DRN-4363945

Financial Ombudsman Service

The complaint

Mr M says Phoenix Life Limited (Phoenix) was negligent in its fund selection leading to a fall of over 25% in the value of his pension pot in the year up to his retirement.

What happened

Mr M's Group Personal Pension Plan was established with Royal Sun Alliance (now Phoenix) in January 1999. His contributions were invested in the 'lifestyle' option. That meant his pension funds were automatically switched into lower risk funds as he approached retirement. His plan had a retirement age of 65, which he reached in 2023.

In January 2023 Mr M was sent a 'wake-up pack'. This set out details of his plan and what his options were for accessing his pension. The value of his pot was recorded as around £48,000. However, his statement from January 2022 had indicated a fund value of nearly £61,000.

In March 2023 Mr M complained to Phoenix about the fall in value of his pension pot between 2022 and 2023. He said this had been the direct result of Phoenix's failure to adequately manage the investment risk levels within the plan. It responded to Mr M in June 2023 rejecting his complaint. It said the reduction in the value of his pension plan was a result of market conditions and beyond its control. There had been no guarantees.

Mr M wasn't satisfied and brought his complaint to this Service. He told us:

"The pension plan contained "lifestyling" which was intended to reduce the level of risk as I approached my retirement age of 65…Phoenix had complete control over the specific funds which they used for this purpose and I was reassured that in the final years of the plan that the majority of it was invested into the "Pension Protector Fund" which I assumed to be safe and secure. However in the final months the value of the fund fell by more than 25.00%. I do not believe that in selecting the appropriate funds for "lifestyling" that Phoenix ever took into account the changes which had happened in pensions legislation since the plan was first set up (ie pensions freedoms) or the prevailing macro-economic environment. I believe that they have been negligent in their fund selection for my requirements."

"My pension fund dropped by £15,000 (over 25% in a relatively short period of time). This has left me with a shortfall in my pension plans and I have less income as a result."

The Investigator considered Mr M's complaint but didn't uphold it. He didn't think Phoenix could've foreseen the market turbulence that his pension plan suffered during the year before he drew on his funds. Mr M disagreed and he reiterated his main arguments. As both parties couldn't agree with the Investigator's view, his complaint has been passed to me to review afresh and to provide a decision.

What I've decided – and why

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

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr M's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by Phoenix for Mr M. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr M's complaint.

There's no dispute about the basic facts. And I recognise that the fall in the value of Mr M's pension pot between 2022 and 2023 when he accessed his benefits was very disappointing. I think Mr M's own testimony when responding to the Investigator's view actually gets to the nub of the issue. He said:

"Whilst I accept that market conditions since early 2022 have been poor, particularly in relation to UK Gilts, this does not excuse the inability of Phoenix to provide a life styling strategy which was fit for purpose. When the plan was first established back in the 1990's I understand that it was commonplace for most Personal Pension Plans to be used to purchase an Annuity. With the Phoenix Life Styling strategy any reduction in the value of Gilts in the lead up to retirement would be offset by the increase in Yields, and therefore Annuity Rates."

"However since the introduction of Pension Freedoms in 2015 the purchase of Annuities have become less popular, by the end of 2021 less than 10% of pension funds accessed for the first time were done so to purchase an Annuity. Therefore the Life Styling Strategy employed by Phoenix could no longer be deemed to be fit for purpose, as it used an investment fund which might be unsuitable for more than 90% of plan holders. Furthermore by using the name "Pension Protector" despite the fund having no form of protection, was clearly misleading. This continues to be the case as Phoenix have not changed the name of this fund, despite it falling in value by nearly 40% over the calendar year of 2022."

The sort of fund to which an increasing proportion of Mr M's pension was allocated as he approached retirement was designed to do two things. Firstly it moved him away from medium and higher risk investments into generally more stable fixed interest investments. And by doing so, it was also offsetting to some degree any negative movement in those investments, because the generally countervailing movement of annuity rates would likely afford some protection of the fund’s purchasing power (had he opted for an annuity).

The objective of the fund Mr M complains about was:

“To broadly protect monetary value of your pensions against interest rate movement by investing mainly in longer term government fixed interest securities whose value should normally rise as annuity rates fall and vice versa.”

I understand the point Mr M makes about pension freedoms which have increased the options available to plan holders for how to use their funds. And that fewer people now take annuities (arguably driven by low rates which have persisted until relatively recently). Nevertheless, the underpinning approach of the Pension Protector fund appears to have been borne out by experience.

The Investigator said

“The Pension Protector fund invests predominantly in long dated securities issued by the UK Government, so effectively fixed interest investments. This sector has historically offered steady lower risk returns but the combination of events over the last few years has resulted in high inflation and regular interest rate rises since the end of 2021. That in turn has caused the value of funds invested in long term Government stock to fall in value which is why your pension performed so badly throughout 2022.”

I agree with this finding. A combination of major movements in inflation and interest rates which were without recent precedent had a significant impact on the value of Mr M’s fund during its final year. But these were unforeseen by most and appear transitional. I don’t think a reasonable argument could be made that Phoenix should’ve changed its long-term strategy – which did protect the purchasing power of funds to some degree with reference to annuities - to cater for short term volatility. It had to have an eye on the interests of all its customers.

It wasn’t Phoenix’s role to provide Mr M with independent financial advice. But I can see that it sent him annual statements. These provided a range of information about the value of his fund, how it was invested and about what he should be considering. For example in January 2021 it said:

“You should review your pension arrangements regularly. If your circumstances or retirement objectives have changed it may be in your best interests to review your choice of pension product and the investment choices within your pension. We recommend that you take regulated advice or seek appropriate guidance to help you to understand your options at retirement.

In the same letter it also reminded Mr M:

“*The value of unit fund investments is not guaranteed and can go down as well as up depending upon the performance of the fund(s).”*

“…You now need to think about whether your plan will still provide the lifestyle you expect in retirement. Taking time to review your pension and making appropriate improvements now will be time and effort well spent. It means that you don't wait until you retire to find out that your pension is not enough for your needs. You should consider getting further information or advice before you review your pension arrangements.”

I can see a similar pattern of information was provided to Mr M in later statements.

I understand Mr M is very disappointed with the value of his personal pension fund. The timing of drawing on his benefits was unfortunate. But I haven't seen any evidence that Phoenix was negligent or treated him unfairly.

My final decision

For the reasons I've already set out, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 December 2023.
Kevin Williamson
Ombudsman