

## The complaint

Mr L complains that Phoenix Life Limited (Phoenix) didn't honour the initial cash equivalent transfer value (CETV) that it set out in his retirement pack when he wanted to transfer his occupational pension scheme (OPS) benefits. He says Phoenix recalculated the value prior to the transfer and said it had previously made an error and the value reduced by around £21,000. He would like Phoenix to pay the original transfer value, compensate him for his distress and inconvenience, and pay his adviser for the additional fees it incurred.

### What happened

Mr L had been a member of an OPS which he left in 1991. The scheme was wound up and subsequently the members had their benefits transferred into individual non profit deferred annuities (NPDAs) which were administered by Phoenix.

In June 2022 Mr L decided to transfer his plan to another provider so, on 16 June 2022 he requested a CETV. He was issued with a transfer pack – which noted the CETV of £138,644.11 was guaranteed until 16 September 2022.

However because it took some time to get all the information required for the transfer, Mr L's adviser asked Phoenix to confirm the minimum requirements (documents) to honour the CETV and what could be sent after its guarantee deadline. The adviser emailed Phoenix on 12 September 2022 with copies of what it assumed were the relevant documents but unfortunately some of the forms had been completed incorrectly. These were eventually completed and sent to Phoenix on 25 October 2022.

As its transfer requirements had now been met Phoenix recalculated the CETV and issued the figure, which was now £117,527.82, to Mr L on 10 November 2022.

On 17 November 2022 Mr L's adviser complained about the time taken to process the transfer and the significant fall in the CETV which subsequently occurred as a result. It also said the dates used to recalculate the value were incorrect but, in any case, the transfer pack had said the CETV was guaranteed if all the documentation was returned before the deadline. It wanted compensation for Mr L's investment loss and for its time and efforts.

Phoenix said its original CETV was calculated incorrectly and offered both Mr L and his adviser £250 for the inconvenience this had caused. It explained that as the benefits were held in the form of a NPDA there was no investment loss to consider. It had simply incorrectly calculated the original CETV. It provided the CETVs from January and June 2019 – which were £106,310.66 and £118,513.98 respectively – as evidence to support its position.

A subsequent response from Phoenix did accept that it had provided a "sub standard level of service" in respect of its communication and handling of the case. It increased its compensation offer to £1,000 for Mr L and agreed it would consider compensation for his adviser on production of its invoice.

But Mr L remained unhappy, so he brought his complaint to us. His adviser said that Phoenix should either honour the original CETV and proceed with the transfer immediately or it

should pay the difference in transfer values to Mr L as a compensation payment so that it could then revisit its advice to see if the transfer was still suitable using the lower transfer amount.

One of our investigators looked into the matter and said he thought Phoenix's offer was fair and reasonable. He made the following points in support of his decision:

- He couldn't recommend that Phoenix paid Mr L a value he wasn't entitled to, and he'd seen nothing to suggest the updated CETV calculation wasn't correct.
- But Phoenix had unreasonably raised Mr L's expectations of a higher CETV and the suitability of the transfer – so he thought it should pay compensation for that and thought the amount offered was appropriate in the circumstances.
- And Phoenix had offered to cover the costs of any additional work Mr L's adviser has
  to carry out on the production of invoices. He thought this was reasonable as it
  wouldn't be fair for Mr L or his adviser to cover those additional costs.

Mr L didn't agree. He said that in all his communications from Phoenix it said the transfer value was *guaranteed* and the possibility of fluctuating values was never mentioned. He also said Phoenix hadn't provided any evidence to support the idea that it provided an incorrect valuation, and thought it was more likely than not the lower valuation was due to "the global financial position" and that Phoenix had taken advantage of these conditions to reduce the CETV accordingly.

He said he wanted his complaint to be referred to an ombudsman – so it's been passed to me to review.

Mr L subsequently confirmed that his transfer did complete and provided further invoices from his adviser relating to the extra work involved in re-establishing suitability of the transfer recommendation.

### 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.

And having done so I agree with the outcome reached by the investigator, I think Phoenix's offer to resolve the matter is fair and reasonable. I know this outcome will disappoint Mr L and I've seen the strength of his feelings throughout his submissions. I have some sympathy for the position in which he's ended up — so I'll explain my reasons.

#### Which CETV is correct and should be used?

Phoenix says when it carried out the original CETV calculation on 16 June 2022 it used an outdated and incorrect version of its calculator. It said when it re ran the calculation in November 2022 it realised the error it had made so it did two further calculations. It used the original calculation date of June and the recent date of November 2022. As the updated CETV was £117,527.82 – compared to the figure of £109,901.05 which it ought to have been in June 2022, Phoenix thought it was fair and reasonable to allow Mr L to benefit from the higher value and not to be disadvantaged.

Such errors do sometimes unfortunately happen when it comes to calculating CETVs. Especially in cases like this where Mr L was originally a member of an OPS which had been wound up and the proceeds paid to Phoenix as a collection of NPDAs for each deferred

member. In this instance, I think this was simply a genuine administrative error. And Phoenix's explanation for what happened doesn't seem unreasonable to me.

However, Mr L is right to say that Phoenix hasn't really demonstrated, through evidence of a breakdown of its calculation, how this error came to happen. There's not really much evidence in the form of "calculated figures" to support its position here.

But I think on balance, I accept what Phoenix is saying and I say that because it has provided two CETVs from 2019 of £106,310 and £118,513. The highest one is likely to have been the last calculation that was available before the effects of the global pandemic on market values and investments. I've compared that with what Phoenix says are the correct CETVs from 2022 and I can see some correlation. It has to be remembered that these are non profit annuities so they wouldn't grow through the addition of bonuses, the value would simply reflect what cash fund would be required to provide the same benefits as those from the original OPS when capitalised.

In this case I think the valuation that was originally calculated in June 2022 would appear to be inconsistent with all the other CETVs that have been provided, and I think it's clear the originally quoted figure was a mistake. As I've said previously, without the addition of bonuses – and during a time when global markets were subdued - it would be unlikely to see an increase of over £20,000 in the value of a CETV. And because the figure is so inconsistent with all the others, I don't think it's unreasonable to look upon as more likely than not the result of an administrative error.

I know Mr L thinks the figure should be honoured as it was Phoenix's error and it had said the figure would be "guaranteed" in its transfer pack. And I have some sympathy for Mr L in that respect as the viability of a transfer and the income and tax free cash that he could expect were directly affected because of this error. But it wouldn't be fair for me to tell Phoenix to honour a figure that I believe to be incorrect and which significantly inflated the correct CETV. That would put Mr L into a better position than he would now be in had Phoenix not made the error – which I don't believe is appropriate.

And although Mr L is right to say that the transfer pack stated that "the transfer value is guaranteed until 16 September 2022" I think the spirit of its statement only applied if the transfer value was correct. I don't think the value should be guaranteed if it is incorrect — which in this case I believe it was. So although I think the CETV guarantee would have been honored if it was correct — as the revised value from November 2022 was - I don't think it's fair to expect Phoenix to honour any guarantees around an incorrect figure which would again, in my view, put Mr L into a more advantageous position that he ought to have been following the transfer.

# **Putting things right**

Phoenix's offer and other compensation to consider

Having concluded that Phoenix doesn't need to compensate Mr L by using the higher but incorrect CETV from June 2022, I have gone on to consider the compensation Mr L has

been offered and the areas in which Phoenix didn't provide him with the standard of service it would have expected to.

Clearly Phoenix raised Mr L's expectations of what he was going to receive here. The period from when he received the initial CETV to when he was advised of the corrected figure was around five months and I think the expectation of receiving the higher income and tax free cash for that length of time would have had a significant impact on Mr L. I can only imagine his disappointment when he realised his retirement income would be based on a fund that was around £20,000 lower than he expected. And Mr L would also have been made aware by his adviser that the recommendation to transfer might not be appropriate based on a CETV some 15% lower.

He would have been told that his transfer might now not be viable. and that there might be additional costs to carry out a revised analysis of the transfer based on the new figures. I think this would have had an impact on Mr L too. I can understand his frustration and worry that the transfer might not now be suitable and that he would incur further costs just to find that out. I don't underestimate how stressful a time this would have been for Mr L.

Phoenix ultimately realised the impact its errors and lack of service had on Mr L and offered him compensation of £1,000 for the distress and inconvenience this caused. When taken overall I think this figure is at the higher end of the level I might have recommended, so I think it's an appropriate offer from Phoenix. I understand the impact the matter has had on Mr L, but I don't think it warrants any additional compensatory award for the trouble and upset caused - using the guidelines we operate within.

But I am mindful that Mr L's adviser had to undertake a fresh transfer analysis comparison on his behalf to test the viability of the transfer. The adviser isn't the complainant here so I'm unable to consider any compensation request on his behalf. I note that Phoenix has agreed to reimburse some of his costs on production of an invoice, so that's a matter for them to discuss and agree upon. But I thought Mr L might have to bear some of these additional costs through no fault of his own and in that case Phoenix ought to be responsible for paying some of them. I asked Mr L to provide evidence of any additional adviser costs which I've considered very carefully, but I've also been provided with the original fee agreement that he signed. It noted that he agreed to pay a fixed fee for the transfer, and I can see that he ultimately paid less than that fixed fee because it completed using a lower CETV.

So I can only conclude that any additional costs that were incurred by the adviser weren't passed onto Mr L and therefore I couldn't reasonably ask Phoenix to pay them to Mr L. As I've said it's for the adviser to discuss with Phoenix himself if he thinks it's responsible for any additional costs he suffered.

## My final decision

Phoenix Life Limited has already made an offer to pay £1,000 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Phoenix Life Limited should pay £1,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 September 2023.

Keith Lawrence

# Ombudsman