DRN-5033977

The complaint

Mr M complains that Phoenix Life Limited (Phoenix) is not allowing him to take a tax-free lump sum from his pension transfer plan.

Mr M also doesn't agree that there is insufficient value in his plan to provide a tax-free lump sum. He says that the amounts quoted in an illustration provided to him, show a similar plan value providing an annual pension in excess of the guaranteed minimum pension (GMP). So Mr M says the value of his plan is more than enough to provide the GMP.

What happened

In 1987 Mr M took out a pension transfer plan funded by a transfer from his former Occupational Pension Scheme (OPS). The terms and conditions of the plan stipulated that the former provider of his plan, and now Phoenix who has since taken over the plan, had to provide him with a Guaranteed Minimum Pension (GMP) at Mr M's normal retirement age, which was 65 years.

In 2012 the former provider of his plan responded to a complaint made by Mr M where he complained that his plan had been mis-sold. It didn't uphold his complaint and provided referral rights to our service.

In 2020 Phoenix responded to a further complaint made by Mr M about the sale of his transfer plan. It didn't uphold his complaint and said that he had previously made the same complaint in 2012, which had already been considered. Phoenix said that the recent complaint didn't contain any materially different issues to those previously considered.

Mr M then referred his complaint about the sale of the plan to our service however we were unable to take his complaint any further.

Mr M's normal retirement date was in November 2023.

On 27 November 2023, following an enquiry from Mr M, Phoenix provided a quotation of his retirement benefits. This gave the estimated value of his pension savings and the options for taking retirement benefits. In the section which referred to the option to take a tax-free lump sum, it stated that no tax-free lump sum was available. In that document it also said:

"*Unfortunately there are insufficient funds available under your plan to provide any tax-free lump sum in addition to your Guaranteed Minimum Pension benefit.*"

In December 2023 Mr M made a complaint about the sale of his plan. He also complained he been informed by Phoenix that he couldn't take a tax-free lump sum even though he had paperwork from earlier years indicating he could do so with a lower annual pension.

Mr M also complained that the value of the plan shown under assumption A, in an illustration provided to him when he took out the plan, provided retirement benefits that were higher than the GMP.

Phoenix responded in January 2024 and said that his complaint about the suitability of his plan had been previously considered in 2012 and not upheld and that decision had been reiterated in 2020 and referred to our service. It said as there were no materially new issues, it didn't think Mr M's complaint should be reviewed.

Mr M contacted Phoenix in March 2024 and reiterated the complaints he had made about the tax-free lump sum and the GMP.

On 2 April 2024 Phoenix responded to an enquiry from Mr M. It said his two pension plans couldn't be merged and they would remain as separate annuities once in payment.

On 10 May 2024 Phoenix wrote to Mr M and provided information about his plan including the fund value and the cash equivalent transfer value (CETV) at that time. It said that the transfer value at that time included the value of the investment element as well as the deferred annuity benefits and was therefore greater than the current fund value.

Phoenix also said that at the start of the plan the original premium paid was deemed only capable of providing the Guaranteed Minimum Pension (GMP) at retirement by a small margin, so it had purchased Non-Profit Deferred Annuity benefits to partly secure the GMP payable at retirement.

In July 2024 Phoenix contacted Mr M and apologised for not considering the points he had raised in December 2023, in respect of the tax-free lump sum and the GMP.

Phoenix considered those points but didn't uphold Mr M's complaint. It explained that his personal pension plan was funded by a transfer from his former OPS, and as part of the terms and conditions of his plan Phoenix had to provide a Guaranteed Minimum Pension (GMP), at his normal retirement age, which was 65.

Phoenix said that the cash equivalent transfer value (CETV) for his plan was the cost of providing Mr M with the GMP. And at that time the CETV was higher than the fund value of his plan. So the value of his plan was less than the minimum value needed by law to provide the GMP. As there wasn't enough money in his fund to provide the GMP, Phoenix said it wasn't allowed to let Mr M take 25% of the fund as a tax-free lump sum, take the whole fund as a taxed lump sum or transfer it to any other provider (unless that provider agreed to provide Mr M with his GMP).

Phoenix also said the amounts quoted in illustrations were never guaranteed. It reiterated that at the start of the plan, the original premium paid was only deemed capable of providing the GMP by a small margin.

Phoenix apologised for its initial communication and the delay in dealing with his complaint and offered Mr M £400 in compensation.

Mr M didn't agree with Phoenix's conclusions and referred his complaint to our service. He said Phoenix had said in letters and quotations that a tax-free lump sum would be available. He said the final pension fund as stated by Phoenix was able to provide an annual pension that was greater than the GMP.

Mr M also said he believed the amount of the fund, with a contribution from Phoenix, needed to meet the GMP was about £12,100. He said the value on the quotation of about £109,600 would provide a pension of approximately £11,200 per year.

Our investigator considered Mr M's complaint but didn't think it should be upheld. She firstly noted that she couldn't look into the advice he had received to transfer out of his OPS and into the transfer plan in 1987.

The investigator explained that transfer plans (known as section 32 plans) were designed to receive pension benefits from an existing workplace pension scheme (also known as an occupational pension scheme) into a personal pension and the GMP, which was a guaranteed benefit, would also transfer into that new plan. So, the provider of the transfer plan would have a responsibility to pay the GMP at the appropriate age.

The investigator also said that the money held in Mr M's plan was invested and the value of the plan and the benefits would depend on the performance of those investments, except for the GMP which had to be paid to Mr M.

The investigator noted Phoenix had written to Mr M in May 2024 and provided him with the fund value and transfer value of his plan. She noted Mr M's concern that these values were different and said that the fund value represented how much his policy was worth at that time, but the transfer value also included the cost of purchasing a deferred annuity in order to provide the GMP. The investigator said that the investment value wasn't sufficient to provide the full GMP amount.

Mr M didn't agree with the investigator. He said that the investigator hadn't referred to the original forecast which he said indicated there would be a minimum value of £109,600 providing approximately £11,200 per year with a tax-free lump sum. Mr M said as the value of his plan was approximately £112,100 which was higher, Phoenix should have to, at least, pay the amounts set out in that quotation.

Mr M said a bank didn't change the rate of interest it pays out on an investment at the end of the term. It said if Phoenix couldn't meet its own quotation, this was because it had over inflated its projections, which he said was misleading.

Mr M said the benefits under this pension plan were not equivalent to what he would have received, if he hadn't left the scheme, which would have been based on his earnings. He also noted he would have been in receipt of that pension since 2010.

Mr M provided a copy of the illustration he received in 1987 and noted that the value at assumption A, of approximately £109,600 provided an annual pension of about £11,200 which was more than the guaranteed pension of approximately £8,815. So he didn't agree that there was insufficient value in his plan to pay a tax-free lump sum in addition to the GMP.

As no agreement could be reached the complaint was referred to me for 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.

I should say at the outset that I won't be considering the sale of this plan in this decision. That is a matter that has already been raised by Mr M on previous occasions and considered by Phoenix and its predecessor and has also previously been referred to our service. So, while I note that Mr M has referred to the pension he would have received, if he had stayed a member of his former scheme, that isn't a matter that I can consider.

This decision is about Phoenix's administration of the plan and specifically its decision that Mr M is unable to take a tax-free lump sum from his plan

Is the provision of a tax-free lump sum a guaranteed element of Mr M's pension transfer plan?

Mr M has said that documentation provided to him during the course of his pension plan has referred to him taking a cash lump sum, so he says that was one of the benefits afforded to him by the plan.

I can see that the plan documentation does refer to a maximum tax-free cash sum, but I can't see anything to indicate that there is a minimum amount or a guaranteed amount of tax-free cash.

I also note that there is a maximum lump sum death benefit if the holder of the plan dies before retirement. However, here we are concerned with the benefits for Mr M upon retirement.

So, while I think that the tax-free lump sum is a benefit that *could* be available to the plan holder, Mr M, I am not persuaded it is more likely than not that it was guaranteed.

This plan invests the contribution made by Mr M. So, the fund value of the plan is impacted by the performance of any investments made and isn't guaranteed. That means that the value of the plan can fluctuate and isn't fixed, in the way that the investments Mr M has described in his response when talking about the actions of banks, are.

However, because of the way this plan was funded, by virtue of a transfer from Mr M's OPS, and as Mr M had a GMP as a result of contracting out of the State Earnings Related Pension Scheme (now S2P), Mr M's plan also contains a guaranteed element – the GMP. So Phoenix has to provide that GMP to Mr M irrespective of the performance of his plan.

I consider, that in contrast to the tax-free lump sum, there was specific reference in the plan documentation to the guaranteed nature of that benefit and I also note there is a formal notice from the DHSS (as it was then) confirming Mr M's entitlement to a GMP.

As I have said, the GMP is a guaranteed annual pension and so there is a cost to providing that benefit. The cost of providing that benefit is met broadly from the value of the plan (although I note Phoenix has said that it purchased non-profit deferred annuity benefits to partly secure the GMP payable at retirement.)

If the value of the plan is higher than the cost of securing an annuity to provide that benefit for life, then the surplus can be used to provide a tax-free cash lump sum. However, if there isn't sufficient value in the plan to pay for the GMP, the provider, Phoenix has to make up the difference. And accordingly, if there is insufficient value to provide the GMP, then it follows that there isn't enough to also fund paying out a lump sum.

<u>Was there sufficient value in the plan to fund the GMP?</u>

Mr M says the value of his pension plan is sufficient to fund the GMP. He says he was provided with a value of approximately £112,100 in May 2024, and that was more than the value of approximately £109,600 shown in his illustration, which provided an annual pension of about £11,200. He points out this projected annual pension is more than the GMP which is £8,815 per year. So, he doesn't agree that there was insufficient value in his plan to fund the cash sum.

He also says, in effect, that the illustration showed the minimum values that should be achieved and so he says Phoenix should have to provide those "minimum" values.

<u>Transfer value versus fund value</u>

I can see Mr M's point that the CETV value given to him in May 2024, was higher than the value on his illustration, which was said to be able to provide an annual pension that was greater than the GMP. However, in my view it is important to take into account that there is a key difference between the fund value of the plan and its transfer value. The fund value is the value of the investments held in the plan whereas the CETV also includes the value of the guaranteed benefits, so in effect what it would cost to provide those guaranteed benefits, in this case the GMP. That is the value that would need to be transferred to any new provider.

I also note that just looking at the figures in a very broad sense, the fund value of approximately £26,800 (as it was in May 2024) is unlikely to secure many years of an annual pension of about £8,815, even taking into account Phoenix's purchase of non-profit deferred annuity benefits to partly secure the GMP.

I should also underline here that the GMP is a valuable benefit and the intention behind making providers, such as Phoenix, responsible for paying that benefit was to provide some protection for pension plan holders who had contracted out, such as Mr M. So, while I appreciate Mr M is unhappy that he doesn't have a full range of options for retirement, including the tax-free lump sum, he is being provided with a benefit that is valuable which can be seen from the cost of providing it, included in the CETV.

<u>Status of illustration</u>

Mr M also says the illustration he received in 1987 set out the minimum that the plan should provide so Phoenix should be held to that "minimum." However, I don't think that is the status of the illustration. I don't think it was a promise to provide a minimum value and I note it used the word "possible" when talking about the retirement benefits. It said:

"Retirement benefits

Set out below are three illustrations of possible benefits at normal retirement date based on the assumptions detailed overleaf."

So, I think it was showing what might be achieved depending on different assumptions – so for instance on the assumption that investments produced a certain level of return. These weren't minimum and maximum figures - they were figures based on different assumptions.

The illustration also said about the values shown under the assumptions:

""*which could provide a personal pension of* ..."

I note that the amount of annual pension that a particular fund value could provide, would depend on the cost of providing that annuity and those rates have historically fluctuated over the years. So the cost of providing a certain level of annuity at the time of the illustration might be very different to the cost at the time the retirement benefits are taken.

The illustration also said that

""*A tax free cash sum may be taken with a resulting lower pension.*"

But that doesn't mean, in my view, that a tax-free cash sum was guaranteed. I think it meant that if you took a tax-free cash sum, the annual pension available to you would be lower because there would be less left in the retirement pot to provide the annual pension. However, as the pension had to be at least equal to the GMP, it followed that if the retirement fund was less than the cost of providing the GMP, there wouldn't be anything left for a tax-free cash sum. And as Phoenix has explained, in Mr M's case, there wasn't enough value in his fund to provide both.

<u>Summary</u>

I appreciate Mr M's frustration at not being able to choose the benefits from his pension and specifically not being able to access a tax-free lump sum. However, I have to consider whether Phoenix has acted incorrectly or treated him unfairly here, and I don't think it has. There is simply insufficient value in his plan to provide the GMP and a lump sum, indeed the value of the fund is lower than the cost of providing the GMP. As the GMP is the benefit that is guaranteed, that is the benefit that Mr M can access.

Complaint handling

I also note that Phoenix has offered Mr M compensation in respect of the delay in handling his complaint. That isn't an area that falls within my remit however I would recommend that Phoenix pay Mr M the sum offered in its complaint correspondence.

New matter

I note that Mr M has recently raised the issue of whether Phoenix would backdate his annual pension, which would have been available from his retirement date in November 2023 but was subject to a formal process as set out in his retirement quote.

I consider that to be a new issue which has arisen since Mr M made this complaint. As I understand it (at the time of writing) Mr M has yet to access his retirement benefits.

As this is a new matter and given the circumstances, I don't think it is appropriate for me to consider whether Phoenix should backdate the annual pension and any such consideration would involve both parties putting forward their representations. I think it is important to issue this decision now, so that Mr M has some clarity on the position regarding the complaint he has made. It is then open to him to pursue this new matter with Phoenix, should he wish to do so.

My final decision

My final decision is that Mr M's complaint against Phoenix Life Limited is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 January 2025.

Julia Chittenden
Ombudsman