

## The complaint

Mr K made a number of customer service related complaints to Phoenix Life Limited (Phoenix) concerning his pension. They mainly followed from his initial complaint around September 2022. The complaint(s) led to four Complaint Responses ('CRs') from Phoenix – sent to him on 30 March 2023 ('CR1'), 12 June 2023 ('CR2'), 8 December 2023 ('CR3') and 15 May 2024 ('CR4').

Mr K referred his complaint issues to our service on 11 June 2024. Phoenix says all the issues it dealt with up to CR3 have been referred to us out of time, so we do not have jurisdiction to address their merits and it does not give us consent to do so. For the new issues addressed in CR4, it accepts they have been referred to us in time, but it considers that its £200 compensation to Mr K, for them, is fair and reasonable.

## What happened

One of our investigators looked into our jurisdiction for the complaint. He concluded that all the complaint issues addressed by Phoenix up to CR3 are out of time and outside our jurisdiction, but the new issues treated in CR4, and for which its £200 award was made, are in time. He did not uphold the complaint about the new issues treated in CR4.

He mainly said –

- Mr K's first service complaint claimed he had faced difficulty and distress from being unnecessarily transferred between teams during telephone calls in which he sought to discuss his pension. Phoenix's CR1 upheld the complaint and awarded him £400 compensation. CR1 gave him notice that if he remained unhappy, he had six months from CR1's date to refer the complaint to our service.
- Mr K wrote to Phoenix again in April and May 2023, referencing his unhappiness with the lack of service he experienced in specific telephone calls that happened in September 2022 and February 2023, with Phoenix issuing CR1 without first speaking to him and with the £400 award (in response to which he counter proposed £10,000). Phoenix then issued CR2. It mentioned its attempts to contact him, apologised for IT problems he had faced, apologised for the February 2023 telephone call experience, disagreed with the £10,000 counter proposal, but awarded an additional £100 compensation. CR2 gave him notice that if he remained unhappy, he had six months from CR2's date to refer to our service.
- Mr K replied in July 2023. He repeated that he had not spoken to the complaint handler, and he argued that serious health issues he had declared had not been taken into account by Phoenix. Phoenix then issued CR3. It confirmed that its complaint handler had made sufficient attempts to contact him, but, with regards to consideration of the serious health issues, it awarded an increased compensation amount of £1,750. CR3 gave him notice that if he remained unhappy, he had six months from CR3's date to refer to our service.
- Mr K wrote to Phoenix again in May 2024. He disagreed with Phoenix's position. In

addition to his previous submissions (including his £10,000 compensation award counter proposal) he referred to telephone call waiting times he had experienced, difficulty in understanding Phoenix's automated messages, non-functioning telephone numbers he had been given, and an issue which suggested to him that Phoenix was not properly controlling its customers' data (a matter in which Phoenix wrongly attempted to update his address, but the task was actually about updating his adviser's address).

- In CR4 Phoenix maintained its position about the issues it had previously addressed and its position against the £10,000 counter proposal. It also said – as of the time of CR4, the issues addressed in CR1 and CR2 would likely be considered out of time by our service; and for the issues it addressed in CR3, Mr K would need to ensure he referred to our service by 8 June 2024.
- On the new issues, it upheld the complaints about telephone call waiting times and difficulty understating the automated messages; it acknowledged that he should not have experienced difficulties in using the telephone numbers given to him; it accepted its error in trying to update his address without cause to and noted that this would have compounded Mr K's service experience; it agreed to pay £10 towards the return postage for the address update forms it had sent him; and it made an additional award of £200 for these upheld new matters.
- The regulator's rules on time limits for complaints require complaint referrals to us within six months of a firm's final complaint response. In Mr K's case, there were four such responses. CR3 significantly changed the outcome from what had been presented in the previous CRs, so the effects of the complaint referral notices in the previous CRs was essentially superseded by the effect of the referral notice in CR3. In other words, Mr K needed to refer his complaint to us within six months of CR3 in order for such referral to capture all the matters addressed in CR1, CR2 and CR3. CR4 did not alter this, because it expressly addressed the referral time limit (and deadline) for what Phoenix had addressed in CR3 distinctly from the referral time limit for the new issues it addressed within CR4.
- The referral deadline after CR3 was 8 June 2024, but Mr K did not refer his complaint to us until 11 June 2024, so the referral was late and is out of time. We do not have jurisdiction to address the issues in CR1, CR2 and CR3 for this reason, and Phoenix does not give us consent to address any complaint issues that are out of time. Furthermore, no exceptional circumstances caused the delayed referral. He claims that he received CR3 later in December 2023 than it was sent, but this claim does not alter the referral time limit and deadline.
- The only complaint issues we have jurisdiction to address are the new issues treated in CR4, which have been referred to us in time. These issues have already been upheld by Phoenix. Its compensation award of £200 for them is fair and reasonable.

Mr K disagreed with this outcome.

He mainly said – the investigator had not considered the full extent of his circumstances and experiences in the case; they should also be viewed in the context of the serious ill health event he faced in 2022; due regard must be given to the need for Phoenix to address and be accountable for its poor practices, as depicted in all his complaint issues; he replied to all the CRs within six months and it must be noted that his receipt of CR3 was delayed for almost a month by a postal strike at the time (so the delay should be discounted from calculation of the referral deadline); therefore, there are exceptional circumstances in his case (inclusive of

the “*sheer number of mistakes, issues, problems, errors and promises broken*”).

The matter was referred to an Ombudsman.

### **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.

#### *Jurisdiction*

I have considered the matter of our jurisdiction for the complaint. It is in dispute and our service’s power to determine the merits of a complaint only apply where we have jurisdiction to do so.

The regulator imposes a duty on firms to give notice in their final complaint responses about a complainant’s right to refer the complaint to our service. Firms must also state the time limit within which the referral must be made – that being six months from the date the firm’s final response to the complaint *is sent*.

The Dispute Resolution (‘DISP’) rules within the regulator’s Handbook define this service’s jurisdiction to consider complaints. The rule in DISP 2.8 says – “*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service ... more than six months after the date on which the respondent sent the complainant its final response ...*” [my emphasis]

In the present case, there are four CRs from Phoenix, each presented as its final response at the time it was sent to Mr K.

It can sometimes be the case that a firm’s communications with a complainant after issuing its initial complaint response – or, as in the present case, a firm’s production of subsequent complaint responses – has the effect of reopening the complaint and/or, essentially, nullifying/withdrawing its previous complaint response(s) (including nullifying the referral time limit arising from its previous complaint response(s)). In this respect, I have considered the CRs issued by Phoenix.

Application of the six months referral time limit depends on a valid *final response* having been sent by the firm to the complainant. The time limit starts from that valid final response. It does not and cannot run from an invalid one. The regulator’s rules say a valid final response is one in which the respondent firm –

“... (a) *accepts the complaint, and, where appropriate, offers redress; or*  
(b) *offers redress without accepting the complaint; or*  
(c) *rejects the complaint and gives reasons for doing so ...*”

in which it gives the complainant notice about the right of referral to this service (with an enclosure of our leaflet and reference to our website) and notice about the six months time limit to do so, and in which it –

“*indicates whether or not the respondent [the firm] consents to waiving the relevant time limits ...*”

Phoenix’s CRs met the above requirements. Our records show that Mr K’s complaint was referred to us on 11 June 2024. The complaint referral happened more than six months

after CR1, CR2 and CR3 were issued. Phoenix reminded Mr K, in CR4 and in relation to referral of the issues it determined afresh in CR3, as follows –

*“You have the right to refer your complaint points addressed in our letter of 8 December 2023 to the Financial Ombudsman Service, free of charge — but you must do so before 8 June 2024.”*

and

*“If you do not refer your complaint in time, the Ombudsman will not have our permission to consider your complaint ...”*

This reminder gave Mr K a deadline date to work towards. Irrespective of any postal delay in receiving CR3 in December 2023, he was informed in May 2024 (when he received CR4) that he had until 8 June 2024 to refer to us, and as of May 2024 he was still in time to do so (with regards to CR3). It must also be noted that, as I emphasised in the quote of DISP 2.8 above, the rule says the referral time limit starts from when the final response is ‘sent’ to the complainant. The rule must be applied as it is, so we do not have discretion to ignore this and we cannot calculate the deadline from when Mr K *received* CR3.

A late complaint can be considered if exceptional circumstances caused its delay. The regulator’s guidance on what constitutes exceptional circumstances refers to a high threshold and, for example, to instances in which a complainant is incapable of referring a complaint in time.

I do not find that this applies to Mr K’s complaint referral. I acknowledge and empathise with the serious ill health event he faced in early 2022, and with its aftermath. However, as he has said, he replied to all CRs within six months of receiving them. He initiated his complaint in late 2022 and engaged in ongoing cross correspondence with Phoenix from then and up to 2024, including responses to the four CRs. Unfortunately, none of his reactions and replies involved a referral to our service until the referral we received on 11 June 2024.

Given his ability to engage, on an ongoing basis, with Phoenix as described above, I do not find grounds to say he was incapable of referring his complaint to us earlier than 11 June 2024, so I do not find that exceptional circumstances delayed the referral. The same effort and capability used for his responses to Phoenix could have been used to refer to us.

The 11 June 2024 referral was/is in time for the new issues addressed in Phoenix’s CR4, but it is out of time for all the other issues treated and concluded by Phoenix in CR1, CR2 and CR3.

I agree with the investigator that the outcome in CR3 can be viewed as a significant change from the previous CRs, with the potential effect being that the issues in the previous CRs were reopened in CR3. However, the issues dealt with in CR3 are, themselves, out of time, so this does not make a difference.

For all the above reasons, my remit to determine merits is limited to the new issues addressed in CR4, so I make no comments or findings on the other complaint issues.

### Merits

There is no dispute over the merits of the new issues addressed in CR4. Phoenix upheld the complaints about those issues. Its findings included the following –

*"I would like to apologise that you have been unable to get through to the previous call handler on the number you were provided. I agree this is not good enough and it is not the standard of service any customer should expect to receive when calling us."*

*"I would like to apologise that we issued you letters on 11 March 2024 and again on 24 April 2024 asking you to confirm your details. After we received returned correspondence from your financial advisor ... it appears a gone away marker was added to your profile instead of theirs. Please accept my apology for the inconvenience this may have caused and I'm aware that we made matters worse at an already difficult time."*

*"Please accept my apologies for the long call wait times you experienced when trying to contact us. We are proactively working to reduce the wait times for all of our customers and recognise the impact this has. I am also aware that you found some of our automated messages difficult to understand therefore, I have also upheld this part of your complaint."*

The dispute between the parties relates to compensation. Concerning all the matters treated in all the CRs, Mr K claims an overall figure of £10,000. In contrast, and based on available evidence, Phoenix appears to have paid him £400 (after CR1), offered and paid him £1,750 for the new issues addressed in CR2 and CR3, offered and paid him £200 for the new issues addressed in CR4, and it confirms it is not prepared to increase any offer.

I repeat, I have no jurisdiction to address the issues dealt with in CR1, CR2 and CR3, and this includes the compensation/settlement aspects of those issues. Therefore, I am limited to considering only Phoenix's offer of £200 for the new issues addressed in CR4.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>.

Under this guidance, awards between £100 and £300 can be considered where a firm's wrongdoing has caused a complainant some distress, inconvenience and/or disappointment. On balance, I consider this range applicable to the personal impact upon Mr K caused by the contact related problems he faced, as upheld in the quotes above. On balance, I am not persuaded that, based on those matters alone, the trouble and inconvenience he faced went beyond this range. For this reason, I find the £200 compensation paid by Phoenix to be broadly reasonable. Had it not offered/paid any compensation, it is likely to have been the amount I would have ordered it to pay Mr K for the upheld issues. On this basis, I am not persuaded that it should have to pay any more compensation to him for the new issues upheld in CR4.

### **My final decision**

For the reasons given above, most of Mr K's complaint issues are out of time and outside our jurisdiction, so I make no findings on them. The issues that are within our jurisdiction have been fairly and reasonably addressed by Phoenix Life Limited. Therefore, I do not uphold the complaint that is in our jurisdiction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 April 2025.

Roy Kuku  
**Ombudsman**