

The complaint

Mr H has complained that Phoenix Life Limited (Phoenix) caused him financial loss by delaying the provision of information which would have enabled him to transfer a pension policy he held with it at an earlier point.

What happened

On 14 January 2022, Mr H made enquires as to the transfer value of his pension policy at that date, the pension savings value, and requested the transfer value from December 2022. He also requested information concerning the guaranteed annuity rates he could expect on his pension at various ages.

Mr H also enquired as to whether the policy could be transferred at any point, but he also said that it seemed that there didn't need to be anything done at that point.

Mr H also enquired as to the value of the annuity which would be payable and talked about possibly deferring taking his pension. Mr H further requested the information about the future values of his pension, and was informed that an annual statement would be sent separately to the letter which would confirm the future projected pension values, which might take ten to 15 days to arrive.

Mr H called on 18 January 2022 and asked about the implications if he took a lump sum, and also requested the transfer value, which he thought would have been sent to him in writing. Mr H was informed that, before a transfer pack/quote could be sent, Phoenix would need to send a retirement options quote first as he was over 55. But the call handler also said that Phoenix would need Mr H's National Insurance (NI) number before that could be sent. Mr H said that he would call back with this, but Phoenix has no record of him doing so. Phoenix later confirmed that the NI number wouldn't have been needed for the retirement options pack to be sent.

The next call was on 21 February 2022, at which point Mr H again enquired about a lump sum payment and was provided with the policy value. When informed of this, Mr H asked as to the reason for the drop in the value, and whether this was linked to the FTSE 100 index. Mr H commented that it would have to be stock market related and added that markets would inevitably recover, in which case he could forget about taking a lump sum payment.

Mr H enquired as to what needed to happen if he wanted to transfer his policy, and when he was informed that Phoenix would need to issue a transfer pack, he commented that thought he'd already requested this. The call handler explained that the process would be quicker if Mr H used the "Origo" system rather than completing transfer forms through Phoenix.

In a further phone call on 24 March 2022, Mr H requested the cash in value for the policy, and asked to what extent it was linked to interest rates. Mr H again enquired as to the quickest method of transferring if he wanted to do so.

A further call took place on 20 April 2022, in which Mr H requested the deed for his policy, the policy value and also asked about the annuity which might be payable at ages beyond

70. He asked that this be confirmed in writing, and also for the current policy value. Mr H noted that it had reduced by quite a bit and said that he wondered what the basis for his might be. He said that stock markets had increased, and so this couldn't be the reason. Mr H then asked again about the process for transferring if he were to do so, and said that he had a recipient provider – Hargreaves Lansdown – in mind.

In a subsequent call on 9 May 2022, Mr H and the call handler discussed transfer routes, including the option of requesting it through Phoenix, or via Origo through the recipient provider. Mr H noted that the annuity route was still available, but that he wasn't sure that it was worth it due to the tax consequences. Mr H further enquired as to the future annuity beyond age 70 which might be payable if he chose to leave the policy as it was. The call handler then explained that, if Mr H wished to transfer, he would need to call it to discuss this before transfer forms could be issued, or he could use the more direct Origo route.

Although the transfer documents were issued on 21 February 2022, Mr H wasn't provided with information in full about the future annuity amounts until 6 October 2022. Mr H had in the meantime raised a complaint about this issue in early August 2022.

There followed an initial conversation with Phoenix in January 2023 and Phoenix then sent Mr H its final response letter on 9 February 2023. It apologised for the lengthy delays in providing Mr H with information which he'd first requested in January 2022. In respect of these delays it offered Mr H redress of £480, of which £30 was intended to cover his telephone costs, £250 for the general delays and poor service Mr H received, and a further £200 to reflect the delay in addressing the complaint Mr H subsequently made.

The letter concluded by saying the following:

“If you have incurred any additional costs or charges as a result of the delay in providing this information please provide details and evidence and we may be able to consider this further. In addition if you were to transfer your plan in the next couple of months we may be able to consider the delay in providing this information and the impact this had on your decision to transfer and the implications of this. Please note that we would not be able to consider this until you have transferred the plan and it is not guaranteed that your funds would be increased in any way”.

The final response letter also provided Mr H with an updated version of the information he'd been seeking and had eventually been provided in October 2022.

Following further discussions which related directly to the transfer issue, a second final response letter of 6 April 2023 set out why Phoenix wasn't prepared to accept the redress methodology Mr H was proposing. Mr H had requested that his transfer value be backdated to January 2022, with an uplift to the transfer value of the policy at January 2022 to today's value.

Phoenix also didn't repeat the offer it had previously made of £480.

Mr H then referred his complain to this service in July 2023.

Having considered the matter, our investigator didn't think that the complaint should be upheld, saying the following in summary:

- He noted that, in Mr H's written submission to this service, he said that *“This schedule details the background together with and a summary of issues arising from a failed transfer with Phoenix”*. However, the investigator said, for a transfer to fail, instructions would first have had to have been given to Phoenix to effect such a

transfer, and he couldn't see that any such instruction was given. Rather, just an expression of interest in finding out about the impact if such a transfer had been made.

- The investigator also noted that Mr H had said of his request to obtain from Phoenix *“an evaluation of the projected benefits going forward”* of the guaranteed annuity policy *“written by NPI circa 1988 and now with Phoenix”* that *“Whilst this was thought unlikely to affect the decision to transfer this seemed a simple enough task and a small delay to get the required information seemed sensible”*.
- The investigator said that he could understand that, as Phoenix's Terms and Conditions said that any guaranteed annuity terms would be nullified if Mr H transferred away or cashed in his policy, he might want to check what the effect of that loss might be on his overall pension provision.
- However, given the certainty which Mr H recalled having in January 2022 as to an imminent downturn in certain economic factors, it might reasonably be expected, as Mr H thought this information was unlikely to have much impact on his decision to transfer or not, a transfer could have taken place without the requested information.
- In support of this position, the investigator said that, in assessing cases, this service would look to see whether consumers had taken all reasonable steps to mitigate against financial loss wherever possible.
- In this instance, Mr H had acknowledged that by February 2022 *“...the transfer documentation was to hand”*. So Mr H would have been able to start the transfer at any time thereafter if he so chose. The investigator said that he appreciated that Mr H would have been waiting for the information to be provided to make an informed decision, but noted that no action was taken, or had since been taken in respect of the transfer. And so he couldn't conclude that there had been a financial loss.
- The investigator also noted that Mr H had told this service the following:

“In October 2022 the previously unavailable KI [this key information being the guaranteed annuity rates at various ages] was made available. As expected, it confirmed the intended transfer should have proceeded in early 2022 but not at the transfer values available in October 2022 which were some 25% lower, much of the loss having occurred in September and October 2022. This gave cause for a claim for a backdated transfer or equivalent. The consequence is there has been no transfer since and whilst all options remain theoretically open, nothing will happen until the claim is resolved.”

And also:

“Consideration was given to transferring and making a claim against Phoenix for the shortfall in value in the intervening period, however this was thought to be unwise as it would likely muddy the waters and in any event the Phoenix transfer conditions precluded the possibility of a claim.”

- But, the investigator said, aside from the fact that a transfer would have nullified the guaranteed annuity the available evidence didn't support the position that Phoenix's

transfer conditions would have prevented Mr H from making a claim and the investigator also couldn't see anything to that effect in those terms and conditions.

- Mr H had said in October 2023 that no transfer of the policy would be made until his claim was settled. There'd been no indication that this situation had changed. And so, the investigator said, as no transfer had taken place, it wasn't possible to know whether Phoenix's actions or inactions had caused Mr H an actual financial loss.
- The investigator also noted that, within the final response letter dated 9 February 2023, Phoenix had said that it would be willing to assess any losses Mr H may have experienced had it not caused the delays, if Mr H was to continue with the transfer within the next few months. The investigator noted that Phoenix hadn't confirmed that promises could be made at that stage, but he did think that this was a reasonable offer.
- However, as the investigator was unaware of a transfer having taken place after this offer, he considered that he had no basis upon which to uphold the complaint on the grounds that Phoenix had caused Mr H an actual financial loss.
- But he did recognise that the experience would have caused Mr H frustration and annoyance. He said that he'd considered this service's guidelines in terms of the awards which might typically be made in circumstances where the impact of a mistake had caused considerable distress, upset and worry, and/or significant inconvenience and disruption that required a lot of additional effort to resolve. And this may have lasted many weeks or months.
- The investigator thought that the circumstances here would reasonably fall within that category, and so he thought that the offer made by Phoenix was appropriate.

Mr H disagreed, however, saying the following in summary:

- It was unclear as to where the investigator's notion of "*imminent downturn in economic factors*" had come from. This was an incorrect characterisation of Mr H's view on matters at the time, and his perceived investment opportunity was around six months or so, driven by the interest rate landscape at that time.
- He simply wished to receive a positive evaluation to enable the transfer to proceed – but Phoenix prevented this by its inability to provide the requested information. The certainty alluded to by the investigator was relevant to conditions at the start of 2022. The documents required to begin the transfer weren't received until March, some seven weeks later, by which time things had changed and that earlier sentiment had waned.
- The application of the duty to mitigate losses wasn't clear in this case. The key point here was that there were "step change" events, the rapidity of which meant that mitigation against this wasn't possible. In the aftermath of such a step change event here, it was prudent to avoid doing anything but wait for the position to recover. That the transfer value had recovered by 10% from its 2023 low was demonstrative of this point.

- It wasn't acceptable to transfer without the requested information, especially as he was given the impression that the information would be due "soon". Given the inexorable rise in the annuity payable and likely small interest rate changes in the anticipated period, it seemed sensible to continue to wait. And so a loss mitigation strategy wasn't appropriate.
- At all relevant times, however, Mr H faced a potential loss in the transfer value compared to that which he could have expected in early 2022. If the issue here was that the loss remained crystalized, then this could be arranged, but only on a basis which involved an agreed end result.
- The problem with the offer made by Phoenix was that he would then be transferring on a "wing and a prayer" with no certainty of outcome. This was unreasonable, untempting and unrealistic at the time, but there seemed to be no reason as to why a transfer couldn't now be done as part of an agreed settlement.
- He'd been caused significant frustration, which was out of proportion to the fund value and quantum at issue.
- The delays incurred by Phoenix meant that, by the time the requested information was received in October 2022, the step change down in the transfer value at around that time meant that there was no chance of a transfer being viable at such low levels. Although the transfer value had since risen, it was yet to do so to a level which made the transfer viable once more.
- Had the information been available in early 2022, Mr H's subsequent evaluation would have confirmed the transfer to be viable and it would have proceeded. But as 2022 progressed, the omissions became more problematic as the slow but ongoing decline required a closer and more granular evaluation to determine whether a transfer should proceed. It wasn't known how the annuity was calculated between the years until February 2023.
- The delays were still ongoing and Mr H still hadn't received an up to date copy of the policy. In view of this and the further evidence provided, the £480 element for the compensatory award should be revisited.

As agreement couldn't be reached on the matter, the investigator said that it would be referred to an ombudsman for review.

Mr H then submitted further comments as follows:

- Mr H made a direct request to transfer his policy in January 2022, but Phoenix was silent on this aspect.
- When the (albeit still incomplete) information relating to the annuity payable at various policy anniversary dates was finally received 10 months later, this was sufficient to determine that a transfer would have been viable and would have taken place in early 2022, but it was less helpful when considering viability in later months. This required the additional information relating to the annuity calculation between years. This latter information wouldn't have been an issue in 2022, however, as the

case for the transfer was confirmed regardless of how the annuity was calculated between years.

- The evidence of the intent to transfer was clear, but the only other course of action which would have been open to Mr H was to complete, sign and return transfer documentation and so unconditionally accepting a transfer – which he wasn't prepared to do without first completing an evaluation of the transfer, which required the information relating to the annuity on the anniversary dates. Any other course of action would have been reckless.
- By the time the information relating to the annuity anniversary dates had been received on 6 October 2022, the market had crashed some three to six weeks earlier. It therefore wouldn't have been sensible to do so. And the step change event couldn't by that time be mitigated against.
- Further, the terms of the transfer set out that a transfer wouldn't happen without acceptance of a section within those terms which would preclude making a claim against Phoenix.

The complaint was then referred to me for review.

I issued a provisional decision on the matter on 29 January 2025, in which I set out my reasons as to why I didn't think the complaint should be upheld. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think it's reasonable to say that Mr H's central point here is that the opportunity to transfer and capitalise on a higher transfer value was lost because of Phoenix's delays. Mr H has said that, in the absence of the requested information which would have been required to undertake a proper evaluation of the transfer's viability, he wasn't in a position to proceed with the transfer.

Mr H has said that he expressed a clear intention to transfer in January 2022, which I'll address presently. But I firstly note that Mr H has said that, by the time the transfer forms were sent in February, and "seen" in early March 2022, that the landscape had already changed, and that what Mr H has described as his certainty around a transfer had by this point waned. So my initial observation on this case is that, if the landscape was changing so rapidly, it has to be borne in mind that transfers in any case take some time to process.

If Mr H's sentiment had changed from the point of the first call on 14 January 2022 to early March 2022, then there is no clear way of knowing at which point, if any, he would thereafter have considered the transfer to no longer be viable. Certainly, given that Mr H first contacted Phoenix on 14 January 2022, a point in January couldn't reasonably be used as the date of transfer – as I've said, transfers take time to process, and when it came to it, Mr H may in any case have considered by the time of the transfer that it wasn't then in his best interests to do so – as indeed he says he did later in 2022 when some of the requested information had been received.

To illustrate this point further, I can see that the transfer value had already fallen from £23,177 on 1 January 2022 to £21,392 on 25 February 2022 – a decline of nearly 8%, which would quite reasonably explain why Mr H's interest in transferring may have waned by early

March 2022. This sentiment was reconfirmed in a conversation with Phoenix on 9 May 2022, when Mr H said that, as the value at that time was £21,296 (so broadly similar to that at the end of February 2022) he wasn't sure whether taking the lump sum was worth it. I don't think it's more likely than not that, even had the requested information Mr H had requested been provided in a more timely fashion, and the transfer documents sent out more quickly, that a transfer would have completed by 25 February 2022.

I think the first point at which Mr H might reasonably be said to have expressed an interest in the transfer value, rather than obtaining policy information, was on 18 January 2022.

Assuming Mr H hadn't been misled about the requirement for the NI number, and allowing ten working days for the retirement options pack to be sent, this might have arrived by 1 February 2022, after which Mr H could then request the transfer pack. Again allowing ten working days for the transfer pack/quote to be issued, this would have arrived by 15 February 2022.

According to the information sent by Phoenix at the end of February 2022, for Mr H to then initiate the transfer he would need to contact Phoenix to confirm that he wished to transfer to another provider. Assuming that Mr H already had a new recipient provider in mind, he might reasonably have contacted it the same day – 15 February 2022. But this would only then have allowed eight working days for the transfer to complete, by which time the fund value had dropped by nearly 8%. Phoenix has confirmed that the timescale for the transfer to complete would be between ten and 15 days.

As I've said above, Mr H has himself confirmed that his certainty around the transfer viability had already waned by early March. And so I don't think it's clear that Mr H would in any case have accepted the drop which would likely have taken place by the time the transfer was due to complete.

But even if a different interpretation on that point was possible, there is then the matter of the robustness of Mr H's intention to transfer.

As noted previously, Mr H's point is that he clearly intended to transfer. But the content of the call on 14 January 2022 doesn't support this position. As I've set out above, Mr H certainly made enquires as to the transfer value at that date, the pension savings value, and requested the transfer value from December 2021. Mr H also enquired as to whether the policy could be transferred at any point, but he also said that it seemed that there didn't need to be anything done at that point. This wouldn't be consistent with a firm intention to transfer.

As also set out above, Mr H enquired as to the value of the annuity which would be payable and talked about possibly deferring taking his pension. Mr H also requested the information about the future values of his pension, and was informed that an annual statement would be sent separately to the letter which would confirm the future projected pension values, which might take ten to 15 days to arrive. But no clear intention to transfer was expressed at this point.

Further, there is also a tension here between what Mr H has said on the one hand about the information he'd requested being unlikely to make much of a difference to his decision making, meaning that the decision to transfer had already been made (as, according to Mr H, indicated by his requests to transfer at the time), and on the other that it was vital that this information be received before he could make such a decision – and that it would be reckless to do so.

If I'm to accept the former position, and Mr H was aware of a rapidly changing situation, then if Mr H had a firm intent to transfer, it might reasonably be expected that he would initiate the

process on 14 January 2022 or once he'd received some partial information on 27 January 2022 about the prospective annuities which would be payable at ages 70 and 75. If it was unlikely that further information would make a difference to his clear intent to transfer, then it might reasonably be expected that this would at least begin the process of transferring, with the prospect of receiving the outstanding information before the transfer finalised.

But according to the call records, following the initial call on 14 January 2022, Mr H called again on 18 January 2022 and asked about the implications if he took a lump sum, and also requested the transfer value, which he thought would have been sent to him in writing (although Mr H had only requested policy information four days previously). Mr H was informed that, before a transfer pack/quote could be sent, Phoenix would need to send a retirement options quote first as he was over 55. But the call handler also said that Phoenix would need Mr H's NI number before that could be sent. Mr H said that he would call back with this, but Phoenix has no record of him doing so.

The next call record was on 21 February 2022, at which point Mr H again enquired about a lump sum payment and was provided with the policy value. When informed of this, Mr H asked as to the reason for the drop in the value, and whether this was linked to the FTSE 100 index.

I think these particular aspects are indicative of two things. Firstly, if Mr H was intent on beginning the transfer process, then I think it's likely that he would have called back to provide Phoenix with his NI number. Phoenix has since confirmed that an NI number wasn't in fact necessary to issue the retirement options pack, but Mr H wasn't aware of this at the time.

So I don't think the available evidence supports the position that it's clear, or ought reasonably to have been clear to Phoenix, that Mr H was intent on transferring. In fact, although conversations about transferring had previously taken place, the first record that Phoenix has of Mr H mentioning transferring to a SIPP with Hargreaves Lansdown was on 20 April 2022 when he asked how to go about this.

And secondly, if Mr H was asking about the reason for the drop in the value of his pension plan on 21 February 2022 and whether this was related to the FTSE 100 index, this isn't consistent with what Mr H has said about him being aware of the "step changes" in his policy value resulting from interest rate increases and which made the need to transfer so pressing.

Mr H has further said that the intent to transfer is bolstered by the fact that the transfer value was at that time at or near its peak. But even if Mr H was aware of the reason for the reduction in the policy's transfer value, which doesn't seem to be borne out by his questioning as to the reason for the reduction, I don't think this could in any case have been known with any certainty – this can only be known with the benefit of hindsight.

And so, for the reasons given, I don't think it's clear that Mr H had expressed a firm intention to transfer, and certainly not before his sentiment on the matter had by his own account changed by early March 2022.

Mr H has latterly said that he would now transfer and so "crystallise" his loss in response to the investigator's assessment.

That resolution which, if implemented, would now provide Mr H with the transfer value he would have received in early 2022, with the addition of a set return, would clearly present no risk to Mr H now, other than the future loss of the guaranteed annuity. It's been demonstrated that transfer values continued to decline to their nadir in November 2022, at which point they seemingly began to recover, but not, as I understand it, to the level of early

2022. And so the rationale for transferring now, with no risk and a transfer value from early 2022, would seem clear.

But as I've said above, I think it was less clear that this is a decision which Mr H would have made in say, late February or early March 2022, as Mr H has himself indicated in his response to the investigator's assessment. And so I don't think that requiring Phoenix to apply a return to the transfer value which was applicable in January 2022 would be fair or reasonable.

Further, and although I don't think this is central to the outcome of the complaint here, I've also noted Phoenix's offer to consider a loss to Mr H due to the delays which it made in February 2023 if he decided to transfer his policy value within a short period of time. Mr H has said that this was too unclear in terms of guarantees that he would be recompensed for his losses, but I don't think the manner in which Phoenix phrased its offer was inappropriate. I don't think it could set out a guarantee that it would enhance his transfer value – it would need to assess whether, on balance, it was more likely than not that Mr H would have transferred in early 2022, as I have done above.

Also, had Mr H transferred and been dissatisfied with the response, it would have been open to him to refer his complaint to this service for us to determine whether, on balance, Mr H would have been more likely than not to transfer in early 2022.

And although I've noted what Mr H has said about the transfer terms precluding any future claim against Phoenix, I think there may have been a misreading of these – Phoenix actually said that transferring wouldn't preclude any claim being made against Phoenix in respect of any error or omission it had made.

I do acknowledge that Mr H wished to have more certainty that what he considered to be his losses would be redressed if transferred, and that by that point there seemed little point in doing so if those losses wouldn't be recouped. But I think it would have demonstrated a clear intention that Mr H wished to have his funds invested outside of the with profits guaranteed annuity environment in which was invested with his Phoenix policy, which I think is a reasonable assumption as to Mr H's initial interest in transferring, i.e. to capitalise on the available transfer value and move his pension funds elsewhere.

And on that particular note, whilst I can see that Mr H has suggested various means by which an assumed transfer in early 2022 might be "updated", there's no credible or persuasive evidence for how Mr H intended to invest his funds if they were to be transferred. And so even if I were able to uphold the complaint on the balance of what I consider would have been more likely than not to have happened in February/March 2022 had the information from Phoenix been received earlier, it would be difficult to determine how the funds would then have been invested.

I've then thought about the sum offered by Phoenix in respect of the trouble and upset caused to him by the delays in providing the requested information. And whilst for the reasons given above I don't think that it can reasonably be concluded that the delays caused Mr H an actual financial loss, I do think that they would have caused Mr H not inconsiderable inconvenience and frustration, and he should be compensated for this.

Taking into account the types of award which this service might typically make in such circumstances, however, and our guidance on such matters which can be found on our website, I think the amount of £480 originally offered by Phoenix is probably appropriate here.

Overall, and whilst I know Mr H will be disappointed with this outcome, my provisional

conclusion is that, for the reasons given, it wouldn't be fair or reasonable to uphold the complaint."

Mr H provided further comments in response, and whilst I've read all of Mr H's submissions, I consider the key points may be summarised as follows:

- All of the telephone records should be provided up to October 2022.
- It was assumed that, when I referred to my consideration of the available evidence, I had only considered the evidence provided by Phoenix.
- Much reliance has been placed on trying to infer intentions from incidental telephone comments. "Snippets" had also been taken out of context and the whole conversations needed to be considered to determine the true meaning.
- Mr H maintained that the terms for a transfer precluded the possibility of claiming for a different amount. The provisions within the form only related to a mistake which might have been made by Phoenix after he'd signed the form.
- It would be surprising if the change in the policy value didn't have some effect on sentiment in the first three or so months of 2022. But although sentiment may have waned, this shouldn't be construed as not wanting to surrender the policy.
- Had the requested information been made available by 25 February 2022, there would have been a transfer.
- The aspect regarding the NI number was a red herring, and was taken to mean that it would be required before a transfer could be completed.
- Speculations as to his intentions were unsound – but what was known was that a transfer was intended, subject to a satisfactory evaluation of the outstanding information.
- There seemed to be uncertainty around the date a transfer was requested, but the phone records seemed to be the most likely source of information for this, assuming that the records weren't defective or missing.
- I had got the "wrong end of the stick" when interpreting his comments about possibly deferring taking his annuity. To suggest that this went against an intention to transfer was unfair, and his evaluation methodology necessitated access to the requested information. And the issuance of the documents dated 21 February 2022 was unequivocal evidence of the intent to transfer.
- With regard to the letter of 27 January 2022, partial information wasn't good enough to evaluate whether or not to transfer. And in the absence of the key information, the transfer was progressed as far as possible.
- Addressing my comments on the NI number request and Mr H's comment in a phone call relating to whether the reduction in the transfer value was a result of a fall in the FTSE 100 index, there was a pattern of overthinking things. It was difficult to know which call resulted in the issuance of documentation, but it could reasonably be said to be that of 18 January 2022.

- The fact that the packs had been sent by Phoenix was a clear indication of its understanding that he wished to transfer.
- With regard to his comments about the reduction in value being linked to the FTSE 100, knowledge of the matter evolved over time, and he sometimes needed to be “devil’s advocate” to tease out answers from Phoenix. And so questions such as this wouldn’t necessarily have been consistent with his actual knowledge of the situation. Interest rates were deemed to have an important effect on the policy value in January 2022, and discussions in phone calls were an attempt to find answers to fluctuations in the policy and how it was invested.
- As to my comment that accepting the transfer value from January 2022 now would present a “no risk” solution for Mr H, given the movement of the transfer value since, for any given set of interest rate conditions, the policy continued to grow at a predetermined rate. Since late 2022, the likelihood had been for interest rates to decrease and a return to zero would have a far greater effect than a similar increase the other way.
- It was stretch too far to say that the event complained of here could be within the ambit of either an error or omission for the purposes of satisfying the provision within the transfer declaration for claiming against Phoenix after a transfer. Only an error or omission in the value itself would fall within the ambit of that clause.
- The point relating to alternative investment had he transferred was a red herring. There were a number of scenarios available to him, but the approach would be dependent upon the outcome of the claim. There were arguments for and against both investing and spending. These matters could only be evaluated in light of the situation “come the moment”. However, a loss was faced at all relevant times and remains up to the point of crystallisation.
- Regarding the award in respect of distress and inconvenience, although it had been suggested that the circumstances in this case were typical and should be determined on that basis, this was a fairly unique situation. He’d been steadfast in his determination to make a decision on a rational basis, but Phoenix had placed a block on what could rationally be done. As such, the proposed award was inappropriate irrespective of other factors under consideration.

At my request, the investigator sent Mr H the recordings of the calls up to that of 9 May 2022. Mr H was invited to make any additional comments on the content of those calls.

The investigator also asked Mr H the following additional question:

“The ombudsman has also noted your comments in response to the provisional decision that the decision to transfer had been made in January 2022 (barring the information about the annuity for ages between 70 and 75), that the perception in January 2022 was that the transfer value was at or near to its peak, and that interest rates were deemed to have an effect on that value. On that basis, the ombudsman has said, it must reasonably be assumed therefore that speed was considered to be of the essence – hence your claim for the transfer value which applied in January 2022.

Phoenix sent information to you on 27 January 2022 and again on 10 May 2022 which gave details of the guaranteed annuity per annum at ages 70 and 75. The information (which was guidance only) for ages 71 to 74 sent in October 2022 and February 2023 effectively interpolated between those ages, as the ombudsman considers might reasonably and

intuitively be expected to have been the case. Given this, and in terms of the evidence relating to your commitment to transfer, the ombudsman cannot currently conceive of information which might have been provided about the guaranteed annuity amounts at ages 71 to 74, and which might have been reasonably anticipated to be sufficiently different from that later provided, which would have changed the decision to transfer which you say had already been made in January 2022 - but which, despite speed of transfer seemingly being of the essence on the above detailed basis, prevented you from transferring before the information for those ages was received.”

In response, Mr H said the following in summary:

- The information relating to the annuity had been requested a decade or so earlier, and this hadn't indicated linear interpolation between the ages of 70 and 75 due to the application of mortality factors. Any perceived linearity was a mere coincidence, viewed with the benefit of hindsight, and not an intrinsic feature.
- The comments about the need for speed were misapplied to the situation. The whole process needed speed, but particularly the request for the missing annuity information.
- He had no record of receiving the information sent on 27 January 2022 and 10 May 2022. But correspondence received in June 2022 said that Phoenix could only provide annuities for ages 70 and 75. This was considered untrue, as it had been able to produce this information over a decade previously.
- The commitment to transfer was always evaluation based and the transfer wasn't going to be done blindly without the requested annuity information. And interpolation between the ages of 70 and 75 was inappropriate.

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 think it's worth firstly correcting Mr H's assumption that I've only considered the information and evidence provided by Phoenix in my consideration of the complaint. The wording "*all the available evidence*", as perhaps might reasonably be inferred, refers to that provided by both Phoenix and Mr H.

I'd then address Mr H's comment relating to what he's said are inferences about intentions from incidental phone conversations. My view is that the comments made are far from incidental when trying to determine the firmness of Mr H's intention to transfer and the reasons as to why time might have been of the essence. They provide a valuable insight into Mr H's thinking around this at the time. And I think their value in understanding what happened is mirrored by Mr H's own request that all telephone conversations up to October 2022 be provided.

And for the sake of clarity, I'd confirm that I've listened to the entire conversations referenced in this and the provisional decision, and so no particular aspects which might have been highlighted in call records have been taken out of context.

And so I don't think it would be fair or reasonable to discount particular aspects of phone conversations simply because they don't align with, or support, one or the other party's position.

In terms of the actual calls I've listened to, I'm satisfied that those which have been provided by Phoenix and sent to Mr H for his comments are sufficient for me to be able to draw fair and reasonable conclusions both on the matter of whether there would have been time for the transfer to complete before the transfer value reduction on 25 February 2022, and also Mr H's commitment to transferring.

To address that first aspect, Mr H has further said that, had the information been made available by 25 February 2022, he would have transferred. But as set out in the provisional decision, I don't think it's more likely than not that the transfer would have completed by that point, even if the requested information had been received promptly. And by early March 2022, after the transfer value had reduced, Mr H has said himself that his sentiment towards transferring had waned.

Mr H has said in response to the provisional decision that his comment about sentiment waning by early March 2022 on the basis of the lower transfer value shouldn't be interpreted as him no longer wishing to surrender the policy, but I can't reasonably see why else Mr H would have mentioned this (at least without an accompanying phrase that he still wished to transfer), other than to indicate that the transfer proposition no longer appealed. And I think this is also consistent with Mr H's claim that he should be paid the transfer value which was available in January 2022.

And so, my view on that first header of the complaint remains the same. There simply wasn't enough time to get things done by the time of the reduction which, according to Mr H himself, caused sentiment to change.

But as set out in the provisional decision, even if I am to accept that either there had been enough time to complete the transfer by the time the sentiment had waned or that that it hadn't waned enough to rule out the transfer, I don't in any case think that there was the clear level of commitment to transfer, as borne out by later conversations. There's persuasive evidence that for several months after the initial contact in January 2022, Mr H was still mulling his options and that it wasn't the case that, excepting the last piece of information, the transfer was a firm intention.

And I think dealing with Mr H's comments in turn might be helpful in illustrating why I think this is the case. Firstly, regarding the matter of the NI number, again I don't think this can simply be dismissed as a red herring – my view is that it's important evidence in that Mr H was informed that it would be required to move to the next stage of the transfer process, not as he has asserted to complete the transfer. And the fact Mr H didn't provide this in response to the request in my view strengthens the position that he wasn't at that stage committed to a swift transfer.

I also don't think that speculation on the basis of the available evidence about Mr H's intentions is unsound. I think it's worth noting that Mr H's "fact" that he would have transferred had the required information been received is also, by virtue of the information not having been received and that he didn't transfer, also speculation.

Turning then to the matter of the date at which the transfer was definitively requested, I'd agree with Mr H that the phone records provided by Phoenix are likely to be the best source for this – and as mentioned above, for much else. But as to Phoenix either having lost or failed to record calls, I don't think the available evidence supports this position - for example, Mr H hasn't provided varying recollections or call records, nor are there references in recordings to other calls which haven't been provided. And so, as I've said above, I think the available call recordings (albeit alongside the other evidence) are sufficient upon which to draw fair and reasonable conclusions. And as set out in the provisional decision, the evidence indicates that the first time that Mr H mentioned something akin to a likely decision

to transfer was when he referenced the receiving scheme on 20 April 2022.

Mr H has further asserted that his comments in relation to possibly deferring taking his annuity have been misinterpreted – but to use Mr H’s own parlance, I don’t really think there’s any wrong end of this stick to be had – the query was in my view a clear indication that Mr H was still considering his options and that no firm commitment to transfer had at that point been made.

Mr H added that he was still considering his options as the requested information hadn’t been received. But this doesn’t sit comfortably with Mr H’s position that, barring the final piece of information, the decision to transfer had been made. Had the latter been the case here, then I think that, rather than mulling the idea of possibly deferring the annuity, Mr H would have placed more emphasis on receiving the outstanding information so that he could proceed with the transfer without delay.

And on that particular point, I think it’s also worth noting that, although Mr H has said that the firm intention to transfer was present and that he needed the outstanding information, the only point at which this was chased between January and April 2022 was in the phone call of 20 April 2022. I don’t disagree that Phoenix should nevertheless have provided the information sooner, but had there been the urgent need to transfer to avoid further declines in the transfer value (and Mr H was undeniably aware that it was falling), I think it might reasonably be expected that this information would be chased on a more frequent and insistent basis.

But instead, until that point in April 2022, phone calls routinely contained reflections about what might have caused the drop in the transfer value, about whether this might recover if it was linked to the FTSE 100, and options for how Mr H might access his pension benefits. Mr H also repeatedly used phrases such as “*If I wanted to transfer*” in several phone calls, rather than expressing the firm intention to transfer, and that the absence of requested information was preventing him from doing so.

Mr H has further said that partial information wasn’t enough to proceed with the transfer, but my point on this within the provisional decision was that, on the basis of Mr H’s argument that there was a clear intention to transfer, he would have taken every necessary step to ensure that the process was progressed as far as possible, pending that last piece of information. However, I don’t think the available evidence supports this position, not least that relating to the request for the NI number as set out above.

Mr H has also said the fact that Phoenix sent information packs is evidence that he’d made his intention to transfer clear, and that this would have been understood by Phoenix. But I disagree – although Mr H had indicated an interest in the transfer values at different points, these packs contained information about Mr H’s options and unless the transfer was initiated via Origo, which was also discussed in phone calls, there were several steps which needed to be completed before the transfer would be processed by Phoenix. And I don’t think Mr H’s other comments relating to annuity deferral options and the prospect of doing nothing with the plan on the basis of stock markets recovering would have done anything to make it clear to Phoenix that this was the case. Rather, I think they would have distinctly diluted any such intended messaging.

As to Mr H’s assertion regarding his query about the FTSE 100 that he was at times playing devil’s advocate to tease out answers from Phoenix, this seems to me to be a rather unnecessary - and in my view unlikely - game of “cat and mouse” to be playing if indeed matters were perceived to be as urgent as they were, and when all other aspects of Mr H’s questions of Phoenix seemed to have been quite straightforward. And there are then Mr H’s additional comments in the phone call of 21 February 2022, as alluded to above, that the

reduction in the transfer value would have to be stock market linked and that markets would inevitably recover, in which case he would be able to forget about the transfer anyway. Following this, it wasn't until the phone call of 24 March 2022 that Mr H enquired as to whether the policy value was linked to interest rates.

And so the available evidence doesn't support Mr H's position that interest rate movements were deemed to have an important effect on the policy value in January 2022. There was no such indication from Mr H that he had an awareness of this until the enquiry in late March 2022.

I agree with Mr H that it would be a perfectly sensible thing to do to enquire as to why the transfer value had declined. But I don't think either the initial question about the reduction being linked to the FTSE 100 or the subsequent elaboration about markets recovering could reasonably be interpreted as evidence of Mr H "testing" Phoenix, with him covertly having knowledge of the real reason for the reduction. Rather, I think it's more likely than not that Mr H was quite genuinely asking about the reason for the reduction, and simultaneously speculating about a recovery in the transfer value.

And that latter point of course is of some significance in itself when considering Mr H's commitment to the transfer. Not only was he seemingly unaware of the primary reason for the reduction – rising interest rates – but he was also of the view that, if the stock markets recovered some value, his transfer value would also recover. This is starkly different from the picture painted of Mr H being aware of the primary reason for the reduction (rising interest rates), hence the need for a swift transfer.

I'm not therefore persuaded that Mr H was in fact aware that the reduction in the value was more a result of rising interest rates than a fall in the value of the FTSE 100, such that there was a clear urgency in either his thinking on the matter, or certainly that conveyed to Phoenix. And the comments relating to the potential for the transfer value to recover in line with a recovery in the FTSE 100 also don't align with Mr H's position that there was a perception that the transfer value was either at or near its peak. This could only have been speculated about if there was knowledge of the connection to interest rates – and for the reasons given above, I don't think the available evidence supports this position.

As set out in correspondence since the provisional decision, I've also thought further about the requested information which Mr H has said was staying his hand in January 2022. As indicated in the further question to Mr H above, he'd been informed on 27 January 2022 and 10 May 2022 of the guaranteed annuity amounts for ages 70 and 75. However, despite what Mr H has said about the decision having been made to transfer (barring the additional information about the annuity at ages 71 to 74), his purported knowledge of interest rates having a bearing on the transfer value in January 2022, and the perception that this value was at or near its peak at that point, Mr H has said that he decided to wait for projected annuity amounts for those ages.

It's Mr H's current position that he didn't receive the letters of 27 January 2022 and 10 May 2022 in which this was set out. However, the letter of 27 January 2022 was referenced in the provisional decision, and Mr H responded to that specific point, as set out above, by focusing on the "partial information" aspect. It might reasonably be expected that, if Mr H hadn't received that letter, then rather than responding with comments on having only been sent partial information, he would have said in response to the provisional decision that he didn't receive any information at all.

Mr H has further said that no linear interpolation between ages 70 and 75 was possible, or indeed appropriate, as had been demonstrated by similar information received over a decade ago. Mr H hasn't provided that information to support this position, so it's not

possible for me to comment on the specific figures. But, notwithstanding variations in mortality rates which might have an effect on the actual amount of increase to Mr H's guaranteed annuity, I think there are aspects of Mr H's policy (such as, even ignoring declared bonuses, increases to the basic pension), which might give rise to reasonable inferences as to how it might progress between ages 70 and 75. Mr H has himself noted that the policy continued to grow at a predetermined rate.

If I'm to consider this in combination with all other available evidence here, I think that a fair and reasonable conclusion is that, if Mr H was as keen as he has asserted to transfer, given his purported knowledge of the other factors which dictated urgency, this information was a "nice to have" but not something which either would, or ought reasonably, to have had a significant impact on his decision to transfer. And as set out above, although I agree that Mr H was entitled to expect to receive the information much sooner than he did, at no point in the phone calls did Mr H say to Phoenix that this information was vital to his decision as to whether to transfer.

Therefore, for the reasons given, I don't think that a claimed decision to transfer as soon as possible (given the other purported knowledge of a changing landscape) ought reasonably to have been prevented by the lack of information which I'm satisfied could have been extrapolated from that already known.

In terms of what I said in the provisional decision about Mr H's proposed solution now being risk free for him, I've further noted what Mr H has said about interest rates now declining, and the effect that this would have on the policy. But my understanding is that the policy value remains lower than that which he would have received in January 2022. And so my point remains that, if Mr H's proposed resolution was implemented, this would effectively be free of risk for him as things stand.

I also acknowledge what Mr H has said about the clause within the transfer document referring to an error or omission. But I can't find any additional explanation within that transfer document which might reasonably limit the scope of this to Mr H's interpretation of that wording. It doesn't for example set out that this would only apply to an error or omission in the transfer value. I think the wording in the declaration "*For the avoidance of doubt, this discharge shall not prohibit me for raising a claim relating to any act or omission by Phoenix Life Limited in relation to the plan(s)*" is in fact quite broad in its scope, specifically referencing the plan rather than the transfer value itself. But notwithstanding this, as set out in the provisional decision, Mr H would in any case have had recourse to this service to put matters right.

Addressing Mr H's comments on what I'd said would be the difficulty in determining how he would have invested if the complaint were to be upheld, I acknowledge the point that this would be dependent upon the outcome of the claim. But the investment point is not a pivotal aspect on which the outcome hinges here, and was noted in the provisional decision more as an observation. And if the complaint isn't upheld for the reasons set out, then it's in any case rendered somewhat moot.

Summary

I think there are two clear headers to this complaint – was it feasible for the transfer to be completed before Mr H's sentiment waned, and was it in any case clear, or at least more likely than not, that Mr H had a firm intention to transfer, with just one last piece of information missing.

For the reasons set out above, I don't consider that the timeline for transferring before the transfer value dropped in February 2022 and before Mr H's sentiment, by his own admission,

had waned, was realistically achievable.

But Mr H was in any case for some time after the reduction in that transfer value still mulling a deferral of his annuity, unsure of the reason for the drop in the transfer value, and asking other questions about the policy. And even notwithstanding what I've said above about the last piece of information about the annuity at ages 71 to 74 not having a realistically plausible bearing on an apparently urgent need to transfer, if Mr H did need that information, I would also expect to have seen more chasing of that information and more definitive moves towards a transfer pending the receipt of that information.

Enquiries about a transfer were certainly made, but the other commentary in phone calls from Mr H, as set out above, along with the failure to provide his NI number to (as far as he was aware at the time) progress the transfer process, lead me to fairly and reasonably conclude both that Mr H didn't display the characteristics of an individual who was clearly committed to transferring and that no definitive and/or urgent commitment to transfer had been made.

I think there was certainly at point at which Mr H looked back at the transfer value which had been available in January 2022 in the context of that which was quoted later that year and concluded that it would have been financially prudent to transfer earlier. And this is one of the reasons I haven't deemed it necessary to listen to phone calls relating to the complaint when it was made – Mr H had by then in any case concluded that an earlier transfer would indeed have been financially advantageous.

But that later realisation that an earlier transfer would have been financially advantageous doesn't mean that it can effectively be transposed onto an earlier point. And for the reasons given, the earlier actions and conversations – not least Mr H's comment in January 2022 that there seemed to be nothing to be done at that time with the policy - simply aren't consistent with the claim that there was a firm commitment to transfer.

As such, I don't think the available evidence supports the position that the complaint should be upheld on the basis that Phoenix's delays in providing information have caused Mr H a financial loss.

But I've also considered further the matter of the offer made by Phoenix in respect of the trouble and upset caused to Mr H as a result of the delays incurred. I note that Mr H has said that this situation is unique, but so are all of the cases considered by this service. There may be similarities between them, however, and the guidance on our website is intended to reflect this.

A payment of £480 would be appropriate in a situation in which the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact might last over many weeks or months. Overall, considering the amount of time it took Phoenix to provide Mr H with the requested information, I think this is reflective of what has happened here.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 September 2025.

Philip Miller

Ombudsman