

The complaint

Ms C has complained about, in summary, the poor customer service provided by Phoenix Life Limited since she tried to take the benefits from her personal pension in May 2023. She considers Phoenix Life Limited has been blocking her from accessing her pension.

What happened

Ms C's complaint was considered by one of our investigators. He issued his assessment of it to Ms C and Phoenix Life on 10 April 2024. The background and circumstances to the complaint were set out in that assessment, and so I have not repeated them all again here. But to briefly summarise, Ms C first contacted Phoenix Life about her pension in January 2023. She asked it various pension related questions. Phoenix Life responded asking Ms C to call it to discuss the matter.

Ms C responded to Phoenix Life saying that due to her disabilities she needed answers by e-mail. Phoenix Life subsequently sent Ms C annuity quotations and answered some of her queries. There was then a series of exchanges between Ms C and Phoenix Life where Ms C asked for annuity quotations on specific terms and asked Phoenix Life further questions. This went on for a number of months, during which time Ms C raised her complaint. There was also a problem in Phoenix Life requiring Ms C to provide a certified wet signature in order for it to pay her the benefits from the pension - Ms C said she was not able to provide this due to her disabilities. Ms C still has not been able to take the benefits from her pension as she intended.

Phoenix Life - ultimately – acknowledged that its service had fallen short on some occasions, and it offered to put Ms C back into the position that she would have been in had she taken her pension on 17 May 2023. It also offered her £300 for the distress and inconvenience caused by the matter.

Our investigator recommended that Ms C's complaint should be upheld. He thought although the offer Phoenix Life had made to Ms C was initially fair, Phoenix Life had continued to get things wrong, and Ms C still had not been able to access her pension at the time he had sent his assessment of her complaint. He thought Phoenix Life should increase its offer for the distress and inconvenience caused to Ms C to £400.

Ms C did not agree with the investigator's assessment. She said, in summary, that although she agreed the service provided by Phoenix Life had been poor, she thought it had blocked her from accessing her pension due to 'disability discrimination'. She provided details of where Phoenix Life had not provided quotations on the terms that she had asked for, or provided complete responses to her queries.

Ms C said although Phoenix Life had said it would call her back (she said she was told it would be 3-5 days – not within 24-48 hours) when she called it on 17 May 2023, this process did not take into account her disability. She thought Phoenix Life had had time to prioritise her due to the nature of her disability and call her back that afternoon. She said she told the call handler about her disability and that she might not be able to answer the call back at a later date. And when it did call her back on 18 May 2023, she was unable to take the call, as

she was in bed paralysed and unable to speak as a consequence.

Ms C said Phoenix Life still had not dealt with the wet signature issue – it was still blocking her as it still required a witnessed signature. She said this did not accommodate her disability access issue. She said this had all been very upsetting, stressful and deteriorative to her health. She said the whole process has been extremely difficult, particularly due to her disability, and it had contributed to further deterioration in her cognitive abilities over the year.

Ms C went on to provide further arguments about how she had been discriminated against. She said Phoenix Life's call back procedure did not take into account her specific disabilities - it was not reasonable in the context of her particular disabilities and issues arising from it.

Ms C said continuing to ask her for a professionally witnessed signature was also an example of indirect discrimination. She explained she was housebound, isolated, had very severe disabilities and complex communication and cognitive issues. She said she did not have equal access or the same opportunity to obtain a professionally witnessed signature. She was not in the same position to respond quickly to market fluctuations - access for her, with her particular disabilities, was not equal to others who went through the same process.

Ms C also said that, in the context of her circumstances, Phoenix Life's expectation for her to have a verbal journey was also a disability issue. She said Phoenix Life should have had a disability policy in place, and a suitable pathway to enable her to access her pension when she was not able to complete a verbal journey.

The investigator sent a further assessment of the complaint to Phoenix Life. He noted it had not made a firm offer of an alternative arrangement for Ms C to verify her identity to allow it to pay her the proceeds from the pension. The investigator said he recommended it fully waive its requirement for a wet signature. He thought it should use a reasonable alternative, such as confirming Ms C's identity via the previously used bank account. He confirmed that he thought Phoenix Life should backdate Ms C's pension to 17 May 2023, and add 8% interest to any missed annuity payments.

The investigator thought that, overall, the service provided by Phoenix Life had been inadequate. He said it had failed to make reasonable adjustments in a timely manner, and he thought Phoenix Life could have been more proactive in ensuring that Ms C was not disadvantaged throughout the process.

Phoenix Life did not agree with some of the investigator's findings. It said it understood the signature issue was with Ms C not being able to have it witnessed. So it said its solution was to allow Ms C to sign the form in her maiden name to match a previous claim she had made which it could match it to its historical records.

Ms C responded to say, in summary, that to her knowledge Phoenix Life had never definitively agreed with her or, seemingly, the investigator, that it would waive the wet signature issue, and it still appeared to be insisting on it. She said without a workable solution to enable her to access her pension she would continue to be disadvantaged. Ms C again said Phoenix Life not arranging a call back to her on 17 May 2023 was discriminatory, because it was a clear issue related to her health and disability.

Ms C again said this was not just a poor service issue, but it was also about disability discrimination and Phoenix Life not acting in accordance with the Equality Act 2010. Ms C said she had not just been inconvenienced by poor service, she thought she had been unfairly disadvantaged because of her disability. She said she had not had access to the lump sum which she had specific items and intentions for which had to be delayed. Ms C

said she did not feel the disability issues had been adequately recognised or compensated for and accepted as actual discrimination. Ms C went onto to ask a number of questions about the tax implications of the proposed compensation.

Phoenix Life subsequently agreed on a process to allow Ms C to take the benefits from the pension without the need for a 'wet signature'.

As an agreement on fair compensation could not be reached between the parties, Ms C's complaint was passed to me to decide.

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.

Ms C has said she thinks Phoenix Life has discriminated against her and has not acted in accordance with the Equality Act 2010. She has said she does not think this has been recognised or adequately compensated for.

Section 228 of the Financial Services and Markets Act 2000 (FSMA) provides that 'A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.' That is reflected in DISP 3.6.1R (The Dispute Resolution Rules 'DISP') which are the rules set out in the Financial Services Authority's Handbook which the Financial Ombudsman Service has to follow.

DISP rule 3.6.4 provides that in deciding what is fair and reasonable in all the circumstances, an ombudsman will take into account, amongst other things – relevant law. However whilst I have to take relevant law into account, that is in order for me to decide what is fair and reasonable in all the circumstances. I do not have the power to decide whether a firm has actually breached the law – only a Court can decide that. Therefore if Ms C wants a decision on whether Phoenix Life has in fact breached the Equality Act 2010, she would need to take the matter to Court.

As I set out above, I have only summarised the background and circumstances of the complaint and what Ms C has said in response to the investigator's assessment of it. However I have taken all the circumstances and what Ms C has said into account in making my decision below.

Firstly, I recognise the difficulties Ms C has experienced in dealing with the matter with Phoenix Life, in particular given the circumstances of her physical and mental health and the issues thereof arising. And this matter has been going on for some time. Ms C made a number of requests for annuity quotes and asked a number of specific questions in her exchanges with Phoenix Life. It is clear looking back through the correspondence that on several occasions the information or quotes she had requested were not supplied. Or only partially.

I have not set out every occasion. But for example Phoenix Life did not send the annuity quotations on the terms that Ms C had asked for – joint life escalating and level – on a number of occasions. Phoenix Life subsequently said this was because Ms C did not provide her spouse's details. But Ms C was not asked for them - if such details were required Ms C should have been asked.

There were other instances where the questions Ms C asked were not answered or only partially answered. For example on 17 May 2023 she asked what the difference in annuity would be for monthly in advance and arrears. Phoenix Life subsequently said the difference

could be seen in the quotations that had been sent to her. But the quotations both showed annuities on the same basis, that they would be paid monthly in advance – so in fact did not.

In her 23 February 2023 message I understand Ms C said:

“Can you tell me how to get a quote for an enhanced annuity due to ill health. I wish to explore this as a possible option due to my long term health issues. I understand you can recommend a provider? Can you do this? If I were to go with a different provider but take out 25% tax free I understand you would keep that amount back and send to me. On which date would that be determined the amount? On the day of switching to another provider?”

Ms C was sent claim forms for serious ill health lump sum/ill health retirement. In responding to her complaint Phoenix Life said this is what she had asked for. But in my opinion it was not – Ms C had asked how to get a quote for an enhanced annuity as she understood Phoenix Life could recommend a provider and asked it if it could do this.

Ms C has been consistently asked to provide a professionally witnessed signed signature after it has been established that she could not do so. I am aware that when Phoenix Life forwarded forms onto us (in March 2024) to send on to Ms C, it said Ms C should ignore the request on those forms as they could not be removed. However Ms C was asked again in correspondence dated 17 April 2024 – which also thanked her for returning forms which she says she had not returned. And in more recent correspondence Phoenix Life had said it still required a wet signature from Ms C in order for it to be able to pay her the proceeds from the pension – albeit it has now agreed to adjust its process so the benefits can be paid.

Ms C has said she thinks Phoenix Life should have been able to prioritise her and call her back on the same afternoon when she called it on 17 May 2023. Phoenix Life has said it did not have sufficient call handlers working on that day to be able to return Ms C’s call on that afternoon.

When the call handler initially told Ms C he would arrange a call back, and Ms C asked how long it would be, the call handler said it would normally be within 24 to 48 working hours and asked if that was ok? Ms C said that really she wanted to do it today, and asked if there was another number she could ring to get her annuity sorted out. Ms C did subsequently say she was not very well, it was hard for her to make a phone call, and she might not be able to talk when somebody rang her back. However she did not provide any details of her illness, or the extent of its impact on her.

Ms C then said she would arrange a call back through the call handler, and also try another number the call handler had provided to see if she could get through on that number. The conversation continued with the call handler asking what Ms C’s query was about, and she said she wanted to cash in her annuity and did not want to wait – she wanted the appropriate forms and wanted to discuss the matter – including about tax. The call handler said he would arrange a call back from the appropriate contact to help set up the pension – which would be 3-5 working days. The call handler said he would record that the call was urgent because Ms C was unwell. And Ms C thanked the call handler.

Given the content and tone of that conversation, I do not think Phoenix Life acted unreasonably on this particular issue. I accept Ms C said she might not be able to take the call. But I do not think the call handler would have realised the extent of the limitations on Ms C’s ability to discuss the matter at a later date. And Ms C did not object to a call back within 3 to 5 working days or say that was not appropriate because of her circumstances.

However, for the reasons outlined by the investigator and set out above, I think there have been a number of other occasions where the response to Ms C has not been appropriate/

and or Phoenix Life has not provided an acceptable level of service. And this was over a period of time. So I therefore have to decide on what is fair compensation in the particular circumstances.

As I have said, although I take account of the relevant law, I do not have the power to decide if there has been a technical breach of it – that would be for a Court to decide. And I do not have any powers to fine or punish firms. I do not make an award in a complainant's favour *purely* because a firm makes an error or omission, or does or meet certain standards or regulations or may have breached the law. In deciding on what constitutes fair compensation, I take into account whether a firm's errors or omissions have caused financial detriment to a complainant and, if so, decide how that should be put right. And also, amongst other things, take into account the impact on a complainant and whether they caused undue distress and inconvenience.

Phoenix Life acknowledged that its service had fallen short on some occasions and offered to put Ms C back into the position that she would have been in had she taken her pension on 17 May 2023. Like the investigator, I think this provides fair compensation in respect of any financial losses resulting from the poor service provided by Phoenix Life. And ultimately, it has made adjustments to its process which will allow Ms C to take her pension – albeit it should have got to this position earlier.

For the reasons set out by the investigator and above, I recognise Phoenix Life's poor service resulted in Ms C suffering unnecessary distress and inconvenience – both in her dealings with Phoenix Life and because she has not had the money from the pension to spend in the way and on the items that she had intended at the earlier date. Having carefully considered all the evidence and arguments, I think £400 is slightly light. Taking everything into account, I think £600 is fair for the distress and inconvenience caused to Ms C overall.

Putting things right

My aim, in deciding on fair compensation, is to try and put Ms C broadly back into the position that she would have been in but for the firm's errors. However she might not be in *exactly* the same position – sometimes we have to take a pragmatic approach in particular circumstances.

Phoenix Life has agreed to put Ms C back into the position that she would have been in if she had taken the pension on 17 May 2023. Ms C has not yet taken the benefits from the pension. So when she does actually take the benefits, Phoenix Life needs to calculate whether Ms C has lost out as a result of the benefits not being paid since 17 May 2023.

Ms C would have had the tax-free lump sum and income payments that would otherwise have been paid to her from 17 May 2023. So Phoenix Life should calculate the lump sum and income Ms C would have been paid from that date, to the date the lump sum is actually paid from the pension, with interest at the rate of 8% simple added from the date of payment to the date of settlement (and take any income tax due on this into account using Ms C's marginal rate of tax). And then compare this to the tax-free lump sum Ms C will now be paid. If the lump sum payable now is lower Ms C should be paid the difference.

Phoenix Life should also compare the income payable going forward when the annuity is arranged with what Ms C would have received on 17 May 2023, *and if it is now less*, make up the difference. If it is now less, and the tax-free lump sum now payable is higher than the tax-free lump sum and income plus 8% simple interest as calculated above from the 17 May 2023 date, then any difference can be taken into account in calculating this part of the compensation.

I realise this may appear quite complex to Ms C. But ultimately, it attempts to compare what Ms C would have received to date if the pension had been arranged on 17 May 2023, plus interest, and the future income she would have received, with what she will now receive when the pension is arranged.

Ms C has queried the tax situation with the compensation. Phoenix Life will compare the positions taking tax into account, and so Ms C will not be liable to pay further income tax on it. If Ms C did not use up all her personal allowance for the tax-years 2023/24 and 2024/25, she should let Phoenix Life know when it calculates compensation. Phoenix Life will start the process to arrange settlement once we have notified it that Ms C has accepted this final decision (if Ms C does accept it).

Phoenix Life Limited should also pay Ms C £600 for the distress and inconvenience caused by the matter.

Recommendations

As I have said above, this matter has been ongoing for some time, and I think it is in all parties' interests to arrange the pension for Ms C and arrange settlement of the compensation as soon as possible (if Ms C accepts my decision). Whilst it is not part of my award, I think it would be helpful if Phoenix Life could arrange for a specific contact for Ms C to deal with, who is alerted to the background to the case and Ms C's particular circumstances. In order to arrange for Ms C to take the pension there will still be paperwork to be completed. And I expect Ms C will have further queries about it. So in order to avoid further problems, I think a specific contact would be helpful.

My final decision

My final decision is that I uphold Ms C's complaint.

I order Phoenix Life Limited to calculate and pay compensation to Ms C as I have set out under 'Putting things right' above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms C to accept or reject my decision before 19 February 2025.

David Ashley
Ombudsman