

## **The complaint**

Miss E is unhappy with the service she received from Phoenix Life Limited (Phoenix) in relation to her membership of a Group Flexible Retirement Plan. She says this has resulted in financial detriment and noted other negative impacts on her including the considerable inconvenience and distress she's been caused.

## **What happened**

I want to begin by apologising to Miss E for the failings of this Service in dealing with her case. I know a colleague has been in touch with her to address these matters. So, the focus of my decision here is solely in relation to her complaint about Phoenix.

During the period of Miss E's complaint journey all of Standard Life Assurance Limited's business was transferred to Phoenix. To keep things simple I will refer to the latter throughout.

Miss E was a member of her then employer's Group Flexible Retirement Plan provided by Phoenix between December 2016 and September 2019. In August 2020 it had a value of around £10,600.

Miss E has provided several very detailed submissions about the multiple complaint points raised against Phoenix Life in 2020. These covered matters including poor service; issues with Power of Attorney (PoA) documentation to enable her father to act on her behalf while out of the country not being accepted; annual statements not being issued; missing information on her statements; changes to the funds she was invested in without her consent; and with the performance of her fund.

There was a lot of to-and-fro of communication on these matters between Miss E's father on her behalf, and Phoenix during 2020. The firm didn't accept it had done anything wrong. For example, it explained its requirements for accepting a PoA arrangement; it considered annual statements had been posted correctly and that these provided clear and appropriate information; it noted it had closed the fund she'd previously been invested in, the rationale for this and identified her investment options; and it noted that fund performance was a function of market conditions.

Miss E, raised further complaint points in August 2023, which were centred around the transfer of business from Standard Life to Phoenix. She was unhappy about what this meant for her plan. She also requested a copy of the Expert Report, which she says Phoenix failed to provide.

Phoenix responded to Miss E's points in September 2023. It referred her to previous responses it had provided in relation to matters concerning the content of the annual statements; and changes to investment funds and her options. It provided further information in response to her other enquiries, including information about the transfer of Standard Life's policies to Phoenix. And it also said it would provide her with a copy of the independent expert's report.

Miss E wasn't content with Phoenix's final response letter. And when confirming in February 2024 to this Service the main elements of the complaint she was raising, she identified:

*"Standard Life's extreme reluctance and obfuscation to accept my Power of Attorney (PoA) authority for my father, in my opinion, indicated serious lack of either legal knowledge or intentional obstruction for whatever reason. It might have also indicated a possible lack of appropriate up-to-date policy on PoA within Standard Life (SL)."*

*"A series of misrepresentations by SL, in particular the explanations on why my pension fund was moved to a more disadvantageous fund, when I was only 26 years old at that time to a fund that was designated to those who were 5-10 years before their pension age. Some of the explanations from SL directly contradicted the original wording of written undertaking by SL. Most notably, the reassurances given at the time that if somebody left [my employer] but their pension fund remained with SL there will be no change to their pension arrangements. I was not aware at the time that during my employment...SL was sold to Phoenix (without ever advising me as a member and fund holder). Therefore, it is likely that the wording of written undertaking provided to me by SL in 2016 on joining [my employer] its pension scheme, was altered. However, I do not believe that as an existing member of the scheme at the time of the selling of SL to Phoenix, it would have been legal to have the original written undertakings changed one-sidedly and without any notice whatsoever to me (and many other members of the pension scheme..."*

*"It is also striking that during and following of the sale no annual statements were sent to me at all. Given that the property at my previous address...remained in the possession of my wider family, it is rather doubtful that if these statements had been sent, they would not have been passed over to me as many other letters etc were. Therefore, the claim by SL that these statements were sent must be questionable and rather dubious."*

Miss E went on to say:

*"In July last year (2023) I received a booklet from Standard Life (dated May 2023 ) in which the members of the SL pension schemes were advised about the proposal to transfer all Standard Life Assurance Limited business to Phoenix Life Limited. The Proposal was long on reassurances but rather short on facts including copious edited summaries from an Expert Report instead of providing access to the actual Report."*

*"I raised several concerns...and requested a copy of the Expert Report. [It] has never arrived to date (19/02/2024). That, in my opinion, is wholly unacceptable, gross shortcoming in standards from any company."*

An Investigator considered Miss E's case and she upheld two elements of it. She thought Phoenix were at fault for a delay in sending her 2020 pension statement to her father and its failure to send her a copy of the independent expert's report as it had committed to doing. She awarded a total of £200 for the distress and inconvenience caused.

Miss E was unhappy with the Investigator's findings and conclusions. She brigaded her concerns under the following themes: PoA; missing statements; representation; fund charges; and the expert's report.

As both parties couldn't agree with the Investigator's view, Miss E's complaint has been passed to me to review afresh and to provide a decision.

### **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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

Miss E has provided detailed submissions throughout her journey with this Service. I want to assure her that I've considered all of them fully. However, I've not provided a detailed response to all the points she's raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers.

While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of her complaint. In particular I will focus on the main themes in Miss E's responses of June and December 2024 to the Investigator's views.

I'm upholding Miss E's complaint, but not to the extent she'd like. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by Phoenix for Miss E. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Miss E's complaint.

I'll now address the main elements of Miss E's complaint.

#### *Power of Attorney deed*

Miss E is unhappy Phoenix didn't accept her father as the PoA on her plan, following his letter to them on 17 March 2020 enclosing relevant copy documentation. She thought it had the option of seeking any necessary confirmation of its validity from the Office of the Public Guardian.

In responding to Miss E's father on this point Phoenix said:

*"We hope you understand that as a financial services provider before we could continue with your instructions on our customer's behalf we have a duty towards [Miss E] and required proof of the validity of the copy of the original Lasting Power of Attorney (LPA). We can request such information from a presenter of a copy of an LPA and can refuse to deal with such a presenter of the document until such verification is complete."*

*"Furthermore, please note that the Office of the Public Guardian (OPG) are there to register the LPAs, without which the LPA would not be valid, the OPG does not verify copies of LPAs. In this instance, we were requesting certification to verify that the copy of the LPA was a true copy of the valid and original LPA."*

Miss E's father didn't accept what Phoenix said. He thought it should've been cognisant of the particular circumstances at the time, with the unprecedented situation around the Covid pandemic. He also rejected its argument as incorrect, unlawful and excessive.

I understand the arguments of both parties here. I note that Mr E says a different organisation accepted the documents initially presented. But I'm mindful businesses must comply with many laws and regulations. That is particularly the case for financial businesses which must operate within a strict regulatory environment. Much of this is a framework constructed to protect the interests of consumers. Phoenix had a clear duty of care to Miss E.

I note Miss E's father wrote to Phoenix on 22 April 2020 and was able to satisfy its requirements. While I recognise this entailed additional effort, time and cost, I can't see this caused a material delay or detriment in the circumstances. More significantly, on balance I don't find Phoenix's request was unreasonable. I think it was made with Miss E's interests in mind. I think it was undertaking due diligence.

### *Investment fund changes*

Miss E is unhappy her pension investment funds were changed. She'd wanted to remain with the original IPP Mixed Blend. But instead Phoenix initiated switches that she believes were inconsistent with her interests, for example fund charges were higher and she thought the changes were focussed on those approaching retirement, which was clearly not the situation she was in.

Phoenix explained its decision was based on the lack of customers opting for annuity upon retirement and so to have a lifestyle fund targeting annuities was not beneficial for their customer base as a whole, as opposed to a fund designed to be suitable for taking lump sums and drawdowns, which has statistically proven to be more popular over time. It confirmed its actions involved all customers in the IBM lifestyle profile (aged 18-75) and it acted based on the interests of the majority of its customers.

Miss E says Phoenix is in breach of the contract she had with it. She offers in support of her argument an extract from a document *Group flexible Retirement Plan; Key features of the [...] UK Personal Pension Plan [by] Standard Life*, issued to her at the commencement of her employment. There is a section in that document which states:

*"What if I leave?*

*If you decide to leave [...] then you will still retain your existing contract and the terms applied to your plan. You will remain invested in the plan and you can continue making payments into it. However, any payments made by your employer will stop."*

Miss E's father said that Phoenix was *arguably* in breach of contract. I understand the point being made here. But the contract and terms between the pension provider and his daughter remained in place. One of the terms set out in her Standard Life Self Invested Personal Pension Scheme stated:

*"8a Where the Provider has made Lifestyle Profiles available for selection by Members under the contract or policy of assurance issued to the Trustee, the provider shall, on a regular basis, review the ongoing suitability of such profiles and, as a result of such a review, may*

- Amend the name of objective of the profile*
- Replace that profile with another Lifestyle profile, with another investment solution or*

*strategy or with one of more of the funds established by the Provider for some or all of the members using that profile...*

- *Alter the investment objectives of one or more funds used within that lifestyle profile..."*

I'm mindful Phoenix let its customers know about the change. And when it responded to Miss E's father when he raised his disquiet about the fund change before it had been given effect, it clearly set out the options his daughter had for investing in a different way. And it continued to make her options clear in subsequent months. It seems no action was taken. Had the issue been of significance, I would've expected Miss E or her father on her behalf to have taken steps to mitigate the position.

I've concluded Phoenix acted within the terms and conditions it agreed with Miss E. Further, I think it proceeded reasonably.

### *Missing pension plan statements*

Miss E's father initially sought copies of her annual pension plan statements for the years 2017/18, 2018/19 and 2019/20 in March 2020. These were not all forthcoming until June 2020. During the complaint journey, a difference emerged between the parties about whether the statements had ever been issued. In his letter to Phoenix of 7 December 2020 Mr E set out his position and noted why he thought the issue was important:

*"Standard Life admitted it has no records and could provide no evidence that any of the Annual Statement had been sent out during the relevant times. As the address was the same during the whole relevant period and not one, single statement had ever been received it is highly suggestive, certainly it is more likely than not, that no Statement had ever been sent by SL as the likelihood that 3 consecutive statements over a period of over 3 years addressed to the same address disappeared at the Royal Mail's care, while other mails relating to financial matters etc had arrived, is NOT credible."*

*"The failure by SL to provide regular annual statements prevented [my daughter] to discover SL certain lamentable practices and to transfer her fund before it was further depleted. Therefore we seek compensation and redress on this account too."*

I note in Mr E's earlier letter to Phoenix of 7 July 2020 he said:

*"As all other communications etc have been received from SL over the years - except the annual statements - SL is invited to substantiate and to provide evidence of this claim regarding yearly posting. There is no evidence and indeed any claim that any other communications have gone missing over these years. Given the high reliability of Royal Mail and the Postal Rules applicable in the UK - unless such evidence forthcoming - we shall treat the matter that the statements have not been posted. That might well explain why copies were not immediately provided by SL to our letter of 17/03/20 or at the very latest after 11/05/20 at which point I was registered by SL as [my daughter's] attorney."*

Phoenix had addressed the issue of Miss E's pension plan statement in its letter to her father on 18 June 2020. It stated:

*"The 2017, 2018 and 2019 annual statements were sent to your daughter at her correct address. I'm not sure why she didn't receive them."*

We know the address details Phoenix had for Miss E were correct. As her father notes, all other communications from the firm had been received. It was only the annual pension statement communications that he says she didn't receive.

Mr E quotes Phoenix's letter to him of 25 August 2020 in which responding to his request for evidence it had posted the three annual statements to Miss E at the right time. It said:

*"We can't provide evidence that we've posted an annual statement. However, our records show that the 2017 to 2019 statements were printed with the correct address on them and we would assume that they were posted."*

In light of these differences the Investigator sought further evidence from Phoenix to show whether the pension statements had been issued to Miss E. It responded in the following terms:

*"Our statements are issued automatically, without any manual intervention, so we would take the fact that they were successfully produced – as shown by the copies we included in our previous file sent to you – as evidence that they were also successfully issued. We also didn't receive any requests for copy or replacement statements during that time, so had no reason to believe that they might not have been issued. Our system only shows the status of the most recent annual statement."*

Miss E has asked for contemporaneous evidence her pension statements were issued. And in responding to the Investigator's view she said:

*"The response by SL to my father, dated 23 March 2020 was sent to his London address. Yet the statement of 2020 (sent in June 2020!) was addressed at [my address] strengthening the views that all missing three statements were produced at a later date (sometime after May 2020) at the same time using the same address including accidentally putting it on a statement (2019/20), which could not have been created before 05 April 2020 at the very earliest."*

*"...assuming on the information that SL provided — that the statement of 2020 was already created by the time SL accepted my PoA (allegedly 11 May 2020), when in fact it was received by SL on 04 May 2020 (an email from SL evidencing that date) again is rather problematic. No explanation came forward by SL why the statement had not been sent out until June 2020 if it was allegedly created several weeks before."*

*"If the printing was indeed an automatic process as claimed without any evidence by SL — it would have been sent out automatically on or soon after the 05 April 2020. However it was not until 2 months later in June 2020 and only AFTER our repeated requests, that it was sent. It is an undeniable fact that the statement is not dated. Only the end of tax year was put on it as a date, not the one when it was created or sent out..."*

There were problems with Mr E receiving Miss E's 2020 statement, when he had PoA for her affairs. In March 2020 he not only requested copies of the statements for 2017-19, he also asked that any further correspondence was sent to his address, instead of his daughter's. He chased for the old statements on 22 April 2020. And on 5 June he chased again, and in that letter noted he had received Miss E's statement for 2020, although this had been sent to her address and not his as requested.

In its final response to Mr E dated 25 August 2020 Phoenix said:

*"Your letter of 17 March 2020 was signed by you as the Power of Attorney for [your daughter]. We couldn't act upon your instruction (including updating the address records to your address) until we received the copy of the original Lasting Power of Attorney."*

*"We received your letter of 22 April 2020 and certified copy of the Power of Attorney document on 27 April 2020. The 2020 annual statement was sent on 28 April 2020."*

*"We updated our records to show you were authorised to act and received information on 11 May 2020. We updated our records to show your address on 12 May 2020. I'm sorry we didn't do this in time so the 2020 annual statement was sent to your address."*

Taking all these matters together. It is often the case in considering a complaint we have incomplete and imperfect information. We do know that Phoenix was using Miss E's correct address for correspondence. We know that other communications from the firm to her had been received. And I've seen no evidence to suggest there was a problem with its automated issue of statements around this time.

So, I've decided it's more likely than not Phoenix did issue the 2017-2019 statements to her. Phoenix weren't made aware there had been a problem with non-receipt of the statements for 2017-2019. For example, I can't see that she made enquiries about this and so the firm wouldn't have been aware there was a problem, prior to her father's involvement.

Regarding the discrepancies alleged by Miss E in Phoenix's version of events concerning the matter of her 2020 statement, which she draws on to support her case around non-issue of her statements from 2017-2019, I'm not persuaded by her arguments.

For example, I don't find it odd that Phoenix was corresponding with Mr E at his home address, yet it sent Miss E's 2020 statement to her address. I've already dealt with the PoA issue and the firm's approach.

Phoenix says it issued her 2020 statement on 28 April and we know that on 5 June in a letter to it pursuing the complaint, Mr E acknowledged he'd already received this statement, although it had been sent to Miss E's address. He also confirmed he still hadn't received the other statements. Mr E hasn't confirmed the date of receipt of the 2020 statement, presumably because he couldn't have been aware of when it was delivered to Miss E's address. I think it's more likely than not it would've been delivered within a week or so of 28 April 2020. And that it was issued prior to the PoA matter being settled.

I agree with the Investigator's finding that Phoenix was slow in providing Mr E with copies of Miss E's pension statements for 2017-2019 once it had secured satisfaction he had PoA in early May 2020. I understand he didn't receive these until after a month later.

### *The Expert Report*

Miss E, raised further complaint points in August 2023, which were centred around the transfer of business from Standard Life to Phoenix. She was unhappy about what this meant for her plan. She also requested a copy of the independent Expert Report, which she says Phoenix Life failed to provide.

The Investigator found Phoenix had failed to meet its commitment to provide Miss E with a copy of the Expert Report. I agree. But Miss E wasn't satisfied, she noted:

*"...very significantly, time was the essence in this matter as any submission by any member of the scheme had a definite deadline to submit observations (or indeed objections) to the Court. Therefore, one could argue that the lack of response by Phoenix Life was deliberate to prevent such submissions to the Court."*

*"...That caused very considerable distress to me, let alone losses which need to be quantified in future years with the help of yearly statements and the performance of the fund to which I was moved against my insistence into, compared to the one which I was. Such move was against my very specific instruction and in breach of my contractual rights."*

Phoenix told this Service:

*"We did request that a copy of the report be sent at the time we issued our other responses in September last year [2023]. I'm sorry that did not appear to have happened. The mailing*

*of Independent Expert reports was carried out by an external party on our behalf, so we don't have easy access to any reports showing what was issued. We were unaware until now that Miss E had not received a copy as requested."*

*"We can certainly send her a paper copy, although I would point out that the full report is 180 pages long and the supplementary report is a further 54 pages. The reports are still available on our website (Documents | Business Transfer | Standard Life) and we would also be able to send the reports by email. Please let me know which method Miss E would prefer."*

I understand the point Miss E makes. If she'd been reliant on the expert's full report, rather than Phoenix's standard communications about the transfer of business from Standard Life, that will have been frustrating and I can appreciate she thinks she's missed an opportunity to make full representations on the matter.

That said, Miss E hasn't presented any evidence about what new or telling arguments she would've made through the process to influence the outcome. Given the importance of the transaction, and the number of stakeholders who would've been engaged in the process, I've concluded it's more likely than not the appropriate authorities considered all key matters in full before approving the transfer of business.

### **Putting things right**

When I'm considering a complaint like Miss E's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Indeed, Phoenix now accepts that it:

- Took too long to provide Miss E's father with copies of her pension statements covering the three years between 2017-2019. It should've provided these shortly after 11 May 2020, but he didn't receive them until just over a month later.
- Failed to provide Miss E with a copy of the Expert Report in 2023 when it said it would.

As the Investigator tried to explain in her view, representatives, both personal and professional, aren't eligible complainants – and so we can't award for any impact experienced by them personally. However, there might be some circumstances where the impact on the third party in turn impacts the eligible complainant. Again, I think that is the case here. For example, I've no doubt the issues experienced by her father in securing copies of her statements would've caused her trouble and upset.

Phoenix Life Limited must pay Miss E £200 for the distress and inconvenience it has caused her. And if it is yet to do so, it should meet its undertaking to provide her with a copy of the Expert Report.

### **My final decision**

For the reasons I've set out, I'm upholding Miss E's complaint, but not to the extent she'd like. I require Phoenix Life Limited to put things right in the way I've directed.



Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 7 March 2025.

Kevin Williamson

**Ombudsman**