared to £2.24 on the actual investment date of 16 August, so Mr B hadn't been disadvantaged by the delay. Phoenix confirmed this to SFL on 6 October 2023.

It became apparent that due to a typo in Phoenix's request, Aviva had provided the unit price of 18 July rather than 11 July 2023. As the unit price on 11 July 2023 had been lower, Mr B's plan should've purchased more units. So for this error Phoenix offered a further £300, and said they'd contact Aviva to clarify matters.

Mr B wanted the compensation increased to £1,800. He said the £700 shouldn't have been paid into his pension as he'd be taxed when he withdrew it, and he hasn't received the £100 as the cheque had got wet in the post. He said Phoenix had agreed to honour the valuation in the original retirement options pack of £64,353, plus pay 8% interest. But Phoenix clarified the offer in its 12 June final response letter was based on Mr B purchasing an annuity with them. It no longer applied as he'd decided to transfer to Aviva.

Phoenix explained to SFL why the value of Mr B's policy had fallen from the initial quotes in early 2023. The non-protected rights element had been moved out of the "*with profits*" fund at Mr B's original retirement date in 2019, so wasn't subject to the market fluctuations. But the retirement date of the protected rights element had been deferred to age 65 in April 2029, and so remained invested in the with profits fund, which was affected by the turmoil in the bond market following the mini-budget last year.

Mr B brought his complaint to this service in August 2023. It was reviewed by one of our investigators who thought Phoenix's revised compensation offer of £1,100 (comprising £700 and £100 previously offered plus the additional £300) was fair.

Mr B said Phoenix could've called to clarify his bank details or paid the total compensation by cheque. Engaging a financial adviser had cost £2,500, and so far he'd only withdrawn £9,000 from his pension from which he'd repaid a loan and paid SFL's fee. He now expected increased compensation of £2,200, plus the difference in the valuations of around £6,495 plus 8% per month for the loss of funds.

Phoenix explained 6 June 2023 quotation provided to SFL was made up of a valuation of around £48,721 being the total of the protected and non-protected rights elements of Mr B's plan, plus an *estimate* of the final with profits bonus, which can fluctuate. They'd established the unit prices had been lower on 11 July, so Mr B's Aviva plan would've purchased more units on that date. The difference of £598.10 hadn't yet been paid to Mr B, and it might be necessary to update the calculation to add 8% interest for loss of funds between 11 July and 8 August 2023. But it was satisfied the transfer to Aviva couldn't have happened prior to the 1 July revaluation, as the Origo instructions weren't created until 7 July 2023.

Provisional findings

I set out my initial thoughts in a provisional decision in March 2024. I made the following findings (in summary).

- Phoenix couldn't advise Mr B what he should do, which is why he was recommended to consult PensionWise or seek financial advice.
- They had to provide clear, fair and not misleading information about Mr B's options and the risks involved, to enable him to make a decision. Phoenix could provide an annuity, but other options, like drawdown involved transferring to another provider.
- Phoenix had admitted the process hadn't always gone smoothly, and I understood Mr B's frustration.
- Mr B's priority had been releasing the PCLS (to repay a debt and book a holiday) and he wanted to leave the remainder invested rather than taking an income from his pension, which is why he decided on a drawdown plan, which Phoenix didn't offer.
- Choosing this option required Mr B to take (and pay for) a financial advice, which delayed matters further which I couldn't hold Phoenix responsible for.
- Phoenix didn't receive SFL's signed letter of authority until 30 May. Phoenix responded the same day and further on 1 and 6 June, so I didn't think they caused any delays here.
- I was satisfied it had been made clear to Mr B and SFL all the valuations from the May 2022 wake up pack onwards were non-guaranteed quotations, with the final bonus estimated.
- The 1 June transfer quote included a warning about the final bonus that "*if the value of the plan's asset share falls between the date of this letter and when pension benefits are taken, there can be a significant reduction in the value actually paid out*".
- The 6 June illustration provided to SFL warned the valuation was "*not guaranteed and may vary between now and the pension start date so the pension benefits available may be higher or lower than shown*".
- Phoenix's original compensation offer was based on Mr B purchasing one of its annuities, which would've been backdated to the "*best case scenario*" date of 21 February 2023, but the transfer to another provider couldn't have happened that quickly. So Mr B wasn't entitled to the £6,494 difference between the valuations, plus interest, and I couldn't see Phoenix had ever offered this.
- The transfer instructions were received on 11 July 2023 so using that valuation was fair.
- The inaccurate unit price information provided by Aviva (quoting 18 rather than 11 July) was due to a typo by Phoenix.). The lower unit price on 11 July than the

investment date meant Mr B was worse off by £598.10, which hadn't yet been paid to him.

- As Mr B should've had use of his PCLS sooner than he did, I awarded 8% simple interest on the PCLS sum between 11 July and 8 August 2023..
- And I thought the overall compensation totalling £1,100 was fair, although not all of it had yet been paid to Mr B.

Responses to the provisional decision

Both parties responded. Phoenix had no further comments.

SFL made the following points on Mr B's behalf (in summary):

- SFL sent Mr B's letter of authority to Phoenix on 24 May, but Phoenix didn't provide the necessary information for them to advise Mr B until 15 June, despite chasers.
- A meeting was arranged between SFL and Mr B on 20 June and the recommendation was prepared for compliance-checking on 25 June.
- A query about a Guaranteed Annuity Rate was resolved on 3 July and the transfer was requested (via Origo) on 6 July 2023, yet the funds weren't transferred until 11 August 2023.
- So if Phoenix had responded more quickly it would've been possible for the transfer to have been requested before the 1 July revaluation (meaning the value would've been higher).

So I'm now in a position to finalise my 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.

If Mr B had purchased one of its annuities, Phoenix would've honoured the policy valuation of 21 February 2023, the earliest an annuity could've been set up on a "*best case scenario*" basis. Mr B's priority had always been releasing the PCLS, but he considered many options for taking his pension benefits, before deciding on a drawdown plan. I'm satisfied it was made clear that each policy valuation or quotation until he made a firm decision was indicative and non-guaranteed. Mr B needed financial advice before transferring away from Phoenix,. Phoenix didn't receive Mr B's authority to respond to SFL until 30 May 2023, the first working day after a bank holiday, and responded the same day. I wouldn't expect Phoenix to provide information to SFL without the permission of its customer, so I don't think they caused a delay here.

On 30 May 2023 the indicative value of Mr B's plan was £55,300, but the value and bonus amount weren't guaranteed. A transfer quote of around £64,695, including the discharge forms and other information, was provided to SFL dated 1 June 2023, which warned "*the above figures are not guaranteed and will be recalculated before the payment is made*". A further non-guaranteed quote was issued dated 6 June 2023, which valued the policy at around £65,005, due to the final bonus only being estimated.

SFL says it didn't receive the information it needed to advise Mr B until 15 June 2023, which suggests the 6 June letter took more than a week to arrive. Had it not been delayed in the post (which I can't really hold Phoenix responsible for) SFL might have received the 6 June pack a few days earlier. There were four working days between SFL receiving the information on 15 June and the advice meeting on 20 June 2023. So had the pack been

received around Friday 9 June, it's possible (depending on the availability of the parties) that the advice meeting could have taken place on 15 June 2023. I think it's unlikely the compliance check would've actually started on 25 June (being a Sunday). So it looks like there were nine working days between submitting the file for compliance checking and the transfer being requested via Origo. System notes show the transfer instruction was created on Friday 7 July but there was a query about Mr B's date of birth, which wasn't resolved until Tuesday 11 July 2023.

Applying the same timescale, if the advice meeting could've been brought forward to 15 rather than 20 June, the file would've been prepared for compliance check on 21 June, and nine working days from then would be 3 July 2023, which would still be after the annual revaluation.

So while it might have been theoretically possible for the transfer to have been requested prior to the revaluation on 1 July 2023, I'm not persuaded it's more likely than not it would have been, which is the test I must apply. That the policy valuation wasn't guaranteed and would be recalculated was made clear in all the communications I've seen. And although the instruction was created on 7 July it wasn't valid until the date of birth query was resolved on 11 July, which is why I think it's fair to use that valuation.

So I see no reason to depart from the conclusion reached in the provisional decision. Which means I uphold Mr B's complaint, but not to the extent he would like. Phoenix should put things right as set out below.

Putting things right

Financial loss – use of funds

Mr B has confirmed so far he's only accessed a pension commencement lump sum (tax-free cash) of £9,000. And although his original timescale of the end of March may have been unrealistic, he did receive the funds later than he should have. So Phoenix must calculate 8% simple interest per year on the amount of the tax-free lump sum Mr B withdrew for the period between 11 July to 8 August 2023 to reflect the loss of use, and pay this to Mr B.

If Phoenix considers it is obliged by HMRC to deduct tax from the interest payment, it should explain how much has been taken off. It should also provide a tax deduction certificate if Mr B requests one, to enable him to reclaim the tax from HMRC if appropriate.

Investment loss

Phoenix has recognised that had the funds been transferred to Aviva on 11 July they would have been invested earlier than 16 August 2023. And if the unit price on 11 July was lower than the actual investment date, more units would've been purchased. Aviva has confirmed the unit price was actually lower on 11 July 2023 than the investment date. Phoenix has calculated this loss as £598.10. To put things right this sum should be paid into Mr B's pension and backdated to 11 July 2023 to bring the loss up to date.

As Mr B hadn't provided his correct account details, he said Phoenix paid the £700 trouble and upset payment into his Aviva plan against his wishes due to the tax implications. If it's not possible to reverse the payment, a fair and reasonable way to resolve this would be for Phoenix to pay £598.10 direct to Mr B. and leave the £700 in his plan

If the £700 hasn't been paid into Mr B's Aviva plan or if it has been returned, then Phoenix should pay £598.10 into Mr B's pension, backdated to 11 July 2023, as set out above and follow the instructions below in respect of the trouble and upset payment.

Phoenix should provide a copy of its calculations to Mr B in a clear and simple format.

Trouble and upset

I've said I think a total of £1,100 for the trouble and upset is fair, (made up of the original £700, £100 paid by water-damaged cheque and the additional £300 offered).

If Mr B has already received £700, Phoenix needs to pay a further £400 to bring the total to £1,100. Otherwise it should pay the sum necessary to ensure he receives £1,100 in total.

If Mr B accepts my final decision I will leave it for him and Phoenix to agree how the payment will be made, as so far Mr B hasn't provided his correct account details.

My final decision

I uphold this complaint and require Phoenix Life Limited to put things right as set out above.

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

Sarah Milne
Ombudsman