

## **The complaint**

Mr F complains that Phoenix Life Limited ('Phoenix') mis-sold his plan, and have not managed and invested his pension correctly. He would therefore like compensation for this.

## **What happened**

Mr F originally held a pension with Britannia Life taken out in 1995, which has been held by various providers over the years but is now with Phoenix.

At some point between 1998 and June 2003, Mr F's pension was included in the industry wide pension review (carried out by Alba Life, who the policy was held with at that time), which concluded that Mr F's policy had been mis-sold and compensation of £11,716 was paid into his plan. This was invested in the Managed Pension Fund. This was stated to represent 401.47% of the value of the plan in November 1998, the original date of the calculation.

On 21 January 2021, Phoenix Life wrote to Mr F as he was approaching age 55. This letter outlined his retirement choices, and stated that the current value of the pension was £18,823. It recorded his selected retirement date as 23 March 2031. The letter also confirmed that the value was based on current fund prices and was not guaranteed. It stated that the value may be higher or lower due to falls and rises in investment markets when Mr F comes to take his pension savings.

On 14 December 2021, Phoenix wrote to Mr F again, sending a retirement pack. The value at that time was £18,978.

On 7 February 2025 Mr F submitted a complaint to Phoenix. He complained that he believed that he was mis-sold his pension plan, and he was unhappy with the value.

On 4 April 2025 Phoenix wrote to Mr F apologising that he had not yet had a response, and provided him with the right to forward his complaint to this service.

Phoenix provided their final response to Mr F's complaint on 20 June 2025. They stated that the plan was taken out in 1995 to enable Mr F to contract out of the State Earnings Related Pension Scheme (SERPS), and was known as an Appropriate Personal Pension (APP). The response explained that at the time the plan was set up in 1995, there were three key factors commonly considered in deciding whether contracting out of SERPS was suitable for an individual. These included age (the younger a person was when they took the decision, the more likely it was that contracting out would be beneficial), earnings (because contracting out was unlikely to be worthwhile for people who did not earn much over a threshold level), and the amount of time to retirement. This was because it was unlikely that contracting out for a short period of time would result in a bigger pension.

The response concluded that having taken the above factors into account, they were satisfied that contracting out of SERPS and redirecting contributions to the APP would have been suitable for Mr F's needs at the time of the advice.

In relation to the performance of the plan, Phoenix confirmed that the projections of future benefits supplied by the adviser at the time of the sale was based on prevailing market conditions and assumptions set by the regulator at that time. They stated that the performance of the plan was not guaranteed and was dependent on investment returns over the time.

They did not uphold the complaint, but paid £150 to Mr F for the delay in providing their response to his complaint.

Mr F was not happy with this outcome, and referred his complaint to this service. On 2 October 2025, our investigator provided their view. She agreed with Phoenix's outcome and did not uphold the complaint. She considered the fact that the advice received was reviewed in 2003 under the guidance of the financial regulator, and Mr F's policy was assessed to ensure that he had not been financially disadvantaged by contracting out of SERPS. As a result of this, Mr F was awarded £11,716 which the investigator stated that she could not reassess or comment on the compensation awarded.

In relation to Mr F's main concern about how Phoenix has managed the plan, the investigator concluded that there was no evidence that Phoenix took an active role in advising Mr F about his investments, nor is it their responsibility to ensure that his funds were invested in a suitable way. She sympathised with how disappointing the performance had been, but confirmed that whilst performance is not guaranteed, it does not mean that his funds have been unsuitably invested.

Mr F did not accept the investigator's view, because he states he recalls being given guarantees when his pension was set up, that his pension policy would match the income he would have received from his employer's pension scheme.

The investigator re-engaged with Phoenix in respect of this, who were unable to locate any paperwork relating to the pension when it was set up. The investigator therefore responded to Mr F to confirm that due to a lack of evidence to indicate that Mr F was told his plan included any guarantees she couldn't confirm that Phoenix had made any errors. Mr F was unable to provide any supporting information, and did not accept the investigator's view therefore the complaint has been forwarded to me for a final 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.

Having done so I am in agreement with the investigator's view and for broadly the same reasons, and do not uphold Mr F's complaint. Despite the amount of time since Mr F's pension was originally assessed to have been mis-sold under the pension review, and the dates of the documents issued to Mr F, Phoenix have consented to this service considering his complaint.

Mr F's complaint stems from the fact that he believes he would have been better if he had not taken out the APP, rather than contracting out of SERPS, and the ensuing performance of the fund.

Phoenix have confirmed that because of the time that's since elapsed, they no longer have the papers from when Mr F took out his plan but based on three commonly considered factors, alongside Mr F's circumstances at the time of the advice, they concluded that contracting out of SERPS was likely to have been in Mr F's best interests at that time. They have confirmed that at outset, Mr F would have received policy documentation and literature

which included an illustration of the benefits that would have been payable on his selected retirement date. They have also provided regular updates on his pension plan.

A review of Mr F's original sale was already carried out under the regulator-mandated Pensions Review, which resulted in a loss assessment and redress being paid into his plan. In line with our usual approach, I'm not re-opening that historic review because I've not been provided with any evidence to suggest that it wasn't undertaken correctly. I've therefore focused on Mr F's concerns about how Phoenix has administered and managed his plan since.

Mr F states that he was told that his pension would be guaranteed, and the value would be higher than it would have been had he not contracted out of SERPS. I can't know exactly what Mr F was told at the time he took out his pension. Where information is missing, incomplete or contradictory, I must go on what I believe was most likely to have occurred at the time the advice was given.

Mr F's plan is described as an Appropriate Personal Pension (APP)—a defined contribution arrangement used to contract out of SERPS at the time. APPs don't inherently include income guarantees nor are they can they be directly compared to what would be available from a defined benefit pension arrangement - the final value available to Mr F at retirement would depend on any contributions made during the term and the investment performance.

As outlined above, Phoenix state that at outset, Mr F would have received policy documentation and literature which would have included an illustration of the benefits that would have been payable on his selected retirement date. As part of his correspondence with this service, Mr F stated that he thought he had historic documents in the loft of his home, which unfortunately he was unable to locate. The fact that Mr F recalls having had paperwork relating to his pension leads me to conclude that it is more likely than not that the sales process in place at the time of the advice was followed, and Mr F was likely to have been provided with the documents that Phoenix state would have been issued. The illustrations would have used assumptions that were considered reasonable at the time. Unfortunately market wide investment performance has not matched the rates considered reasonable either at the time of the advice, or following the pension review that was carried out.

I have not been provided with any evidence to suggest that the pension would be invested in a fund that included an element of guarantee. I note that the letter issued to Mr F in June 2003 following the pension review confirmed that his pension would be "topped up" by £11,716 which would be invested in the Managed Pension Fund. A managed fund typically does not include any element of guarantee, and is a type of pooled investment whose performance is dependent on the performance of the underlying investments, typically equities, in line with a specified attitude to risk. Nothing in the file indicates that the plan contained any investment or income guarantee. That accords with the nature of an APP invested in a unit-linked managed fund, where outcomes depend on market performance.

Phoenix have confirmed within their final response to Mr F that as his pension administrator, they have a responsibility to keep Mr F updated about his plan in the form of annual statements however it isn't responsible for ensuring his funds were invested suitably nor providing ongoing investment advice to Mr F. They state that on the annual statements issued to Mr F it says "*We recommend you regularly review your pension savings and investment choices and seek independent financial advice to ensure your investment choices are right for you*". I've no reason to think Mr F didn't receive these..

If Mr F was unhappy with the performance of the investment, I would have expected him to have raised this issue at some point during the time he has held the pension. Phoenix are

required to issue annual statements which clearly set out how the plan has performed over the last 12 months. They also include prompts to the consumer to regularly review their plan to ensure it continues to meet their needs and to speak to a financial adviser if they're in any doubt. Despite having received those regular annual updates from Phoenix, I cannot find evidence to suggest that Mr F has raised this concern at any point prior to his complaint in February 2025.

I have also not been provided with any evidence to suggest that Mr F was paying a fee to Phoenix for them to provide him with any ongoing advice about his pension. That means that whilst Phoenix is responsible for the administration of the pension wrapper, they have no responsibility to ensure the ongoing suitability. The responsibility for this remained with Mr F and if he was in any doubt, he would have needed to engage the services of a financial adviser to assist him.

I understand how disappointing it must be for Mr F that the value of his pension is not in line with his expectations, particularly considering what the illustrations may have shown at the time he contracted out of SERPS. Unfortunately, the changes in market conditions over the thirty years since Mr F took out his personal pension have meant that the assumptions that were considered reasonable historically have not been borne out in practice, meaning that many investors are seeing performance that is lower than anticipated. But, that's not the fault of Phoenix. Poor performance is not an indication that Phoenix have mismanaged Mr F's pension and it would not be fair to hold Phoenix responsible for investment performance not meeting Mr F's expectations.

I therefore do not uphold Mr F's complaint.

### **My final decision**

For the reasons given above I do not uphold Mr F's complaint against Phoenix Life Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 April 2026.

Joanne Molloy  
**Ombudsman**