

The complaint

Mr W complains, via a professional representative, that he was given unsuitable advice by Phoenix Life Limited ('Phoenix') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension.

What happened

Mr W held benefits in a DB scheme from a period of previous employment. In 1999 he transferred his benefits from the DB scheme, which at the time had a cash equivalent transfer value ('CETV') of £99,053, to a personal pension with NPI. NPI later became part of Phoenix, with Phoenix having responsibility for addressing this complaint about NPI. So, to keep things simple, I'll largely just refer to Phoenix in this decision.

Mr W complained to Phoenix, via his representative, in 2022. He said he'd approached Phoenix after seeing an advert about taking advice and that it had advised him to transfer out of his DB scheme. He said he'd been encouraged to transfer by the adviser who had said his DB scheme pension was frozen and wouldn't provide him good returns. Mr W said the advice had all been given over the phone and by post with insufficient explanation given for him to understand the value of the guaranteed benefits he was giving up. He said he was unemployed at the time and had no previous investment experience and a transfer should not have been recommended.

Phoenix rejected Mr W's complaint. It said in the application form for the pension Mr W had recorded that he was working as a financial adviser. And the other point of sale documents indicated he worked for a business which I'll call Firm B – which was involved in the transfer. Phoenix said the documentation indicated that Mr W had been directly involved in the transfer in a professional capacity and had completed forms to confirm that initial commission payable to Firm B should be sacrificed and instead paid into the plan. And Phoenix said it had also found no evidence that it had provided advice.

Mr W referred his complaint to our service. His representative said, while he worked as a financial adviser, he did not have the relevant qualifications to advise on a DB transfer. And the advice had been overseen by a senior member of staff. The representative said Mr W believed this senior figure worked for Phoenix, and that he had relied on their advice when transferring.

One of our Investigator's considered the complaint. But she didn't think that it should be upheld. She said the available evidence didn't indicate that Phoenix had provided Mr W with advice.

Mr W did not accept the Investigator's findings. He reiterated that he'd been given advice by a senior member of staff who he believed was acting in his interests. He also said Phoenix should've ensured that he understood the risks involved.

The Investigator wasn't persuaded to change her opinion, again noting that Phoenix wasn't the adviser so in her view hadn't acted unfairly. As agreement could not be reached, the complaint was referred to me to 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.

When considering what is fair and reasonable, I've taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time the advice was given. And where evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Mr W's complaint is that Phoenix gave him unsuitable advice. But, like our Investigator, I don't think the evidence supports that it advised him.

Mr W's representatives have said that he recalls the contact about the transfer being over the phone and via post. There is no dispute that Phoenix received the transfer from the DB scheme into a personal pension arrangement with it. But neither party have been able to provide a copy of a written recommendation letter or suitability report indicating that Phoenix advised Mr W to transfer. Nor have I seen other documents I would've expected to if Phoenix had given advice, such as a fact find completed by it. Rather the documents available seem to be product illustrations – which as the product provider of the new pension Phoenix would normally produce – and application forms for a pension with Phoenix. And these don't suggest that Phoenix provided advice.

In addition, the information available from the time indicates that Firm B, whom Mr W worked for, was involved in the transfer. As I've mentioned, I've seen copies of transfer illustrations produced by Phoenix. These confirm they were prepared for Mr W but also note that, in the context of them having been prepared, he was a client of Firm B. I've also seen copies of letters Phoenix sent to Firm B, providing copies of the illustrations, and updating it on the progress of the transfer. And the section of the application form relating to commission names Firm B as the independent financial adviser. Which, if Phoenix had provided advice, would be unusual.

The form relating to commission said that Firm B wished to sacrifice any initial commission to enhance its client's terms, with Mr W named as the client. This declaration was signed by Mr W. But appears to have been done so on behalf of Firm B, in his professional capacity – with the application noting he was a financial adviser at the time.

Subsequent benefit review documents sent to Mr W by Phoenix in the years that followed the advice also indicated that it still understood Mr W to be a client of Firm B.

All of which indicates, in my view, that Firm B was acting on behalf of Mr W here. And that Mr W was involved in the transfer in a professional capacity as well.

Mr W says he wasn't qualified to provide pension transfer advice and relied on a senior advisor who he thought was acting in his interests. And he believes this senior advisor worked for Phoenix.

The transfer took place over twenty years ago and memories can and do fade. And I note Mr W and his representative said, when making the complaint, his circumstances at the time included being unemployed. But the application form said he was working as a financial adviser, which is supported by him having completed documents on behalf of Firm B. Which does suggest he may not fully or accurately recall what took place. That notwithstanding though, I haven't seen anything that supports that Phoenix provided the advice he has

referred to.

I'd also note that the rules in place at the time of the transfer are different to those that are in place now. And Mr W was not required to take advice before proceeding with the transfer.

Taking all of this into account, based on the available information, I can't reasonably say Phoenix is responsible for advice Mr W might've received to transfer his pension benefits.

Mr W's representative says that Phoenix still had to ensure that Mr W understood the risks involved and shouldn't have allowed the transfer. But again, the documentation indicated that a regulated financial adviser, Firm B, was involved in the transfer on behalf of Mr W. And that Mr W worked as a financial adviser for that business. Even if pension transfer advice wasn't something he usually gave, I think it was reasonable for Phoenix to expect that he understood general principles of risk. And for it to believe that the advising firm that was involved on his behalf had explained the risks of the specific transaction to him. The pension illustrations also confirmed that rates of return were not guaranteed, were only examples and what Mr W got back from the pension was entirely dependent on how his investments grew – noting there was no minimum or maximum for this. So, I don't think Phoenix has acted unfairly here.

My final decision

For the reasons I've explained I don't uphold this complaint.

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

Ben Stoker
Ombudsman