

The complaint

Mr E complained that Phoenix Life Limited (Phoenix) made errors causing a delay in him receiving his pension. He would like compensation for any financial loss he has suffered as a result, and compensation for the distress and inconvenience that these errors have caused him

What happened

Mr E held a pension policy with Phoenix which contained benefits transferred from his occupational pension scheme, with a scheduled retirement date (SRD) of 22 November 2022, his 65th birthday. He contacted Phoenix Life on a number of occasions since his 55th birthday, as he was keen to take his retirement benefits early if possible. Phoenix Life explained that it was unable to allow early access to his pension, as he had a Guaranteed Minimum Pension (GMP) entitlement of c£9,000. The value of his plan wasn't high enough to provide this level of GMP until his 65th birthday. On 27 May 2022, around 6 months before his SRD, Phoenix, wrote to him to outline his options for taking his benefits. The letter contained a current value of his pension benefits, but also stated:

The above Pension Savings Value is not guaranteed and may be subject to deductions when your pension savings are accessed

and

Around 10 weeks before your intended retirement date we'll send you some retirement benefit illustrations. You can compare them with any others you get when shopping around.

Mr E contacted Phoenix on 13 September 2022 as he had not received any further information. Phoenix explained that the illustrations had been posted to Mr E on 25 August 2022 and arranged for a copy to be reissued to him.

After receiving the information, Mr E made Phoenix aware of his chosen retirement option. Phoenix responded on 29 September 2022 asking Mr E to contact them so they could discuss all his options with him before they could act on his instruction.

Mr E called Phoenix as requested. During this phone call, Phoenix told Mr E it had sent the letters of 25 August and 13 September in error, and that they contained incorrect information. Mr E then complained to Phoenix about the poor service he had received.

Phoenix sent Mr E updated information on 22 October 2022, but this information was also subsequently found to be incorrect, requiring a fourth letter to be sent to Mr E on 28 October 2022. This contained an updated valuation and contained a statement that

The maximum tax-free lump sum allowed under the HM Revenue & Customs (HMRC) simplified tax regime from these funds is [c£56,000]. This represents 25.73% of the total fund value.

Following receipt of this fourth letter, Mr E gave instructions to Phoenix confirming his chosen option, which included taking the maximum allowed tax free cash lump sum. Phoenix received all the documents necessary to proceed on 4 November 2022.

Mr E then called Phoenix once more to confirm that it had everything it needed to pay out his benefits and assured him that the crystallization of his benefits would take place on 22 November 2022.

Following the assurances he had received, Mr E borrowed money and went on holiday to celebrate his 65th birthday. Following his return, Mr E called Phoenix to find out why he had not received his pension benefits, as he had been told he would. Phoenix assured him that his benefits would be paid within a week, but this did not happen. Mr E received his benefits on 15 December 2022.

When he received his benefits, Mr E discovered that the tax free cash payment he received was c£46,000, some £10,000 less than he had been expecting. Phoenix explained that this was due to the cost of providing his GMP annuity rising since the quotation he had received on 28 October 2022.

Phoenix issued its final response to Mr E's complaint on 3 February 2023.

Phoenix summarised the main points of Mr E's complaint as follows:

- *You are frustrated with how long the claim has taken and the amount of calls you have had to make and when you do call the actions agreed are not completed*
- *You are also unhappy that you were expecting annuity payments for your Normal Retirement Date (NRD - 22 November 2022) but did not receive a payment until 20 December 2022 and suffered financial hardship due to this.*
- *You are also unhappy as you were expecting a Tax Free Cash (TFC) payment of c£56,000 but then received c£46,000.*
- *You are also unhappy with the conflicting information provided on letters and how this whole process has been a nightmare for you.*

In its response, Phoenix upheld Mr E's complaint and accepted that it had made errors in issuing incorrect information and that it had caused a delay to the first payment of the annuity income and tax free lump sum.

It explained that although the first payment was delayed, it had based the annuity on the value that applied on 22 November, so Mr E had received the benefits he should have received had the payments not been delayed. It went on to explain that it had backdated the annuity payments to 22 November 2022 and confirmed that future annuity payments would be made as if the annuity had indeed commenced on that date.

Phoenix also confirmed that Mr E had requested to be told if the value of his pension fund dropped by more than 5%. Although this had not technically happened, it accepted that it should have told him about the increased annuity cost and the consequent reduction in tax free cash.

Mr E had informed Phoenix that if he had known this, he may have considered other options for taking his benefits. Phoenix accepted that this may well have been the case and offered Mr E the option of reinstating his pension plan and cancelling the withdrawal of his funds to allow him to consider other options. It also added interest at the rate of 8% p.a. simple to

both the delayed first annuity payment and the tax free cash lump sum, which equated to £183.

To recognise the poor level of service it had provided, together with the distress and inconvenience it had caused Mr E, Phoenix offered him £500 compensation plus a further £20 for the cost of the telephone calls he had to make to them and £100 as it had taken too long to respond to his complaint.

Mr E was unhappy with this and so brought his complaint to this service. Our investigator reviewed the evidence and agreed with the conclusions that Phoenix had reached. They felt that Phoenix had dealt with Mr E's complaint fairly, apologised to him and taken appropriate steps to ensure that he was not financially disadvantaged by its mistakes. They also felt that the level of compensation Phoenix offered Mr E in respect of his distress and inconvenience was appropriate in the circumstances of his complaint.

Mr E disagreed, and so this case has been passed to me to review the evidence again and make 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 do not uphold this complaint and find that the redress proposed by Phoenix is appropriate in the circumstances.

I can appreciate that this may be disappointing to Mr E, so I'll explain my reasons.

Essentially, it is important to recognise that it is the role of this service to review the circumstances of a complaint, and where it finds errors have been made to try to put the complainant back into the position they would have been in had the errors not occurred. It is not our role to punish organisations for any mistakes they have made or expect them to provide benefits to their customers that would not have been available to them.

In reviewing the evidence provided in support of this complaint, it is apparent that Phoenix made a number of errors, leading to a potential financial loss for Mr E as well as causing him a significant amount of distress and inconvenience. It is, however, important to say that Phoenix has recognised this and apologised to Mr E, and suggested how it feels it should compensate him fairly for its mistakes and the effect they have had on him.

Given that Phoenix accepts the substance and merits of Mr E's complaint, I will concentrate on the compensation it has offered him.

Firstly, in terms of the financial loss Mr E may have experienced, Phoenix has demonstrated that it has based the level of Mr E's annuity and tax free cash lump sum on the fund values in force on 22 November 2022, which is the date that the benefits should have been realised. To compensate Mr E for the effect of delaying the payment of his benefits, Phoenix has suggested adding interest to the delayed payments at the rate of 8% per annum simple, which is what this service would recommend. This compensation offer has the effect of putting Mr E back into the position he would have been in, so I feel that this is fair and reasonable in the circumstances.

Mr E also complained about the reduction in tax free cash lump sum of c£10,000 between the figure he was quoted on 28 October 2022 and the figure he actually received. The documentation Phoenix sent Mr E made clear that the quotation he received was subject to

change, and were not guaranteed. Phoenix explained that in Mr E's case the cost of providing his GMP annuity had risen during that period, reducing the amount of tax free cash available. Annuity prices are affected by a number of factors, primarily interest rates, gilt prices and inflation rates and can vary on a day to day basis. These market factors are outside the control of any company, so I can't hold Phoenix responsible for these changes.

Having said that, Phoenix has recognised that Mr E had asked to be updated on any change to his fund value of more than 5%. Although the fund value did not change by this amount, the cost of providing the GMP annuity did change significantly, leading to a reduction in the tax free cash that Mr E could take. Given this, Phoenix has offered to reinstate Mr E's policy so he could seek new benefit quotations, either from Phoenix or from another provider. I feel that this is also a fair and reasonable offer.

I'll now consider the distress and inconvenience Mr E experienced during the period relating to this complaint. I can see from his evidence that he suffered a significant amount of stress that was caused by Phoenix's errors. Mr E has stated that for personal reasons he had sought to take his retirement benefits before his SRD on a number of occasions, so I'm satisfied that he would have felt any delay to receiving his benefits to be distressing. This distress would have been compounded by Phoenix's mistakes, which gave him cause to doubt its competence in calculating and paying his benefits correctly. He felt compelled to contact Phoenix on a number of occasions to try and make sure that he would receive his benefits on time. He has also provided evidence that he encountered some financial hardship, as he borrowed money based on Phoenix's assurances that he would receive his benefits on his SRD.

Phoenix have offered Mr E a total of £620 in distress and inconvenience payments, which I think is fair and reasonable in the circumstances of his complaint.

As I stated previously, it is the aim of this service to put a complainant back in the position they would have been in had any mistakes not occurred. In this case, I'm satisfied that Phoenix has offered compensation in line with that this service would have recommended, and of an appropriate level.

As such, I won't be asking Phoenix to do anything else to resolve the complaint beyond the redress it has already offered.

My final decision

For the reasons explained above, I do not uphold Mr E's complaint.

Consequently, I shall not be asking Phoenix Life Limited to do anything beyond what it has already offered to do for Mr E to resolve the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 December 2023.

Bill Catchpole
Ombudsman