

## **The complaint**

Mrs C has complained that Phoenix Life Limited is unable to confirm what has happened to pension funds she held with it.

## **What happened**

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

After Mrs C had contacted Phoenix Life in September 2023 to enquire about her pension policy, Phoenix Life explained that it had checked its records but had limited information about it. It said that Mrs C's pension plan was partially transferred out in 2003 and the remainder was transferred out in 2004. Phoenix Life couldn't confirm where (or to whom) payments were made to.

Mrs C complained to Phoenix Life on 31 October 2023. On 3 November 2023, Phoenix Life provided its final response letter. It said the plan was transferred away from Phoenix Life but couldn't confirm to whom the pension was transferred.

Phoenix Life also referred to its regulator (the FCA) and explained about its requirement to hold information for set periods of time. It also provided details for the pension tracing service.

Dissatisfied with the response, Mrs C referred her complaint to this service in November 2023.

Following that referral, Phoenix Life wrote to Mrs C again on 22 November 2023 and explained that her plan had been set up to receive national insurance contributions as a result of contracting out of the state second pension. Phoenix Life confirmed that its records indicated receipt of two rebate contributions of £151.85 in 2000 and £55.59 in 2003 and that it said that it believed these had been returned to the DWP.

Phoenix Life directed Mrs C to request information from HMRC to check her personal national insurance records.

The investigator discussed Mrs C's complaint with her and conveyed an offer of £200 (in respect of conflicting information it had sent to Mrs C) which Phoenix Life had made to try to resolve the complaint, but Mrs C rejected that offer. As such, the investigator issued her formal assessment of the matter, saying that she didn't think the complaint should be upheld, for the following reasons:

- She appreciated how frustrating Mrs C's experience had been, and that she had no recollection of transferring her funds away from Phoenix Life.
- It was, however, reasonable for Phoenix Life to direct Mrs C to HMRC to determine her personal national insurance records as its records showed that the state second

pension rebates had been returned to the DWP. Mrs C had said that HMRC couldn't confirm whether it received any payments.

- Phoenix Life had said that it wasn't legally required to retain records after seven years, but it did have a record of the rebates being returned to HMRC. The investigator didn't think that this was unreasonable.
- Further, as part of data protection requirements, a business such as Phoenix Life was required to delete records when the relationship with an individual had ceased. As such, the onus was on Mrs C to provide evidence that rebates hadn't been returned to HMRC.
- However, the investigator considered that the offer of £200 in respect of the conflicting information sent to Mrs C was fair and reasonable.

Mrs C disagreed however, saying the following in summary:

- The DSS had contributed (on her behalf) the amount of £1,328.77 to her Sun Alliance pension policy which was later transferred to Phoenix Life and had a value of £3,023.65 as at 24 September 1997, but Phoenix Life was now unable to tell her where her money was.
- Although the investigator had said that Phoenix Life didn't have an obligation to maintain their records after the relationship ended, to her knowledge the relationship hadn't in fact ended. And at no point had Phoenix Life contacted her to tell her that the relationship had ended.
- A pension provider wasn't entitled to simply lose its customer's money and then say that it had no record of what had happened to it.

Mrs C therefore asked that the complaint be referred to an ombudsman if the investigator wasn't persuaded to change his view.

The investigator responded to say that, although Mrs C had a projected value of what the pension plan may be worth in the future, Phoenix Life's (albeit limited) records showed that rebate payments had been returned. But he noted Mrs C's request for referral of the matter to an ombudsman and said that he would do so.

Upon referral to me, I asked the investigator to enquire of Mrs C as to evidence that she had received confirmation from the pension tracing service that it hasn't been able to locate her pension funds.

I also asked the investigator to put what Mrs C's had said about the £3,023 transfer value she received in 1997 to Phoenix Life for its further comments.

Mrs C has said that the government's pension tracing service has confirmed that it can only help by putting consumers in touch with the company which holds their pension funds and doesn't have access to whatever that company may hold for the individual.

Phoenix Life has provided the transfer quote from 1997 and also a screenshot from its legacy system which showed the termination of the plan in 2003.

It added that, due to the passage of time, it was unable to determine whether Mrs C did transfer her plan after receiving the transfer quote in 1997. But it could see that it received a

DSS rebate contribution in 2001 of £151.85 and this was then issued as a surrender payment in 2003.

It said that as no further value remained on the record, it appeared to be the case that Mrs C had transferred her plan in 1997. If any value was now available, the records would be showing as “live”, it added.

Phoenix Life further said that it wasn't able to trace a policy which had an end date which was more than 15 years ago, due to the rules in place which governed how it managed customer information. These derived from General Data Protection Regulations (GDPR).

### **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.

And having done so, whilst I'm sorry to disappoint Mrs C, I've reached broadly the same conclusions as the investigator, and for similar reasons.

I acknowledge what Mrs C has said about not having any recollection of transferring her pension fund, and this case is difficult to decide due to the lack of definitive evidence as to what happened here.

But in the absence of such evidence, I need to decide the case on the balance of probability, or in other words what I think is more likely than not to have been the case here.

And in thinking about this, there are several aspects of the case which lead me to the conclusion that Mrs C more likely than not did transfer her pension fund elsewhere.

To clarify, I've firstly considered the nature of the document which Mrs C has from 1997. This wasn't something which might ordinarily be sent to a customer, such as an annual statement – rather this was a transfer value quotation which had been sent in response to an enquiry which Mrs C (or someone acting upon her behalf) had made for the transfer value.

Royal & Sun Alliance described it as a “transfer value package”, and it set out the requirements which needed to be fulfilled if the policy fund value was to be transferred to another provider.

There was therefore the strong suggestion of an interest or intention of transferring the fund value to another provider.

And although Phoenix Life has no documentation relating to the actual transfer of the policy, it then has no record of the policy having a value after this point, other than when it received rebates in respect of Mrs C having been contracted out of the second state pension, and which was then repaid or paid out as a surrender value.

I must then consider how likely it is that Phoenix Life simply erased the value of a live policy, such that Mrs C would thereafter receive no annual statements or any information at all relating to her pension, and that Mrs C, having at least expressed some interest in the value of her policy in 1997, wouldn't then have queried the lack of any further documentation relating to it in the years following this. And having done so, I don't think it is more likely than not that this would have reasonably been the case.

I appreciate that recollections as to what happened with the policy value may have been lost or changed with the passage of quite a considerable length of time. But by the same token,

Phoenix Life isn't required to retain records indefinitely for private pension arrangements if the individual has effectively ceased to be a customer many years ago. It needs to bear in mind its obligations in terms of data protection.

And the more likely than not explanation for why Phoenix Life has no records of a live fund value for Mrs C is that the fund value was transferred away to another provider – as is suggested by Mrs C's request for that transfer value in 1997. And it therefore hasn't had a live policy for Mrs C for many years. Pension providers don't routinely erase pension policies, and have system safeguards (including back up systems) in place to ensure that this doesn't happen.

I appreciate that I can't entirely rule this out as a possibility, but as I've said above, I need to consider this case on the balance of what is more likely than not to have happened.

And on the basis of the available evidence, I think it's more likely than not that the policy value was transferred in 1997 or shortly thereafter.

Focus must then inevitably turn to how Mrs C might trace where that policy value was transferred. I've noted what Mrs C has said about the information provided to her by the government's pension tracing service, and I accept that it hasn't been able to investigate beyond the pension provider details which she has been able to provide.

There are, however, other free services which rely on personal details such as date of birth and national insurance numbers, one of which is referenced by Money Helper, the free and impartial government backed service which has been set up to help people with issues such as this. It refers visitors to its website to a service called "Gretel" and this is described by Money Helper as follows:

*"This is a free service you can use to trace lost accounts, pensions and investments.*

*It will attempt to trace your pensions every 14 days using basic information like your name, current address and date of birth. You do not need to know the names of the pension providers or your policy numbers."*

This service, or others like it, may therefore be able to help Mrs C in locating her pension funds.

I fully understand that Mrs C will be disappointed by this outcome, but for the reasons I've set out above, on an assessment of the available facts of this case, I can't fairly and reasonably conclude, on balance, that Phoenix Life remains responsible for Mrs C's pension funds or that it should make a payment to Mrs C in respect of them.

As with the investigator, however, I do think that Phoenix Life will have caused some confusion by the information it provided, but having thought about the likely impact on Mrs C and the types of award this service might make in similar situations, I think its offer of £200 is fair in the circumstances.

### **My final decision**

My final decision is that Phoenix Life Limited's offer of £200 to settle the complaint is fair and reasonable in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 24 December 2024.

Philip Miller  
**Ombudsman**