DRN-4279121

## The complaint

Mr W complains that Phoenix Life Limited calculated the value of his pension incorrectly. He also complains that it deliberately delayed the transfer of his pension funds to another provider.

## What happened

I issued my provisional decision on this complaint on 13 July 2023. The background and circumstances to the complaint and the reasons why I wasn't minded to uphold it were set out in that decision. I've copied the relevant parts of it below, and it forms part of this final decision.

*Copy*

*In brief, Mr W joined his employer's Occupational Pension Scheme (OPS) in the 1980s. He was invested in a with-profits fund. In 1998 the scheme was made paid up. The OPS was subsequently wound up, and the OPS' Trustees secured members' benefits with a type of pension buy-out arrangement. The deed of assignment was dated 21 May 1999. This said the OPS' Trustees assigned all their legal and beneficial interests to the individual members. The new policy schedule (dated 5 January 2000) said, amongst other things, that Mr W's annuity at vesting date was £13,667 per annum with profits. It said the cash sum in lieu of retirement benefits was £123,004 with profits.*

*In 2008 Mr W complained to Phoenix Life and subsequently to us because he was receiving statements for his pension showing valuations that were inconsistent with previous values. Phoenix Life said that this was due to an error with its systems, which had inflated the value by around £10,000. Mr W's complaint was considered by one of our investigators who was satisfied with Phoenix Life's explanation for the discrepancy, albeit considered it had caused distress and inconvenience to Mr W.*

*Mr W was approaching the retirement date for the plan (in 2020) but still had reservations that Phoenix Life was calculating its value incorrectly. He was considering transferring the pension's value to another pension provider. He had numerous exchanges with Phoenix Life about the pension's correct value over a several month period. Mr W says the transfer was delayed by 375 days and he suffered a significant financial loss as a result.*

*Mr W referred a complaint to us and it was considered by one of our investigators. The investigator didn't recommend that the complaint should be upheld. In brief, he said that Phoenix Life had explained its calculations to Mr W and had both its pension technicians and actuaries check its calculations. He said he thought on the balance of probabilities it was more likely that Phoenix Life's actuary's calculations were accurate.*

*In respect of the transfer, the investigator said that Mr W could have transferred his pension when it reached maturity date and it wasn't reasonable to hold Phoenix Life responsible for delays because Mr W was in correspondence with it disputing its correct value. And he didn't think Phoenix Life was responsible for any material delays in the processing of the transfer.*

*Mr W didn't agree with the investigator's findings. He subsequently obtained evidence from an independent actuary which he provided to us. His complaint was considered by another investigator as the original investigator had left this service. However the second investigator also didn't think that that the complaint should be upheld. In his view the independent actuary's report was inconclusive.*

*Mr W didn't agree with the investigator's findings and his complaint was passed to me to consider.*

*I issued a jurisdiction decision dated 26 May 2023 explaining the reasons why I was only able to consider the parts of Mr W's complaint relating to the pension as from May 1999, when the OPS' Trustees assigned all their legal and beneficial interest to Mr W. I've now gone onto consider the merits of Mr W's complaint.*

***What I've provisionally 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.*

***Incorrect pension value***

*As I explained in my jurisdiction decision dated 26 May 2023, I only have powers to make a determination on Mr W's complaint relating to the pension as from May 1999. Mr W has provided significant amounts of evidence/arguments and calculations that include information and/or figures relating to before May 1999. I have read it all in full, but have only commented where I think it is appropriate in determining the post-May 1999 issues.*

*I do understand Mr W's suspicions. With-profits funds have attracted criticism for their lack of transparency, and I accept that it is very difficult for policyholders to satisfy themselves that they have received what they are entitled to under the terms of their investments. And here Phoenix Life did also provide statements showing incorrect values (which was the subject of Mr W's previous complaint). It explained the values had been over-inflated and the reasons for it, and it subsequently reduced them. Mr W considers it has provided inconsistent explanations for the error and in how it has calculated the value of his pension, which I appreciate all adds to his suspicions.*

*However it's also clear that Mr W's understanding of the operation of the pension has developed over time. My understanding is that there is only one bonus rate declared, but how that is actually applied to the different benefits will vary and over time, in the particular circumstances here. I accept that Phoenix Life's explanation may have lacked detail for Mr W's purposes, which was to recreate the values himself. But I don't think it was trying to retrospectively provide an explanation that would 'fit' with the values it was paying – in effect cover up incorrect calculations.*

*Mr W has alleged, amongst other things, that Phoenix Life has not used the correct bonus rates in calculating the value of his fund – he thinks it has used its own rates for a time when it wasn't the pension provider. Phoenix Life provided a copy of the applicable reversionary bonus rates in a letter to Mr W dated 3 July 2020. It appears the examples of its own calculations Phoenix Life has provided use these rates (of particular relevance here is after May 1999). However I checked with Phoenix Life that the bonus rates provided were the historical rates for this particular policy. And it confirmed that they were – "The Bonuses used were those relevant to this product type whilst owned by [the previous provider] and since Phoenix took over the book of business, ie those published by [the previous provider] up to the point Phoenix took over and those published by Phoenix since."*

*As I've said, Mr W has provided a number of calculations that he considers shows that Phoenix Life valued his benefits incorrectly. Those calculations were considered by an independent actuary on behalf of Mr W. The actuary himself said that Mr W's calculations effectively worked for the single contribution elements. And for the regular contribution elements from the time they were made paid up. He said these elements were in line with what Phoenix Life had provided. As I've explained, I can only consider whether there is an error from May 1999 – prior to that the pension was an OPS. So on the face of it the actuary didn't identify any problems with the post May 1999 figures Phoenix Life calculated.*

*Phoenix Life has also said that its calculations have been checked numerous times by its pension technicians and its actuaries. Whilst I accept that mistakes can be made, Phoenix Life has gone into the basis of its calculations in much greater detail and provided significantly more information than is usual in my experience of these types of complaint. The calculations have been subject to a lot of scrutiny, by a number of different people and a number of times.*

*I've considered Mr W's calculations and it seems to me, like the actuary instructed by Mr W, that the calculations for the single premium benefits and post paid-up regular premium benefits are largely consistent with the example calculations that Phoenix Life has provided.*

*Mr W has calculated that the paid-up value using the bonus rates provided by Phoenix Life for the regular premium benefits is less than the value quoted and the 'adjustment' doesn't make sense, as it increases the benefits. The paid-up values were clearly calculated before Phoenix Life took over the policy or had any involvement with it. Phoenix Life couldn't have manipulated the paid-up values – however they were calculated – there is a contemporaneous record of those benefits. So I think Mr W is effectively saying that both the previous provider and Phoenix Life have calculated values incorrectly. As I've said previously, securing the paid-up benefits was a matter for the OPS' Trustees. However I think it's worth saying that, if anything, that adjustment works in Mr W's favour – it doesn't show there has been an error or that it has resulted in Mr W receiving a lower fund value.*

*Mr W has referred to the letter from the previous provider dated 24 March 2004 which shows that the reversionary bonuses to that date were £138,803. This was consistent with the higher values subsequently quoted by Phoenix Life in statements up to and including 2008 which it later said were incorrect because of a system error, and it was revised downwards (the subject of Mr W's previous complaint). I asked Phoenix Life why the value from the previous provider was consistent with its own value if the overvaluation was a result of a Phoenix Life system error? Phoenix Life said it not only took over the book of business from the previous provider but also the operating systems and the staff which administered these products. It said any valuations were provided by the same systems and staff.*

*I've also considered the example calculations that Phoenix Life provided for certain regular and single premium benefits, and they appear consistent with the other information its provided and the explanation for how the values are calculated.*

*Mr W has provided a number of calculations showing different comparative values for his pension using different 'benchmarks' - for example using FTSE returns and the Bank of England base rate. However a with-profits fund can be made up of a number of asset classes, including equities, bonds, other fixed interest securities and property related assets. The proportion invested in each changes over time. A with-profits fund also provides certain guarantees. For example the first single premium paid of £1,708 provided a guaranteed sum at age 65 of £9,325. In effect it was guaranteeing to provide a rate of return of at least 5% irrespective of subsequent performance. That has an intrinsic value in itself.*

*In my opinion neither the FSTE All Share or the Bank of England Base rate provide* *appropriate comparators to with-profits returns. I realise that the FTSE ALL share index was referred to by the independent actuary. But I think he was using it in very broad terms to provide some form of context for Mr W. In my view what the value of Mr W's fund would have been using either a FTSE Index or the Bank of England base rate is of very little help in deciding if Phoenix Life has calculated the value of Mr W's plan correctly.*

*In my provisional jurisdiction decision I said that Mr W had provided calculations showing the overall investment returns on his plan. But that for comparative purposes he needed to calculate the value using the actual contributions. In response Mr W said he'd done that and went onto mention his SCB (Super Compound Bonus) calculations.*

*I was actually referring to the calculations that Mr W had provided in his letter to the investigator dated 9 October 2022. From what I could see almost all of them had been based on a guaranteed sum or similar – rather than the actual premiums paid. Mr W had referred to a number of different ways to measure the rate of return. But, as I say, I don't think these are relevant as it's the return on the actual contributions that is material - not on the guaranteed sums which just form part of the structure of the plan.*

*As I have said, I can only consider the issues raised post May 1999. But I think it might be helpful in considering those issues to look back at examples prior to that date to see the overall return. The first single premium paid in 1986 was for £1,708. This provided a guaranteed basic fund value of £9,325. The verification spreadsheet shows the amount paid out at maturity corresponding to that benefit was over £36,000, which would be around a 9.5% investment return over the period. Similarly for the single premium payment of £103.4 made on 1 January 1997, a return of just over 7% compound per year would have been made to provide the maturity sum on that slice of £504. The regular contributions started near the end of the plan will drag back those returns (likely due to the high charges that applied in the first years of starting regular contributions at that time). But on the face of it the figures are similar to the 7.5% return calculated by the actuary – albeit he was using a very broadbrush approach. Ultimately approximately £36,000 was paid into the plan over time up to 1998 and its value in 2020 was over £257,000.*

*As I say, Mr W may wish to carry out his own calculations to calculate the total return made by inputting all the contributions and at the dates they were paid. It will be below the figures I've referred to above taking all premiums into account, but above the lower figures that Mr W has calculated. However in my experience the value paid doesn't appear suspiciously low.*

*Mr W has said:*

*"The value of my policy at any particular time, up to terminal bonus being added, is the sum of the guaranteed amount plus attaching reversionary bonuses.*

*It's important to remember here that the terminal bonus is not part of the fund growth. It comes from the scheme's retained profits and shared fairly amongst faithful clients…."*

*Ultimately a with-profits fund aims to pay policyholders their fair share of the profits (net of expenses) that the fund has earned over the time they have held their policy. That's in the form of the basic guaranteed amount, annual and final bonuses in totality.*

*I realise that Mr W feels strongly that his benefits have been calculated incorrectly. However Phoenix Life has checked its calculations a number of times, by a number of different people and over a period of time; the actuary Mr W engaged didn't find any errors on the evidence that was available to him; and I've seen no persuasive evidence that Phoenix Life calculated the value of Mr W's pension incorrectly.*

*Accordingly, I'm not intending to uphold this part of Mr W's complaint.*

***Transfer delay***

*Mr W has referred to the transfer taking just over a year to complete from his normal retirement date. However this time included a period where Mr W was disputing that Phoenix Life had correctly calculated the value of his pension. It's clear that Mr W had a strongly held belief that Phoenix Life had calculated its value incorrectly. Although Mr W had asked Phoenix Life for a valuation in February 2020, he was then corresponding with it for a number of months as he didn't agree with its figures.*

*Mr W has said it wasn't possible for him to transfer until he had received all the information that he could get from Phoenix Life up to 5 August 2020. However Mr W could have started the transfer process at any time and still complained about the figures. I accept that he probably wasn't aware of that at the time, and didn't check it until a later date when he referred the matter to us. But he could also have asked Phoenix Life about that position if transferring as soon as possible was his main objective.*

*I think it was always likely that Mr W was ultimately going to refer the matter to us given his long-held suspicions about the value. For the reasons I've given, I haven't seen any persuasive evidence that Mr W wasn't paid the amount he was rightly entitled to. I don't think it's reasonable to hold Phoenix Life responsible for Mr W not transferring during this period as he was disputing the value of his plan.*

*Mr W has said that after checking with our service that he could transfer but still complain about the value, he confirmed to his IFA to start the transfer process on 17 August 2020. I've considered the exchanges from this point and appreciate there were a number. However I've only commented where I think it's relevant in that it potentially caused a delay to the transfer.*

*Phoenix Life wrote to Mr W on 3 September 2020 saying it had received his authorisation to provide information to his IFA. It provided information to his IFA in a letter dated 4 September 2020. This letter contained some incorrect details and only about one part of the plan. However it's not currently clear to me that this caused a delay, as it doesn't appear that Mr W's IFA requested further information until it contacted Phoenix Life on 15 October 2020. And this was about tax-free cash. It received a response on 27 October 2020. Mr W has referred to a letter he received from Phoenix Life dated 16 November 2020. He said it was sent in response to a request he never made. I accept this will have further caused Mr W to question Phoenix Life's competence, but again I don't think it delayed the transfer in a material way.*

*Mr W's IFA requested policy values from Phoenix Life on 14 December 2020 which Phoenix Life sent by letter dated 22 December 2020. My understanding is that Mr W's IFA made its formal recommendation to transfer on 4 March 2021. Mr W signed and returned the new SIPP provider's forms to transfer on 9 March 2021. Mr W was in correspondence with Phoenix Life to clarify how the plan had been invested since he'd reached his retirement date.*

*Ultimately however, Phoenix Life then received a request to transfer on 9 April 2022. Mr W has provided copies of his correspondence with the SIPP provider where it says it had sent the transfer request on 30 March, 31 March and 8 and 9 April 2022. However irrespective of the date first sent, on 9 April 2022 Phoenix Life checked back with the SIPP provider that Mr W still wanted to transfer given he was disputing the value of the plan. Even if Phoenix Life had received the request a few working days earlier, there wasn't a significant delay in it acting on it. And like the investigator, I don't think it was unreasonable for Phoenix Life to* *check Mr W still wanted to transfer in the circumstances. The SIPP provider confirmed that Mr W wanted to proceed on 22 April 2021. Phoenix Life issued its transfer quote and forms on 4 May 2021 and received the advice declaration form on 10 May 2021. The transfer value was sent on 19 May 2021.*

*I accept that in some instances from when Phoenix Life wrote to Mr W on 3 September 2020 saying it had received his authorisation to provide information to his IFA, it provided incorrect information. However in considering the part of Mr W's complaint about delays, what's material is the impact that any errors made by Phoenix Life had on the timing of the transfer – not just the fact it got something wrong. I don't think the incorrect information materially delayed the transfer. I also accept that there were times it could have acted in a slightly timelier manner. But I think this was a matter of a few working days, and didn't delay the transfer date in a significant way.*

*As I've said before, I appreciate that this is a long running dispute. Mr W has spent a considerable amount of time and money in presenting his case. I realise he will be very disappointed with my findings. However ultimately, for the reasons I've set out above, I haven't been persuaded that it should succeed.*

Taking all the above into account, I said my provisional decision was that I didn't uphold Mr W's complaint.

I asked Mr W and Phoenix Life to send me any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr W provided further evidence and arguments to support his case which I have taken into account in making my final decision.

Phoenix Life said it accepted the provisional decision and had nothing further to add.

**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.

**Incorrect pension value**

In responding to my provisional decision, Mr W has provided a number of comments and further calculations that relate to the plan pre-May 1999. As I explained in my jurisdiction decision dated 26 May 2023, I can't consider complaints about the pension prior to May 1999. I recognise that is very frustrating for Mr W and leaves a lot of his questions unanswered. But that position isn't a matter of discretion – the rules I'm bound by don't provide me with powers to make a determination on those pre-May 1999 issues. So I haven't generally commented on the points Mr W has raised or his calculations relating to the plan prior to May 1999, unless I think it might be helpful to provide wider context.

Mr W also made a number of comments about what Phoenix Life and our investigators/adjudicator said and did or didn't do over the course of the investigations of both this complaint and his previous complaint.

As Mr W didn't agree with the firm's explanation or the investigators' findings the complaint was passed to me to make a final decision. Once a complaint is passed to an ombudsman it is for the ombudsman to decide what is/isn't relevant to deciding the fair outcome of the complaint. And what further evidence is/isn't required from either party to assist in making that decision. That can change through the course of the investigation and as understandings develop or change.  So although I've taken into account what's been said and done or not done before by Phoenix Life and the adjudicators/investigators during the course of the investigation, I have to decide what evidence is or isn't relevant and what weight to put on it for myself.

Mr W has said that his SCB analysis shows differences in the values calculated by Phoenix Life, and that although they were small errors they were errors non-the-less. Mr W had correctly pointed out some errors but they were, as he's said, small, which Phoenix Life subsequently recognised and didn't materially affect the amount paid. However I do appreciate that these small errors, after Phoenix Life had said it had checked its calculations, add to Mr W's doubts.

However, as I've said, I can only consider any issues with the calculations post-May 1999. As I said in my provisional decision, Mr W's calculations were considered by an independent actuary who said Mr W's calculations effectively worked for the single contribution elements throughout. And for the regular contribution from the time they were made paid up. Phoenix Life has said that its calculations have been checked numerous times by its pension technicians and its actuaries. And I've also considered the calculations which I think are materially consistent with the example calculations that Phoenix Life provided from May 1999. I've seen no persuasive evidence that Phoenix Life's calculations from May 1999 are incorrect.

Mr W referred to the part of my provisional decision where I'd said although one bonus rate was declared how that was actually applied to the different benefits varied over time. He said that was incorrect, and although bonus values change their application remained the same. My understanding is that the annual bonus rates applied to the pre-May 1999 regular premiums were adjusted when the plan was made paid up. But that the single premiums weren't.

Mr W said Phoenix Life was only prepared to provide three calculation examples whereas his SCB calculations showed all twenty-two.  In my opinion Phoenix Life provided a lot of information to Mr W and went into the basis of its calculations in a great deal of depth. I think its responses were reasonable and proportionate, and the information it has provided to Mr W has allowed him to form a good understanding of the operation of the plan. As I've said, Mr W's calculations are materially consistent with Phoenix Life's calculations post May 1999. And I think the examples that Phoenix provided were sufficient to identify if there was likely to be a wider problem.

Mr W has again questioned whether Phoenix Life used the correct bonus rates in its calculations. He said that the bonus rates used for the period he was with the previous provider are the ones Phoenix Life uses for all its inherited executive policies from other companies as shown on its website. He said that he doubted all companies used the same list.

I've looked at the with-profits bonuses part of Phoenix Life's website and it provides details of the differing types of plans its acquired over time and from different companies. It provides a number of different bonus rates for different inherited plans. Phoenix Life has confirmed that bonuses from previous companies are ring-fenced, and the historic figures remain in force after any changes in ownership. It provided details of different bonuses added to a different executive plan. I'm not persuaded it uses the same historical bonus rates for all plans or that it used incorrect rates in calculating the value of Mr W's pension.

Mr W has said that that the values he's calculated using alternative benchmarks weren't meant to be precise or to calculate the correct values. But rather he was using them to illustrate how Phoenix Life had used the wrong values. Mr W made some further comparisons. But I don't think these assist; I don't think the figures based on alternative measures are helpful in determining the value of this plan for the reasons I've previously set out.

The return on an investment is determined by the amount paid into the plan and when, and what is paid out and when. Mr W has said he agrees the best way to calculate the value is from the actual contributions and that he tried to do that, but couldn't as he didn't have the correct bonus values or the correct method. But Mr W doesn't need any information about sums assured or bonuses or methodology to calculate the actual return made on the premiums paid. As I've said, its calculated by using the amounts paid in and when, and the amount paid out and when.

However I think that is only part of the story. The plan provided a guaranteed pension at retirement date. My understanding is that Mr W could have taken a guaranteed pension from Phoenix Life of £28,605 a year. The cost of buying that income was *significantly* higher than the £257,452 Mr W decided to transfer. The value and effectively return measured on the cost to buy the guaranteed pension was significantly higher.

As I said in my provisional decision, a with-profits plan aims to pay policyholders their fair share of the profits (net of expenses) that the fund has earned over the time they have held their policy. That includes *all* of the basic guaranteed amount, annual and final bonuses. The return on investment includes all the above.

Mr W said I referred to an incorrect figure in my provisional decision – I'd said the letter from the previous provider dated 24 March 2004 referred to a figure for reversionary bonuses of £138,803. That figure should have been £138,303. I apologise for that error. However I don't think it takes away anything from the point I was making.

**Transfer delay**

Mr W has said both the investigator and I have only quoted a few reasons for the delays in the transfer whilst he had detailed every one. And that a series of many small delays adds up to a great delay.

Whilst I've considered all the available evidence an arguments, I don't necessarily need to refer to or address each and every point made by the parties when giving reasons for my decision. I'll focus on what is, in my opinion, material to deciding the fair outcome of the complaint.

As I explained in my provisional decision, I don't think Phoenix Life was responsible for the delay in the transfer during the period that Mr W was questioning the veracity of its calculations. I appreciate that Mr W may consider his queries should have been relatively straightforward to answer when he's asking the firm that provides the product – i.e his pension. But the information that Mr W required wasn't something that Phoenix could provide 'off the shelf' - Mr W required a lot of detail, and I don't think its unreasonable to take that into account. Mr W was perfectly entitled to dispute that the value of his plan had been calculated incorrectly. But as I've said, I've not been persuaded that Phoenix Life wasn't offering what Mr W was rightly entitled to. And I don't think it's reasonable to hold Phoenix Life responsible for Mr W not transferring during the period he was disputing the value of his plan.

Mr W has said that he confirmed to his IFA to start the transfer process on 17 August 2020. I accept what Mr W has said that a number of small delays can add up to a bid delay. But I don't think they added up to a material delay from when Mr W confirmed he wanted to transfer.

As I’ve said before, I do recognise that Mr W’s complaint has been ongoing for a long time. Mr W has invested a lot of time, effort and money into providing evidence to support his case. But as I’ve explained, I can only consider the matter from May 1999. So although I’ve looked at the calculations as a whole, in terms of deciding the fair outcome of this complaint I’ve focused on whether they identify there were likely to be any errors in the calculations from May 1999. And for the reasons I’ve set out above, I’m not persuaded that either the SCB calculations or the other evidence and arguments that have been presented suggest that there were.

## My final decision

Accordingly, my final decision is that I don’t uphold Mr W’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 14 November 2023.

David Ashley
**Ombudsman**