

## The complaint

Mr N complains that Phoenix Life Limited provided incorrect information to him about the value of his pension and incorrectly set up his annuity using a guaranteed annuity rate (GAR) that wasn't reflective of his circumstances.

Mr N would now like Phoenix to honour the higher value of his pension that they originally quoted and apply the higher GAR that he believes he's entitled to.

## What happened

Mr N held a retirement annuity contract (RAC) that he took out through a business that was subsequently acquired by Phoenix. The RAC contained a guaranteed minimum annuity rate, which promised to pay Mr N an income for the rest of his life. The plan allowed Mr N the ability to take the income from age 60 onwards, however the GAR Phoenix used increased each year, meaning that the longer Mr N held off taking his income for, the higher that benefit would become.

Around seven months before Mr N reached age 75, he decided that he'd like to take the benefit on his birthday so he contacted Phoenix's helpline on multiple occasions to understand what income he might receive and to better understand his options.

In March 2024, Mr N received a letter from Phoenix, explaining that his plan would be converted into an annuity once he reached age 75 the following month. After speaking with Phoenix's helpline, Mr N was told to ignore the letter as it had been sent in error and nothing would happen to his plan until he confirmed to them that he wanted to take out the annuity.

As Mr N wanted to take the income, he completed the application forms and posted them back to Phoenix the day after his 75<sup>th</sup> birthday, Phoenix then wrote to Mr N explaining that his plan was valued at £38,349. A month later, Mr N received his tax-free cash, but rather than receiving 25% of £38,349, he received a slightly lesser amount. Confused, Mr N contacted Phoenix asking for an explanation. Phoenix stated that the value of Mr N's plan, after it had been divested, was actually £38,204. In addition, Mr N was also surprised to receive an annuity based on GAR for what he felt was for a 74-year-old rather than a 75-year-old customer.

Shortly afterwards, Mr N decided to formally complain to Phoenix. In summary, he said that having spoken to their helpline on multiple occasions, he wasn't convinced what information he'd been provided with was correct. In addition, he explained that he had followed the instructions provided in order to get the maximum age 75 GAR but the rate for age 74 had been applied. Mr N also asked Phoenix to look at the final value of his plan that had been used to purchase the annuity.

After reviewing Mr N's complaint, Phoenix concluded that whilst they were content that the annuity had been set up correctly, they did concede that their helpline staff had provided incorrect information to Mr N. To say sorry for the incorrect insight their helpline had

provided about how the annuity would be set up, Phoenix said that they were sending Mr N a cheque for £200. Phoenix also said that the value of Mr N's plan that had been used to purchase the annuity was correct, as was the GAR rate that had been applied.

Mr N was unhappy with Phoenix's response, so he referred his complaint to this service. In summary, he repeated the same concerns. Those were that he didn't think Phoenix had used the correct GAR for his age and that he wasn't clear how they'd arrived at the value used.

The complaint was then considered by one of our Investigators. He concluded that Phoenix hadn't treated Mr N unfairly when setting the annuity up because from what he'd seen of the terms and conditions of the plan, the value of the policy was taken on the day before Mr N's 75<sup>th</sup> birthday. He also felt that the £200 that Phoenix had offered to Mr N to say sorry for the misinformation was fair and reasonable.

Mr N, however, disagreed with our Investigator's findings. In summary, he said that he still believed that the annuity should have been set up after his birthday and the age 75 guaranteed annuity rate applied.

Our Investigator was not persuaded to change his view as he didn't believe Mr N had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr N then asked the Investigator to pass the case to an Ombudsman for 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.

I have summarised this complaint in less detail than Mr N has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr N and Phoenix in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, whilst I'm upholding Mr N's complaint in part – I'm not going to instruct Phoenix to do anything beyond what they've already proposed to do and I'll explain why below.

I can see why Mr N wanted to proceed with an annuity; his RAC offered a valuable guaranteed income not available to most consumers.

I've looked closely at the policy conditions of Mr N's plan. This document sets out what he can expect from Phoenix when they're transitioning his monies into an annuity. It's important to be clear that despite whatever Mr N was told by Phoenix's helpline, it's these

terms that govern what happens with his pension pot when it's changed into an income for life. The most important section is Clause: 11. *Annuity Options and Elections*, that covers the date at which Mr N's pot needs to be changed to an annuity:

*(a) Commencement of Annuity – At the election of the Contract Holder the annuity shall commence and the first payment in respect thereof shall fall due subject to the provisions of Clauses 8, 9, 10 and 12 on some date other than the Chosen Annuity Commencement Date, provided that the date so chosen shall not be later than the 75<sup>th</sup> birthday and no earlier than the 60<sup>th</sup> birthday of the Contract Holder.*

So, in short, if Mr N wanted to take advantage of the GAR on the plan, he had to convert his pot to an annuity before his 75<sup>th</sup> birthday. As Mr N's monies were invested in the International Fund and the Security Fund, those monies had to be sold down and converted to cash, which happened the day prior to his 75<sup>th</sup> birthday which then provided Phoenix with the funds. Clause 6 (part vii) of the terms that govern Mr N's RAC allow Phoenix to do this so I can't conclude that Phoenix are acting unfairly by following those conditions.

Mr N has explained that he understood following legislative changes, he was able to take his pension income whenever he wished and as such, should be entitled to the annuity rates that are payable to consumers who are a year older – which in his case would be age 75 rather than the rates that Phoenix used which applied to customers who were 74 years old. Whilst Mr N is correct in that this legislation does allow him to take his benefits at a point of his choosing (subject to certain minimums), the terms of this specific policy and the GAR that relates to it require him to take the benefits within the confines of the plan to take advantage of those features. From what I've seen, it therefore seems to me that the approach Phoenix have used when converting Mr N's pension pot into an annuity is in line with the conditions of the plan so I can't conclude that he's been treated unfairly and as such, I'm not upholding this element of his complaint.

In his submissions to this service, Mr N has highlighted policies that he has with other providers who, he says, don't apply the same restrictions as Phoenix does. However, it's important to remember that this complaint is about Phoenix and the plan that's held with them rather than what restrictions other firms place on their plan holders, so I won't be commenting on what other providers do or don't offer their consumers.

Phoenix have conceded that their telephone helpline didn't provide Mr N with the correct information about the timing of how and when his pot would be converted into an annuity using the GAR within his plan and it's evident that Phoenix's letter to him in April 2024 contained misleading information. In recognition of this, they sent him a cheque for £200 to say sorry for the loss of expectation and the inconvenience that they'd caused. Using financial services won't always be hassle free and sometime mistakes occur, but when they do, we'd typically ask the business to put the consumer back into the same or as close to the same position that they would've been in were it not for the error. But, from what I've seen, that already appears to have happened and Mr N has the annuity to which he's entitled – I wouldn't expect, or instruct Phoenix to pay Mr N an annuity rate to which he would have never been entitled to. So, having thought about the £200 that Phoenix have offered to Mr N for the misinformation, I'm satisfied that it takes account of the number of interactions that Mr N had to have with Phoenix to get to the bottom of things and is in line with what I would have instructed them to pay him had they not already offered to do so.

## **My final decision**

Phoenix Life Limited has already made an offer to pay Mr N £200 to settle the complaint and I think this offer is fair and reasonable in all of the circumstances.

So, my decision is that Phoenix Life Limited should pay Mr N £200 if they've not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 February 2025.

Simon Fox  
**Ombudsman**