

## The complaint

Mrs M complains that Phoenix Life Limited (Phoenix) mis-sold her Section 32 Buyout policy to her. She also complains that the amount Phoenix now tells her she is due under the policy is too low. Mrs M says she has certificates which indicate the value at age 60 was £4,100, but Phoenix thinks the policy has a value of £700.

The business which Mrs M's benefits from her former employer's pension scheme were transferred to is now part of Phoenix. So I'll only refer to Phoenix in my decision.

## What happened

I understand that Mrs M started to work for a business in 1981.

On 14 February 1984, her employer wrote to her to tell her that, on 1 March 1984, she'd become eligible to join the Retirement Benefits and Life Assurance Scheme for Hourly Paid Employees, which was non-contributory. The letter enclosed a booklet explaining the scheme alongside an application form.

Later that year, Mrs M received a certificate about her benefits under the Retirement Benefits and Life Assurance Scheme for Hourly Paid Employees. This stated that her current benefits as at 1 March 1984 were as follows:

*"Death in service before Normal Retirement Date – Sum Assured £3,000*

*Benefits at Normal Retirement Date – Cash Sum £4,100."*

I understand that Mrs M stopped working for the business in August 1986. On 30 December 1986, Mrs M's former employer wrote to her with a further certificate of benefits.

*"The letter stated: "I enclose your certificate of benefits. Keep this in a safe place until the date of your sixtieth birthday when you will be eligible to redeem it.*

*You may, if experiencing ill health after the age of 50 request earlier payment and this may be granted at the discretion of the Trustees."*

On 31 October 2003, Phoenix wrote to Mrs M, but the letter wasn't properly addressed. Mrs M said she didn't receive this letter.

The letter stated that a policy had been set up for Mrs M from 9 July 2003. It enclosed policy documents. It said that the Trustees of the scheme had transferred to it under a buyout.

The Appendix of the policy document stated the following:

<i>Transfer Value</i>	<i>£340.12</i>
<i>Members Retirement Benefit</i>	<i>A cash sum retirement benefit of £700.00</i>
<i>Cash Sum on Death</i>	<i>Nil</i>

On 21 February 2024, Phoenix wrote to Mrs M about her benefits under her former employer's scheme. It said her original retirement date had been in 2023. And that as she'd passed this date, she could no longer transfer it to another pension provider. It said a cash benefit of £700 was payable. And that this would be increased by late payment interest.

Phoenix said that the policy was a non-profit deferred annuity contract, bought using funds secured and accrued under an Occupational Pension Scheme in Mrs M's name. It also sent Mrs M a Retirement Options Statement which stated that the plan had been designed to provide her with a guaranteed cash benefit on retirement.

Phoenix said it issued a claim form to Mrs M on 21 February 2024. It said that once she'd completed and returned this, it could arrange payment.

On 13 March 2024, Phoenix wrote to Mrs M again after she made further enquiries about her policy. It said her individual buyout policy had been set up following the wind up of her former employer's scheme. It sent Mrs M a copy of her policy schedule. This showed that the policy related to the period of service from mid-1981 to mid-1986, when it said Mrs M had left the scheme.

Phoenix noted that if Mrs M had documents she'd received in 1984, these were likely to show values on the basis that she would remain a member of the scheme until her normal retirement age. It said that as she'd instead left the scheme in 1986, her benefits would've been recalculated to reflect this.

Mrs M said it'd taken a lot of investigation to discover that Phoenix was now responsible for her benefits with her former employer. And that after being given conflicting information, she was told that it was an annuity and that she was entitled to a lump sum of £700. Mrs M felt that she should be entitled to at least £4,100, plus interest. So she complained to Phoenix.

Mrs M said that after she'd left her former employer in 1986, it'd written to her about her benefits. She said that letter had stated that she could redeem £4,100 at her sixtieth birthday. She therefore didn't agree with Phoenix that the lump sum should be reduced because she'd left work before her normal retirement date. Mrs M also said that Phoenix had failed to send her the policy schedule it'd offered to send to her.

Mrs M wanted to understand how her pension benefits could've been sold to another company without her knowledge or permission.

Phoenix said that Mrs M's plan was a Section 32 Buyout plan, which had been set up after a wind up of her former employer's scheme. It said it hadn't provided advice on this. It said that the policy had been taken out to receive a transfer of pension benefits from Mrs M's former employer's pension scheme. And that the responsibility for taking out the policies was with the Trustees of that scheme.

Phoenix issued its final response to the complaint in May 2024. It acknowledged it had failed to send Mrs M the policy schedule. It shared a copy of this, apologised, and offered Mrs M £100 for the poor service.

Phoenix didn't uphold the main part of the complaint. It said it hadn't given Mrs M any financial advice. And that it wasn't responsible for the sale of the policy.

Phoenix said when Mrs M had joined the scheme on 1 March 1984, she was entitled to a lump sum of £4,100 payable from the age of 60, together with death-in-service life cover of £3,000, provided that she remained in service. It said that when Mrs M had left employment in 1986, her lump sum retirement benefit reduced and her life cover ceased. It said it couldn't

explain how the reduced lump sum of £700 had been calculated as it wasn't the administrator of the scheme when Mrs M had left employment.

Mrs M didn't agree with Phoenix. She said she knew nothing about the buyout, noting that the 2003 letter only had a partial address for her. She said she couldn't understand why the benefits from the scheme had been reduced to £700 without any explanation at the time. She said she'd been shocked by what had happened. And felt that the £100 compensation Phoenix had offered was laughable.

Mrs M wasn't happy with Phoenix's response. So she brought her complaint to this service. She wanted to receive at least £4,100. She said she'd been counting on this money. And that she'd gone into debt on the basis that she'd receive it. Mrs M also thought that the certificate she held entitled her next of kin to a further £3,000 on her death. She felt that Phoenix had been wrong to tell her the pension was worth £700.

Mrs M told this service that she lived alone, earning a small salary from her job. She said she now had to work extra shifts to make ends meet. She said it was all getting too much at her age. And that she was very distressed by the situation. She felt that Phoenix had either misled her about the true value of her pension, or that it had mismanaged her pension.

To put things right, Mrs M wanted Phoenix to pay her the total sum of £7,100 quoted on her certificate, plus interest for late payment.

Phoenix told this service that although the 30 December 1986 letter said it'd enclosed a certificate of benefits, that hadn't been shared with it. It said that if Mrs M could provide a copy of this document, it would be happy to review it. It said that the documents which stated £4,100/£3,000 were all from 1984 when Mrs M was an employee.

Phoenix acknowledged that Mrs M might not have received the 2003 letter. It said it wouldn't have been unusual to not have up-to-date correspondence details for someone who'd left employment in 1986. But that it was likely that a decision had been made to transfer Mrs M's benefits as her former employer's scheme was being wound up.

Our investigator didn't think the complaint should be upheld. He felt Phoenix had calculated Mrs M's benefits in line with the details of the pension it'd taken over. He said benefits under a scheme like Mrs M's were usually reduced if an employee left employment before reaching their normal retirement age. He therefore felt that it was more likely than not that Mrs M's benefits had been reduced based on her period of employment.

Our investigator said that if Mrs M could provide the certificate of benefits that her former employer had attached to its 30 December 1986 letter, he'd consider it.

Our investigator also felt that the £100 Phoenix had paid Mrs M for its poor service was reasonable.

Mrs M didn't agree with our investigator. She said she was part of her former employer's scheme from June 1981 to October 1985. And then the pension was taken over by a different company from October 1985 to July 2004. She said it seemed strange that her employers had her married name and new address in 1986, but that Phoenix had used her maiden name when it'd written to her in 2003. She felt that Phoenix only had her contributions from October 1985 to August 1986.

Our investigator issued a second view on the complaint. He still didn't think the complaint should be upheld. He said we still didn't know how the benefits were built up, noting that there weren't any terms and conditions available with the certificate. He said there was no

evidence to suggest, based on the documents available, that Phoenix had incorrectly calculated the benefits when it set up Mrs M's policy in 2003.

Mrs M said she'd only recently found out that her policy had been bought out. So she'd never received any financial guidance when it was taken over. And she'd not been able to transfer her policy to another provider. She raised a lot of specific questions about the benefits she could've received from her former employer's scheme, including who had deferred the benefit.

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 Mrs M. I'll explain the reasons for my decision.

I first considered the documentary evidence that's been shared with this service about the benefits due.

#### *Documentary evidence about the benefits due*

Mrs M has provided this service with the information her employer provided to her in 1984, when she was still employed. This stated that she was entitled to death-in-service cover during the period she remained in employment up to age 60 of £3,000. And a lump sum of £4,100 at age 60.

In early 1984, Mrs M's then employer sent her a booklet explaining the scheme. But we've not been provided with a copy of that. Neither have we been provided with a copy of the 1986 certificate it sent Mrs M after she'd left employment.

Both Phoenix and our investigator said that if Mrs M could provide a copy of this, they'd be happy to consider it. But Mrs M hasn't been able to provide that information. Without it, I agree with our investigator that it's most likely that Phoenix did correctly set up the buyout plan when it took over the benefits in 2003.

I say this because I agree with Phoenix that the 1984 documents were likely to show values on the basis that Mrs M would remain a member of the scheme until her normal retirement age. But the 1986 certificate would've been more likely to show benefits that had been recalculated to reflect the fact that Mrs M wouldn't now be staying in employment to age 60.

As Phoenix has already stated, it's a usual feature of a defined benefit scheme like this one that the benefits payable from the normal retirement age are reduced when an employee leaves employment before reaching the normal retirement age. If this wasn't the case, an employee could effectively build up full benefits from a number of different schemes while only working for a number of different employers for a short period of time.

It would be surprising if a former employer continued to be entitled to a death-in-service lump sum after leaving employment. I say this because at the point that they ceased employment, they're no longer "in-service". Therefore any "in service" benefits naturally stop.

I appreciate it's frustrating that Phoenix can't explain how the reduced lump sum of £700 was calculated. But I can't fairly say this was unreasonable, as it wasn't the administrator of

the scheme when Mrs M left employment, so it couldn't be expected to know how that calculation was carried out.

Based on all I've seen, I also agree with Phoenix that the Trustees of Mrs M's former scheme were responsible for taking out her policy with it. The 2003 letter confirmed this. While I acknowledge that Mrs M didn't receive Phoenix's 2003 letter about this, I don't consider it to be unusual that the Trustees, and therefore Phoenix, didn't have an up-to-date address for a former member who'd left employment 17 years earlier. And, given the scheme was winding up, I'm satisfied that the Trustees made a decision to transfer Mrs M's benefits when Phoenix didn't hear from her.

I've moved on to consider the other points Mrs M has raised.

#### *Other points*

I acknowledge that Mrs M said she was part of her former employer's scheme from June 1981 to October 1985. And that the scheme was then taken over by a different company from October 1985 to July 2004.

I haven't been provided with any evidence that Mrs M was ever in a contributory scheme with her former employer. The evidence shows that she was in a non-contributory scheme up to the time she left employment in August 1986. I considered the benefits from that scheme earlier in my decision.

I also acknowledge Mrs M's point that it seemed strange that her employers used her married name and new address in 1986, but that Phoenix had used her maiden name when it'd written to her in 2003.

I can't be sure of why this happened, but I can see that Mrs M had been enrolled into her scheme with her maiden name. It's then more likely than not that this name was the one the Trustees had forwarded to Phoenix for its 2003 letter about the buyout. Although I can't be sure of what happened here, I'm not persuaded it led to any financial loss for Mrs M.

Mrs M said she wasn't informed about the 2003 buyout at the time. So she couldn't take any financial guidance when it was taken over. Nor was she able to transfer her policy to another provider.

It's unfortunate that Mrs M didn't receive the 2003 letter. It had been 17 years since she'd worked for her former employer, so it's not surprising it didn't hold her current address. Therefore, I can't fairly hold Phoenix responsible for not holding her address at that time.

I've thought about whether Mrs M would've been likely to have benefitted from transferring her policy to another provider if she'd found out about the buyout sooner. But I'm not persuaded that this would be more likely than not to be the case.

I've also considered all of the questions Mrs M raised about the benefits she could've received from her former employer's scheme. I can see from the questions that Mrs M doesn't consider that the scheme she was a member of only provided a cash lump sum at retirement. But, from the evidence I've been presented with, I'm persuaded that this was the only benefit under that scheme for someone who'd left service. And I'm also of the view that the lump sum benefit stated on the 1984 statement would've been reduced when Mrs M left service in 1986.

Phoenix has acknowledged its failure to send Mrs M the policy schedule when it said it would. It paid her £100 for the poor service. I think this is reasonable under the

circumstances.

I do acknowledge the difficult financial situation Mrs M is now in. I can see that she expected to receive £4,100 at age 60 based on the 1984 information her former employer provided her with. So I understand why it would've been a terrible shock to find out from Phoenix in 2024 that she was actually only entitled to £700 at age 60.

Phoenix has confirmed that if Mrs M completes and returns the claim form it issued on 21 February 2024, it can arrange payment.

My role here is to look at Phoenix's actions, and to decide whether it is responsible for any errors, or for the loss of expectation Mrs M has clearly suffered. Having considered all of the available evidence, I've not found any evidence that Phoenix has provided Mrs M with any incorrect information about her pension. Nor can I fairly hold it responsible for the loss of expectation she clearly suffered when she found out the benefits from her pension were actually only £700 at age 60, rather than the £4,100 she'd expected.

I've not seen any evidence that Phoenix either misled Mrs M about the true value of her pension, or that it mismanaged her pension. Therefore I can't reasonably uphold the complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 19 November 2024.

Jo Occleshaw  
**Ombudsman**