

The complaint

Mr C complains about the service he received from Phoenix Life Limited ('Phoenix') in relation to his self-invested personal pension ('SIPP'). He complains about the administration of his SIPP as well as problems he experienced obtaining information about it. Mr C seeks the refund of his SIPP charges as well as compensation for his time in making his complaint.

What happened

It is clear to me that the facts of this complaint are well known to both parties. I would like to reassure the parties that while I've considered everything on file, I don't intend to address each and every point or issue raised. Instead I will focus on what I see as being the key issues at the heart of Mr C's complaint and the reasons for my decision.

In brief, I can see that Mr C set up his SIPP in April 2011. The SIPP provider he used was taken over by another provider almost immediately and, in 2016, Phoenix bought out that provider. From 1 July 2017 Mr C's SIPP was rebranded to Phoenix Life. Over the course of the years that followed, Mr C had cause to raise a number of complaints with Phoenix. These can be summarised as follows: -

1. On 21 October 2019 about the administration of his SIPP, various service shortcomings, the failure to provide information (particularly in respect of cash transactions on his account), and a failure to establish any online access. Phoenix issued its final response letter on 1 November 2019 apologising for the problems Mr C was experiencing in accessing information about his plan and explaining the reasons why he was having such difficulties. Phoenix issued Mr C with some statements, undertook a review and confirmed the position in relation to part of his plan (referred by the parties as one of the 'tranches'). Phoenix refunded fees of £235 to Mr C and paid him compensation of £450.
2. On 26 May 2021 about a delay in disinvesting some of his pension and taking some tax-free cash. Phoenix issued its final response letter on 11 June 2021 apologising for a delay in issuing Mr C with an illustration which in turn had delayed the disinvestment. Phoenix accepted Mr C's position that he had never asked for an illustration but explained that it was a regulatory requirement that it provide one. Phoenix paid Mr C compensation of £250.
3. On 21 October 2021 about a mistake made by Phoenix in August 2021 when it processed a payment from the wrong 'tranche' of Mr C's pension. When Mr C tried to arrange a further payment on 14 October 2021 it could not be processed as there was insufficient funds in the tranche he wished to take it from on account of Phoenix's previous error. Phoenix rectified the mistake by applying the correct payments to the correct tranches and issued a final response letter to Mr C on 27 October 2021 where it apologised for its mistake and paid Mr C compensation of £250.
4. In April 2022 when, having requested that an ad hoc income payment be made from his pension plan, Phoenix told Mr C that there were insufficient funds within that section of his plan to make the payment on account of the fact that the timing of the

request coincided with the application of annual charges to the plan. The application of the charges had depleted the fund so Phoenix had to reduce the amount paid to Mr C. Phoenix looked into the complaint and issued its final response letter on 29 April 2022 in which it explained that Mr C's 2021 annual statement – which would have contained information about the policy anniversary of 8 April and the date the plan's charges were to be applied – had never been sent to him. Phoenix admitted that without the annual statement Mr C did not have sufficient information to be able to make sure the plan's charges were fully funded prior to requesting the ad hoc payment. Phoenix paid Mr C compensation of £150.

On 24 March 2023, Mr C made a comprehensive complaint to Phoenix. This complaint was formed of the four complaints summarised above with some new elements he raised for the first time. The new elements to Mr C's complaint included: -

1. his dissatisfaction with Phoenix's processes around disinvestment and the payment of benefits.
2. The failure of Phoenix to provide annual valuation statements, annual drawdown pension valuation statements, tranche reviews and information relating to cash transactions.
3. An absence of set procedure, information and delays when processing ad hoc income payments.
4. The failure to provide the information needed to manage the cash account; a possible failure to reclaim overpaid income tax.
5. Administrative errors following his request on 7 March 2023 to drawdown an income payment of £10,000 before the end of the tax year on 5 April 2023. Mr C knew he had sufficient funds across his two 'tranches' but, on contacting Phoenix to request the payment, he discovered that Phoenix had 'lost' tranche number two. As the payment would not be made before the end of the tax-year, Mr C felt unable to proceed.
6. That he held Phoenix responsible for the fact that he now felt he had no alternative but to transfer his pension to another provider so as to secure its proper management going forward. Mr C said he sought the cost of making that transfer from Phoenix.

In addition to setting out the complaints he was making, Mr C also set out the financial redress he believed he was due from Phoenix. This was: -

1. The reimbursement of the initial fee of £10,156.59 he incurred in setting up the SIPP in 2011.
2. Interest on the initial fee of £16,794.66.
3. A refund of all the policy charges he'd paid since the SIPP inception in 2011 totaling £7,845.
4. Interest on the charges of £5,955.80.
5. The cost of transferring to a new SIPP of £8,400.
6. Compensation for the trouble and upset of making six complaints over the years at £750 per complaint (total of £7,500 less compensation already paid by Phoenix of £1,050).
7. The cost for his time in preparing his complaint namely 300 hours at £75 per hour totaling £22,500.
8. Potential unclaimed income tax of £1,250.

In all Mr C complained to Phoenix that he was owed redress totalling £76,352.05. Phoenix looked into Mr C's complaint (including reconsidering those elements where it had previously issued final response letters and paid him compensation) and issued its final response letter on 19 May 2023 in which: -

- Phoenix said the payment of the original adviser fee in 2011 was an agreement between Mr C and his then financial adviser. So any concerns he had about the appropriateness of the advice he had received, or the fees he had paid, would need to be raised directly with it.
- Phoenix explained that various plan fees were correctly applied and were made for different elements of work required in administering Mr C's SIPP. After Phoenix took over as the SIPP provider the fees were consolidated so that they were collected on the same date each year. It said it had previously apologised to Mr C about this in 2019 and had confirmed then that ongoing charges would be collected in April each year. Further, Phoenix said its final response letter in October 2019 arranged for the refund of Mr C's 2019 policy fee of £235 in recognition of the issues he had experienced.
- It said it had suspended the online access provided by the SIPP's previous provider as it was linked to an old IT system. Phoenix said work continued on providing a new online access system and, whilst it had told him in its final response letter in May 2019 that it expected the work to be completed during that year it was, in fact, still experiencing issues. But Phoenix said it had acknowledged Mr C's frustrations around this issue in its final response letter of October 2019 when compensation was paid to him (of £450).
- It explained that part of its systems changes in 2018 included a review of the documentation it was issuing each year. Phoenix said that review concluded that annual updates should be consolidated into one document rather than issuing multiple documents to customers on different dates. It said the annual valuation statement had been replaced by the annual illustration accompanied by a costs and charges letter. Phoenix accepted that it hadn't sent Mr C his 2021 annual illustration and charges letter but pointed out that it had paid him compensation for this oversight in its second final response letter dated 11 June 2021. Phoenix said that since then appropriate updates and information had continued to be issued to Mr C.
- The timescales, processes and requirements around the processing of income and tax-free cash payments had remained the same throughout the life of his policy. Phoenix said that it was satisfied these were reasonable.
- In respect of the payment of income and tax-free cash since 2018, Phoenix noted that there had been twelve income payments and one tax-free cash payment to Mr C. Phoenix said it had assessed the processing of each payment and noted that there had been errors for which Phoenix was responsible with three of the payments but in each instance the issues were resolved, mistakes were accepted and compensation paid for the delays (in June 2021, October 2021 and April 2022). Phoenix said it accepted and apologised for the issues Mr C had experienced on these occasions but in each case they were fully investigated and compensated. Phoenix said it did not propose to compensate Mr C any further in this respect.
- Regarding the mistake in April 2022 with the closure of 'tranche 2' Phoenix said this was due to a system error which meant it failed to identify the closure until after Mr C contacted it in March 2023 when making a drawdown request. Phoenix said it had failed at the time to identify the error impacting tranche 2 and that it had failed to identify the mistake when undertaking its three yearly mandatory review in 2022. It said it accepted that its mistakes affected the information provided to Mr C as well as

income drawdown of £10,000 in March 2023 that he was trying to take. Phoenix apologised and said that in recognition of the frustration caused it was paying Mr C compensation of £250 as well as arranging for the 2023 drawdown charge to be removed from his plan. (Phoenix also credited Mr C's account with £164.89 which was the amount it became overdrawn by after charges were deducted)

- With regards to Mr C's 2023 annual disinvestment, Phoenix explained that this occurred on 25 March each year. It said that Mr C had instructed it to stop the 2023 disinvestment on 22 March 2023 and that this had been correctly processed on 27 March within its usual three working day timescale on 24 March 2023 but as the payment was already in progress by that point it was unable to stop it. Phoenix acknowledged that Mr C had intended to stop his March 2023 disinvestment but it had not been possible for it to do so given the short period of time between receiving his instruction and the payment date.
- Phoenix pointed out that Mr C's SIPP was managed by a discretionary fund manager ('DFM') thus any annual income tax reclaim process was dependent on information it provided to Phoenix in respect of the tax paid from Mr C's investment account. Phoenix said that since 2018, Mr C's DFM confirmed no UK tax had been paid in relation to his investments. Phoenix suggested that any further queries Mr C had about his tax position should be directed to his DFM.

Phoenix concluded its comments on Mr C's complaint by acknowledging that he was unhappy with the service he had received over the years. It went on to say however that it was satisfied that his plan had been administered appropriately and that any issues that had arisen had been correctly logged, investigated and compensated. Thus Phoenix said that the only additional compensation it would be paying Mr C was £250 in respect of its errors relating to his tranche 2 arrangement.

On 17 November 2023, Mr C provided a comprehensive response to Phoenix's final response letter. Much of what Mr C said repeated complaint points he had made previously. In addition to disagreeing with what Phoenix had said in its final response, he also provided numerous comments on generic aspects of the rebranding between the first and second SIPP providers, between the second provider and Phoenix and about the product literature and documentation. Mr C also said that he was complaining that the money he'd spent on the financial adviser in 2011 when setting up the SIPP had been rendered abortive by Phoenix's actions and defaults. And he said he now understood the position around reclaiming tax.

Phoenix did not respond further to Mr C. Thus, unhappy with the outcome of his complaint, he brought it to the Financial Ombudsman Service on 18 November 2023.

One of our Investigator's looked into Mr C's complaint for him but didn't recommend that it was upheld. He considered all the elements of compensation that Mr C had cited and believed he was owed by Phoenix. Having done so our Investigator concluded that Phoenix had responded, apologised and put right all the complaints Mr C had made and had paid him reasonable compensation.

Mr C responded to our Investigator to say he disagreed with his findings. He also said that he had now transferred his SIPP to another provider and had done so without incurring a fee. Consequently his claim for compensation should be revised to omit this cost.

The complaint was passed to me for 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.

Introductory issues

It has not escaped my notice that some of the complaints Mr C has made may potentially fall outside of the jurisdiction of the Financial Ombudsman Service. The Financial Services and Markets Act 2000 (FSMA) gives the Financial Conduct Authority (FCA) the power to say which complaints we can and can't consider. The rules setting this out are known as the DISP rules and can be found within the FCA handbook.

I can see too that Phoenix hasn't expressly consented to the Financial Ombudsman Service's consideration of the elements of Mr C's complaint that have been brought to us potentially out of time. What Phoenix has done however, is to sweep up all of the complaints Mr C has ever made about the administration of his SIPP and issue him with one comprehensive final response letter where they were all reconsidered and where it gave him another six months in which to make his complaint to Financial Ombudsman Service. I can see that Phoenix thought about all the complaints that Mr C put to it in his comprehensive submission dated 23 March 2023 (and these included those made previously) and responded, in full, in its final response letter dated 19 May 2023. Phoenix's final response letter gave Mr C his full rights of referral to the Financial Ombudsman Service and Mr C brought his complaint here within the six-month time limit, on 18 November 2023.

So, as Phoenix considered all aspects of Mr C's complaint again (in its final response letter of 19 May 2023) and gave him a further six months from that point to complain here I am content that Mr C complained to the Financial Ombudsman Service within six-months of Phoenix's final response letter and we can consider those points now.

The complaint

With regret for the disappointment it will cause Mr C, his is a complaint I am not going to uphold; I'll explain why.

It is not disputed by Phoenix that it has made administrative errors and that, at times, the service it has provided to Mr C has been below that which he could reasonably have expected. Given Phoenix's acceptance of its errors, I will focus my attention on whether it has put things right for Mr C and whether its actions have been in line with what the Financial Ombudsman Service would expect from a financial business in a complaint of this nature.

I should first point out that it's not the role of this Service to punish, reprimand or fine a financial business for its conduct. Rather, we look at complaints on an individual basis and decide if steps are required by the business to put things right for consumers in order to put them – as far as possible – back in the position they would have been in had the problem not occurred.

And where a financial business, through its words or deeds, causes a consumer trouble and upset above and beyond that which would normally be associated with the transaction between them, then the Financial Ombudsman Service can require it to pay compensation to that consumer in order to resolve the complaint at hand. So I've thought about what that means in the circumstances of Mr C's complaint. When doing so I have considered this Service's approach to compensation awards in general. I'll look in turn at each element of compensation sought by Mr C.

1. *Reimbursement of the initial adviser charge of £10,159.59 and interest of £16,794.66 on*

that charge

Phoenix was not the provider of the initial advice to Mr C in 2011 to set up his SIPP. It has only administered the SIPP since 2016. In Mr C's opinion, the poor administration of his SIPP by Phoenix and the service errors he has experienced have rendered the initial charge he paid 'abortive'.

I don't agree with Mr C in this respect. He has had the benefit of his SIPP over the years from which he has withdrawn income payments and made disinvestments. Whilst the operation of the SIPP has not been completely free of error, I cannot agree those errors are such that they have rendered the fee Mr C paid to set up the SIPP 'abortive' and one which I should make Phoenix pay to him with interest.

Phoenix had no part in the initial advice Mr C received in 2011, there were no ties between Phoenix and the advising firm and Phoenix received no element of the fee rendered for arranging the transfer. I can see no reasonable basis for requiring Phoenix to reimburse Mr C for this fee or the interest he claims is due. It is not in dispute that Phoenix has made errors during the course of its administration of Mr C's SIPP. Where it has done so, it has admitted fault and paid compensation. I don't agree that an overarching reimbursement of the initial advice fee and the payment of significant amount of interest would be a reasonable approach to compensating Mr C for the errors Phoenix has made since taking over as administrator.

When deciding on how a consumer is to be compensated when a financial business's mistakes or omissions have caused distress or inconvenience I take into account the Financial Ombudsman Service's general approach to such awards and give due consideration to awards it has made in complaints with similar circumstances.

Requiring Phoenix to pay Mr C a sum equivalent to the initial advice fee he paid in 2011 along with interest on that sum would be unreasonable, disproportionate and punitive given the circumstances of his complaint. That is particularly the case where Phoenix has always taken steps to investigate, address and compensate Mr C when mistakes have been made.

2. Refund of all the policy charges totalling £7,845 and interest of £5,955.80 on the charges

Although there have been some mistakes by Phoenix together with some shortcomings in its customer service, I can't ignore that the administration of the SIPP and the customer service provided by Phoenix has predominantly gone well. As Mr C knows, there are various charges associated with the operation of the SIPP which are made to cover the work involved in its administration. Work associated with administration of the SIPP includes asset management, tax management and reporting, arranging drawdown and the provision of documentation.

Phoenix is entitled to make charges against the SIPP for the service it provides and the administration of the plan. And Mr C agreed to pay those charges. So I think it's reasonable that Phoenix fairly applied the charges which Mr C said he would pay for a service delivered. So I don't agree that it would be fair or reasonable to refund all the charges associated with the SIPP – with interest – due to a number of errors. I think it's worth repeating that when errors were brought to Phoenix's attention it responded appropriately, paid compensation and refunded fees where appropriate. I don't believe it would be fair to require Phoenix to do any more in this respect.

3. Payment of adviser charge of £8,400 to transfer the SIPP funds to a new provider

Since our Investigator issued his view on Mr C's complaint, he's told us that he has transferred his pension without incurring a fee and that the redress he sought should be amended to reflect that he had, indeed, not incurred a fee.

That being the case there is no further comment for me to make here.

4. Compensation of £750 for distress and inconvenience suffered between 2017 and 2023 (a total of £7,500 less £1,050 already paid)

The Financial Ombudsman Service does not make financial business pay a flat £750 rate of compensation every time a complaint is made. Each complaint is considered on its own merits and awards are made, if warranted, on a fair and reasonable basis, considering the impact of a business's mistake on the consumer and this Service's established approach to compensation awards.

I have considered each of the complaints where Phoenix has paid compensation to Mr C and I am satisfied that every one has been appropriately investigated (as set out above) and that the compensation paid to Mr C by Phoenix has been in line with the Financial Ombudsman Service's approach to compensation payments. Indeed, if those complaints had crossed my desk without payments having already been made, it is unlikely I would have awarded any more.

I have, of course, not overlooked the additional issue identified by Phoenix in its final response letter of 19 May 2023 (the incorrect closure of tranche 2 and its knock-on effect) which, prior to that point, had not been addressed. I can see however that on assessing this element of Mr C's complaint Phoenix apologised, rectified the issue, paid Mr C £250 in compensation and removed the 2023 drawdown charge from his plan.

I think that Phoenix dealt with this complaint fairly and reasonably so I am not requiring it to take any further steps. The amount of compensation paid by Phoenix for this element of Mr C's complaint is broadly in line with what I would have recommended had the complaint not already been addressed before coming before me. As no further financial loss has been suffered, I think this part of Mr C's complaint has been dealt with fairly and reasonably by Phoenix and I don't require it to take any further action.

5. Charge for time spent submitting complaints to Phoenix; 300 hours at £75 per hour namely £22,500

The Financial Ombudsman Service does not, as a matter of course, recommend that a complainant's time is paid for. Our Service is free to consumers. And whilst I can see that Mr C made lengthy, and at times repetitive, submissions it was his choice to do so. Mr C was complaining in his own personal capacity as a consumer, he wasn't acting in a professional sense. Further, Mr C's own time isn't worth any more than any other consumer's, regardless of how much he might earn or value his time as. And, even where a consumer has used the services of a professional complaints management company or law-firm, given that our service is free, it would only be in exceptional circumstances that we would recommend that a financial business reimburses professional fees. So, while I've thought about the impact Phoenix's mistakes have had on Mr C, I don't think it would be fair and reasonable to award compensation on the basis of an hourly rate.

It follows that I can't fairly require Phoenix to compensate Mr C for the time he spent making his complaints. It is an accepted part of the complaints process that time will need to be spent by the consumer making that complaint and by the financial business resolving it. And that will vary from complaint to complaint. But, for the reasons given above, requiring a financial business to pay a consumer for the time they spent complaining is not something this Service would stipulate. If a complaint is upheld then a compensation award for the trouble and upset caused by the business to the consumer would be what was required

dependent on the circumstances. But such awards do not encompass payments based on hourly rates for time spent complaining.

6. Claim from HMRC for £1,250

Mr C told our Investigator that having read his view on his complaint he now understood the position around reclaiming his tax. I will not therefore be commenting further on this matter.

Other issues

For the sake of completeness I will address the other issues that form part of Mr Cs complaint that have not been addressed by me above.

Mr C has said that he was dissatisfied with Phoenix's processes around disinvestment and the payment of his pension benefits. Phoenix said in response that its timescales, processes and requirements around the processing of income and tax-free cash payments had remained unchanged throughout the life of Mr C's policy. Of the twelve payments made to Mr C, Phoenix assessed that there had been errors with three of them all of which were resolved, the mistakes accepted and compensation paid.

Mr C has also complained about the provision of documentation. In response I can see that Phoenix has explained to Mr C in its final response letter of 19 May 2023 that its annual updates were consolidated into one yearly document following a review in 2018. Phoenix admitted that it had failed to send Mr C his 2021 annual illustration and charges information but paid him compensation of £250 for this oversight in June 2021.

The Financial Ombudsman Service does not interfere in the internal procedures of financial businesses. It is up to individual financial businesses as to how and when they provide their customers with documentation and how to set up their own processes. Where there are service failings in relation to either however, and these have impacted a consumer and caused them to complain then this Service would, of course, expect the financial business to investigate the complaint and take reasonable steps to rectify it if at fault. And, as I say here, I can see that Phoenix has done just that. I am not requiring it to do any more.

In respect of Mr C's March 2023 annual disinvestment, whilst I can see that Mr C's intention had been to stop it the fact remains that he instructed Phoenix in too close a proximity to the date the payment had been made. By the point he told Phoenix he wanted to stop the disinvestment Phoenix was unable to do so because of the short time period between receiving his instruction and the payment date. I can't reasonably find Phoenix at fault in respect of this matter.

Finally, I've noted Mr C's comments on generic aspects of the rebranding between the first and second SIPP providers, between the second provider and Phoenix and about the product literature and documentation. Any corporate rebranding is a matter for the financial business involved and it is not something the Financial Ombudsman Service would interfere in.

I don't disagree with Mr C that he had grounds to complain to Phoenix over the years and I understand that he was unhappy with the service he had received. But I am satisfied, for the reasons I give above, that Mr C's SIPP was by and large administered appropriately by Phoenix. Where it wasn't, I am also satisfied that any issues that arose were appropriately logged, investigated and compensated. I think that the additional compensation Phoenix paid to Mr C of £250 in respect of its errors relating to his tranche 2 arrangement was fair and reasonable in the circumstances. It follows that I am satisfied that Phoenix has put

things right for Mr C and that its actions have been in line with what the Financial Ombudsman Service would expect from a financial business in a complaint of this nature.

I can't reasonably require Phoenix to compensate Mr C any further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 December 2024.

Claire Woollerson

Ombudsman