

The complaint

Mrs M is unhappy with the advice she received from what is now Phoenix Life Limited (Phoenix Life) to transfer her deferred defined benefit (DB) scheme benefits to a personal pension plan.

What happened

Mrs M received advice to transfer the deferred benefits of her DB scheme with what is now Phoenix Life in June 1992. She also opened a separate plan to accept regular contributions – the last contribution was made in 1995.

Mrs M complained to Phoenix Life in 2021 about the advice she'd received. Phoenix Life issued their final response in August 2021. They didn't agree with the complaint and explained they had offered to put things right in 2002 following additional guidance from the regulator at the time, regarding the industry-wide pension review. They said they wrote to Mrs M in October 2002 explaining another review of the 1992 sale was carried out and the review found that based on the new guidance Mrs M had suffered a prospective loss. Phoenix Life said it was their intention to reinstate her back into the DB scheme, and to do this they needed Mrs M's signed authority. Phoenix Life said they didn't receive a response to their letter, so they didn't take any further action and Mrs M's policies remained with them.

Mrs M said she didn't receive the 2002 letter and she is unhappy that Phoenix Life didn't follow up when they didn't hear anything from her in response. She said had she been aware of a potential financial loss she would've definitely responded.

Mrs M then brought her complaint to this service for an independent assessment. One of our investigators looked into things. He thought it more likely than not that Mrs M hadn't received the letter and concluded that Phoenix Life did not do enough to make Mrs M aware of the loss she'd suffered, or to put her in the position she would've been in had it not been for the advice she received in 1992. He thought it would have been reasonable to expect Phoenix Life to follow up with Mrs M after their letter in October 2002 and if no further responses had been received, Phoenix Life should have paid the redress in a different way. As they didn't do this, the investigator concluded they hadn't complied with the pension review guidance, so he set out what Phoenix Life needed to do now to put things right.

Phoenix Life accepted the investigator's view on 3 May 2022 and said they would undertake the calculation. They said this would require Mrs M to complete and return to them a questionnaire and that they would also need to contact her former DB scheme. The questionnaire was provided at this time.

Mrs M also accepted the investigator's view and so the investigator closed the complaint. Mrs M provided the completed questionnaire to us on 9 May 2022, and this was emailed to Phoenix Life on 10 May 2022.

There has been some communication between Phoenix Life and Mrs M since this time, but her complaint has still not been resolved. Mrs M approached this service numerous times since her complaint was closed asking for us to intervene to get her updates from Phoenix

Life on their progress regarding the redress owed to her. Unfortunately, very little progress continued to be made, so in an effort to get things formally resolved, Mrs M's complaint has been reopened and referred to me for a final decision.

I wrote to the parties explaining that I intended to uphold the complaint but that given the passage of time since the investigator's view was issued and the lack of any real progress on providing redress, the methodology needed to be updated to reflect the regulator's current guidance.

I also proposed that Phoenix Life compensate Mrs M £1,000 to reflect the substantial degree of trouble and upset she has experienced as a result of Phoenix Life's actions.

Mrs M responded that she accepted what I proposed but clarified that she had been in regular contact with Phoenix Life since August 2024 and that they agreed to pay her compensation for her past loss (she would have taken benefits as a lump sum and monthly payments at age 60 in January 2022), future loss and for "the upset and anguish" the ongoing case has caused her, but said Phoenix Life hadn't provided a figure.

Phoenix Life responded acknowledging that there had been some initial delay in arranging settlement because they needed to ask for a questionnaire and letter of authority from Mrs M to obtain the information required to conduct the loss calculation. They also said they've had difficulty getting information from Mrs M's DB scheme and said the next step would be to have Mrs M approach the scheme for it.

Phoenix Life provided no comment on the updated methodology or the £1,000 compensation I proposed for Mrs M's trouble and upset.

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.

As I've outlined above, Phoenix Life have accepted that Mrs M is owed compensation for the advice she received in 1992. So I don't need to consider if the DB transfer was right for her. I've only considered how best to put things right.

As I explained to the parties, the industry regulator has established a methodology for businesses to use calculate redress owed where a DB transfer was mis-advised. This methodology has changed since the complaint was originally closed. Phoenix Life didn't provide me with any comments on the updated redress methodology I proposed, but they said they needed certain things before they could proceed with the settlement and wondered if this impacted my decision.

I've considered this, but Mrs M originally provided the questionnaire they said needed in May 2022, and multiple times since. Furthermore, while I appreciate Phoenix Life is having trouble getting information from Mrs M's DB scheme, and now intend to ask her to get this directly, they could have asked Mrs M years ago to help them obtain this information and they've provided no explanation as to why this wasn't done.

So given the lack of evidence that Phoenix Life has made tangible progress towards resolving this over the last two years and that I've not seen any evidence that Phoenix Life experienced significant unexpected roadblocks while attempting to get the information they needed to make the calculations – which might understandably delayed things – I consider it appropriate to now require Phoenix Life to use the updated methodology to settle Mrs M's complaint.

Finally, Phoenix Life indicated that it would make an offer to Mrs M for the pain and anguish they have caused her, but they have not specified any amount. Nor did they counter or make any objection to the £1,000 compensation I proposed for Mrs M's trouble and upset. Given the circumstances surrounding this complaint, the repeated lapses by Phoenix Life in keeping Mrs M updated and the upset caused by the continued delay in resolving matters, I consider this award remains appropriate.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs M as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs M would have most likely remained in the occupational pension scheme if suitable advice had been given.

Phoenix Life Limited must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: <https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, Mrs M has not yet retired, but told us she had intended to retire at age 60 but this was delayed due to this complaint. So, compensation should be based on her retirement age of 60, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs M's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Phoenix Life Limited should:

- calculate and offer Mrs M redress as a cash lump sum payment,
- explain to Mrs M before starting the redress calculation that:
 - her redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest her redress prudently is to use it to augment her defined contribution pension
- offer to calculate how much of any redress Mrs M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs M accepts Phoenix Life Limited's offer to calculate how much of their redress could be augmented, request the necessary information, and not charge Mrs M for the calculation, even if she ultimately decides not to have any of her redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs M's end of year tax position.

Redress paid directly to Mrs M as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Phoenix Life Limited may make a notional deduction to allow for income tax that would otherwise have been paid. Mrs M's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

If payment of compensation is not made within 28 days of Phoenix Life Limited receiving Mrs M's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Phoenix Life Limited deducts income tax from the interest, it should tell Mrs M how much has been taken off. Phoenix Life Limited should give Mrs M a tax deduction certificate in respect of interest if Mrs M asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

In addition, given the time taken to resolve things and the prolonged trouble and upset Mrs M has endured over the past several years caused by Phoenix Life Limited's actions, I considered Phoenix Life Limited should also pay Mrs M £1,000 compensation.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the Phoenix Life Limited pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Phoenix Life Limited to pay Mrs M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Phoenix Life Limited pays Mrs M the balance.

If Mrs M accepts this decision, the money award becomes binding on Phoenix Life Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs M can accept my decision and go to court to ask for the balance. Mrs M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 October 2024.

Jennifer Wood
Ombudsman