

The complaint

Mrs B complains that Phoenix Life Limited (Phoenix) gave her unsuitable advice when she took out her stakeholder pension plan with it. She said that she'd told Phoenix's representative that she didn't want to go into a fund which could lose money. And that he'd assured her that her money would be invested in a fund that wouldn't go down.

Mrs B said that the value of her pension had dropped by over 40% in the last 18 months. She wanted Phoenix to compensate her for this loss.

Mrs B started her pension with a predecessor business of Phoenix. But I'll only refer to Phoenix in my decision.

What happened

Mrs B said she worked for a business which I'll refer to as business B since 1 January 1990. And that she was a shared owner of business B.

In May 2001, Mrs B started a stakeholder pension with Phoenix. The pension was part of a group stakeholder plan for business B.

Phoenix said that from 1 January 2001, it no longer had an active salesforce. It said that business B contacted it to take out a stakeholder policy. And that it was business B which subsequently completed the application form and selected the investment funds for its employees. Phoenix noted that Mrs B's application form didn't appear to have a section in which she could choose the investment funds. It also said it wouldn't have provided any specific advice on whether the plan was suitable for business B's employees' personal circumstances.

Mrs B had a different recollection of events. She said that an employee from Phoenix had contacted business B as he'd previously sold it another policy when he was employed by a different business. She said the agent had advised business B that all businesses were now required to take out a stakeholder pension for all employees.

Mrs B said that the agent met with business B about this on 9 April 2001. And that she'd attended that meeting. She said that the agent had then advised business B on its stakeholder pension. And that she and the business had told him that they didn't want to lose any money by investing in a risky investment, due to being risk averse.

Mrs B said that the agent had completed applications for the stakeholder pension. And that he'd then returned a few days later to help her complete her own application and to assure her that her money would be perfectly safe. Mrs B signed her own application form on 12 April 2001.

Mrs B's pension was set up with a selected retirement age of 55, which she would reach in 2021. But I understand that when Mrs B didn't respond to the retirement option packs Phoenix issued to her in November 2020 and January 2021, it assumed that she didn't want to retire at the time and changed her selected retirement age to 60.

Phoenix said that the retirement options packs had explained that the value of the pension savings they quoted was based on unit prices and wasn't guaranteed. It also said the packs stated that the value when Mrs B actually took her benefits could be higher or lower.

Phoenix wrote to Mrs B again on 2 March 2021 as it still hadn't received a response. It provided the value of the fund and stated:

"The value above is based on current fund prices and is not guaranteed. This value may be higher or lower due to for example falls or rises in investment markets, when you come to take your pension savings."

Phoenix wrote to Mrs B on 6 April 2021 about the deferral of her selected retirement age to 60. The letter explained that her funds were invested in the Income Protector fund and that they would therefore have less opportunity to grow in the future. It said that Mrs B could switch into another fund if she wanted to. But that she'd have to contact it to do so.

Phoenix wrote to Mrs B's financial adviser on 8 December 2022 in response to its request for an explanation of the recent fall in value of her pension. It said the fall was due to the drop in the bid price for the Pensions Income Protector fund. It sent the adviser a copy of the fund leaflet for that fund which confirmed this.

Phoenix explained that each time it received a regular contribution for Mrs B, 60% of the contribution was used to buy units in the Pension Growth fund and 40% was used to buy units in the Pensions Income Protector fund. It also sent the adviser a copy of the fund leaflet for the Pension Growth fund. Phoenix also provided the current fund value. And noted that the values weren't guaranteed. It said they changed daily in line with the bid price of each investment fund.

I understand that in July 2023, Mrs B decided to transfer her pension benefits to a Small Self-Administered Scheme linked to business B. On 5 July 2023, a third party who was working with Mrs B wrote to Phoenix about her requested pension transfer.

Mrs B also wrote to Phoenix about her transfer request on 19 July 2023. She said she was disappointed that the performance of her funds had decreased significantly over the last two years. Mrs B also noted that Phoenix had sent her annual statements.

Phoenix said it issued a letter to Mrs B's financial adviser on 29 July 2023 to confirm that the stakeholder plan at the heart of this complaint was only ever sold directly to clients, and that no financial advice had been taken.

Mrs B complained to Phoenix. She said that the agent who'd sold the stakeholder pension to business B had assured her that her money was invested in a fund that wouldn't go down. But that the value of her pension had fallen by more than 40% in the last 18 months. Mrs B said she'd told the agent she wanted a no-risk policy.

Mrs B chased Phoenix for a response on 22 December 2023. Her financial adviser also chased Phoenix on 4 January 2024.

Phoenix issued its final response to the complaint on 28 February 2024. It apologised for its delayed complaint response. It explained that Mrs B's complaint letter had been delivered to its Bournemouth office. But it agreed that it should've been quickly forwarded to the correct team in its Glasgow office. It offered Mrs B a total of £250 for the delayed complaint handling and the trouble and upset it'd caused.

Phoenix didn't uphold Mrs B's pension complaint. It said that the application form for the

stakeholder plan didn't suggest that an independent financial adviser was involved in arranging the plan for either Mrs B or for business B. It also said that there was no Phoenix salesperson involved. It therefore felt that the trustees of business B's pension scheme would likely have taken the plans out for their employees.

Phoenix felt that the trustees of business B's pension plan must've approached Phoenix to request information about the stakeholder plan, in order to decide whether to take out such plans for their employees. It said it wouldn't have been able to provide any specific advice or find out whether the plans were suitable for the members' personal circumstances at the time. And that the trustees would've chosen to start the plans and make decisions relating to the suitability of the plans for the members' particular circumstances.

Phoenix also said that there were only two funds available for investment in its stakeholder plan. These were the Pension Growth fund, which was primarily invested in UK equities in order to provide long-term growth, and the Pension Income Protector fund, which was primarily invested in long-term gilt-edged securities which would protect the value of the pension at a time of falling interest rates. It said there were no investment guarantees. And that this had been made clear in the plan booklet.

Phoenix said that the booklet had also explained how contributions would normally be applied. It then went on to detail how Mrs B's contribution would've been invested over time, with the proportion in each of the two available funds moving towards 100% investment in the Pension Income Protector fund in the five years leading up to her selected retirement age.

Mrs B was unhappy with Phoenix's response. So she brought her complaint to this service in May 2024. She wanted Phoenix to reinstate her pension value to how it was before the reduction of approximately 40%.

Phoenix told this service that it wasn't responsible for any advice Mrs B received when she took out the plan. It said that it couldn't provide any specific advice. It therefore couldn't confirm what'd been discussed at that time or whether the plan was suitable for Mrs B's personal circumstances. It acknowledged that Mrs B wasn't happy with the performance of her plan but said that unit-linked funds didn't carry a fund performance guarantee.

Our investigator asked Mrs B if she had any documents from the 2001 sale of her pension plan, to see if they showed she was advised to set it up.

Mrs B said she only had a copy of the 9 April 2001 appointment notification. She felt this showed that Phoenix had been wrong when it'd said that it'd provided no advice as it'd disbanded its salesforce by 1 January 2001. She felt the document she'd provided showed that the agent had come to her office to do a presentation on 9 April 2001 and that he'd brought relevant application packs. And that this proved that Phoenix did have a salesforce at that time.

The document Mrs B provided was headed "Corporate Consultant Hand-over Template" and stated that the agent met with business B on 9 April 2001 at 9.30am. There were five columns on the form. But only the two headed "Name" and "Application Pack" had any content. The "Advice" column was left blank. Two names were listed under the "Name" column. But the top of the template noted that there were a total of six employees.

In response for an information request from our investigator, Phoenix provided documents from the time of the sale which stated that the plan Mrs B had taken out in 2001 was: "*not available through IFAs*". It also provided evidence that only the Pension Growth fund and the Pension Income Protector fund were available.

Our investigator didn't think that the complaint should be upheld. He said he couldn't find any evidence that Phoenix had advised Mrs B on her investments within her plan. Nor could he find any evidence within the application that a financial adviser had been involved in the sale. He also felt that the £250 Phoenix had paid Mrs B for its complaint handling was reasonable.

Mrs B didn't agree with our investigator. She felt that the fact that she'd evidenced that the agent had visited business B on 9 April 2001 proved that Phoenix still had a salesforce at that time. She said that her Company Legal Adviser had noted that the appointment note was for more than one person to attend the meeting. She said there had in fact been five people at the meeting. She said that the agent had spoken to each of those people individually. Mrs B said that some of those attendees had agreed to provide affidavits that they'd been provided with advice at that time.

Mrs B then provided three letters from her 2001 colleagues who'd attended the meeting on 9 April 2001 with her.

The first stated that the Managing Director for business B had spoken to them in early 2001 to ask if they would be interested in meeting with a representative from Phoenix who had been arranged to visit the workplace to discuss a stakeholder pension scheme. They said they'd agreed to meeting with the representative with the intention of seeking advice for financial security once they'd reached retirement age.

They went on to say that they met with Phoenix's agent on 9 April 2001 on their own. And that he'd provided them with the necessary information to give them confidence that the money they'd invested into the stakeholder pension scheme would return an income to enable them to maintain their living standards in retirement. They said they'd subsequently accepted the stakeholder pension.

The second letter stated that the employee had met Phoenix's agent on their own on 9 April 2001. And that he'd been given advice about joining the stakeholder pension. They said that despite their insistence that they were too close to their own retirement to join the stakeholder plan, the agent had been insistent that it was never too late. And that he'd explained how the funds worked and that there were many advantages regarding tax amongst other things. This employee said they didn't join the stakeholder plan.

The third letter stated that the employee had met Phoenix's agent on 9 April 2001. And that he'd explained what a stakeholder scheme was. And then advised the employee to join the plan as it was low risk and the fund would grow over time to give a reasonable sum in retirement. He also told the employee that as the employer would contribute into the plan it would be a good idea to join.

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 appreciate this will be disappointing for Mrs B. I'll explain the reasons for my decision.

Mrs B's main complaint is about the investment performance of her pension.

Different funds will have different objectives, features and structures. It's for investors, with

the help of their advisers if required, to decide which type of funds that they want to invest in.

Phoenix said it hadn't given Mrs B any advice on what fund to choose when the pension first started. It wasn't authorised to do that. It could only provide information so that a customer can make their own choice. So I've first considered if there's any evidence that Phoenix provided Mrs B with advice in 2001.

Did Phoenix advise Mrs B in 2001?

As our investigator noted, where recollections differ on what happened in the past, this service relies on documentary evidence from the time to work out what happened.

I've reviewed the 2001 application form. This doesn't indicate that an independent financial adviser was involved in the sale of the policy. Neither does it show that Phoenix advised Mrs B on the pension scheme or on her choice of investments.

I've also reviewed the Corporate Consultant Hand-over Template Mrs B provided to this service. This doesn't indicate that Phoenix's agent provided any advice on 9 April 2001. While the document shows that a meeting was arranged for 9 April 2001, it doesn't show that advice was provided. Phoenix acknowledged that the meeting took place. But said that no advice was provided. Instead, its agent simply provided information about the plan.

I've gone on to consider Mrs B's colleagues' recollections of the 9 April 2001 meeting with Phoenix's agent. Having done so, I consider that it's more likely than not that the agent simply provided any employee that agreed to meet with him with information about the stakeholder plan.

I've not seen anything which indicates that the agent did any more than this, although I note that Mrs B is not alone in referring to what that agent provided that day as advice.

I'm persuaded that Mrs B's colleagues' recollections from the 9 April 2001 meeting show that the Managing Director of business B had in fact asked Phoenix to visit the workplace and to provide information about the stakeholder plan, rather than the agent making the first approach.

In any event, Phoenix has explained that it no longer had an active salesforce on 9 April 2001. It has also provided plan details, which confirmed that the plan wasn't available through an adviser.

I agree with our investigator that if either Phoenix's agent, or an independent adviser had in fact advised Mrs B on her investments, they would've first been required to find out her objectives and her circumstances through a fact find. Only then would they have been able to make a suitable recommendation which met those needs. If this had taken place, I would've expected Mrs B to have been able to provide a copy of the suitability letter that would've been issued to her to explain the adviser's reasons for the recommendation. There's no evidence that such a recommendation was made by either Phoenix or an independent financial adviser.

I have also carefully considered Mrs B's recollections from the April 2001 meeting. In particular, I've thought about whether or not the agent told her that she'd be invested in a fund that wouldn't lose money.

I can understand why, given Mrs B feels that Phoenix advised her how to invest, she's asked it to reinstate her pension value to how it was before the reduction of approximately 40%. But I can't fairly and reasonably ask it to do this. I say this because, as I've already

explained, I haven't seen any evidence that the agent did advise Mrs B how to invest. Instead, the evidence shows that Mrs B has been invested in the default option from the start.

I also note that Phoenix sent Mrs B annual statements every year. While I've not been provided with these, I'm not persuaded that they showed a fund value that always increased over time. So I think Mrs B would've known for some time that her fund value wasn't guaranteed to increase.

I can also see that the pack that Phoenix issued to Mrs B in November 2020 clearly stated that the fund value it quoted was: *"based on current fund prices and is not guaranteed. This value may be higher or lower due to for example falls and rises in investment markets when you come to take your pension savings."* The 2 March 2021 letter also stated that the fund value was based on current fund prices and wasn't guaranteed.

The 6 April 2021 letter Phoenix sent Mrs B also explained that she could switch funds if she wanted. It said: *"If you wish to switch into another fund then you can do so by contacting us."* This letter did also state that Mrs B's funds would remain invested: *"in the stable deposit based funds so will have less opportunity to grow in the future"* unless she wanted to switch funds. I appreciate this might've indicated that her fund value would be stable. But what this actually meant was that the amount of pension Mrs B could expect to achieve from her plan would likely be stable in the event of falling interest rates. It didn't mean that her fund value wouldn't go down.

I'm satisfied that Phoenix made it clear to Mrs B that her pension fund value wasn't guaranteed. And that she could change her investments if she wanted to.

I haven't considered the compensation that Phoenix paid Mrs B in respect of its complaint handling. This is because this service doesn't have the power to consider that point.

I've not found any evidence that Phoenix advised Mrs B on her investments, although I acknowledge that it did provide her and her colleagues with information about the stakeholder plan in 2001. But it was then up to Mrs B to decide what to do. Therefore I don't 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 B to accept or reject my decision before 12 November 2024.

Jo Occleshaw
Ombudsman