

The complaint

Mr M complains that Phoenix Life Limited (PL) mismanaged his pension investments, leading to significant losses. He also considers that PL's charges are excessive in comparison to the fund value. And that PL failed to respond to his queries satisfactorily.

What happened

Mr M has a Self Employed Retirement Plan (SERP) with PL which started in 1996. The plan is invested in the With-Profits fund and was designed to provide a guaranteed level of pension. An alternative cash value is also available from the plan. This is calculated using Notional Cash Factors (NCFs), which are frequently reviewed by PL's With-Profits Committee and Board. I understand that the cash value at any time is obtained by multiplying the guaranteed annuity by the NCF then in force. I understand that the plan was originally written by another provider.

Mr M contacted PL on 14 March 2021 using the My Phoenix platform. He was concerned that his plan value had recently fallen significantly. He asked for an explanation for the decrease and what PL would do to try to improve things. PL wrote to Mr M on 26 March 2021 to tell him that his query had been referred to its Actuarial team. PL also wrote to Mr M on 30 March 2021 with its response to his initial queries.

PL said that its 30 March 2021 letter explained how the SERP worked. And that the guaranteed annuity value remained unaffected by any changes to the equivalent cash value of the plan, which could fluctuate dependent on long-term interest rates. It also said that the NCFs which had been implemented on 5 March 2021 were smaller than those previously implemented on 1 January 2021, causing the fund value to drop.

PL sent Mr M an annual plan update dated 2 June 2021. This said that Mr M had a guaranteed yearly pension at his chosen retirement date of £8,411.33. The annual plan update also noted that the transfer value on 2 June 2021 was £110,611.18.

PL said that Mr M didn't express any dissatisfaction with its response at the time of its 30 March 2021 letter. It said that he didn't message it again until 18 November 2021. And that his message was very similar to the one he'd sent it on 14 March 2021, as it referred to another recent drop in plan value. But the message had also said that PL had failed to adequately answer his previous query.

PL said that it hadn't picked up the associated work item from the message until 30 November 2021, when it had realised that a referral to the Actuarial team would be necessary. PL said that it eventually issued a full response to Mr M on 17 December 2021. It said that this letter had developed the previous explanation it had written in its 30 March 2021 letter. And that a copy of its complaints procedure had been included with the letter.

Mr M complained to PL about the delays in responding to his queries and its failure to provide him with a copy of its complaints policy on 13 December 2021. He listed the following complaint points:

- the value of his plan's fund had decreased again. He felt this was out of line with the performance of his other pension funds. And that PL had failed to reply to his request for a specific explanation of the methodology employed/specific factors relied upon in the fund's valuation.
- He wanted to know the charges for 2020 and 2021.
- He repeated his request for a copy of PL's complaints policy and asked for an explanation for PL's failure to reply to the secure messages he'd sent.

PL said it didn't receive Mr M's complaint letter until 24 December 2021.

PL issued its final response to the December 2021 complaint on 15 February 2022. It apologised for the service Mr M had experienced using the My Phoenix platform. And offered him £75 for any trouble or upset caused.

PL also apologised to Mr M as he felt its explanatory letters hadn't fully answered his queries. It said it didn't agree that its responses had ignored Mr M's queries, or that they were inadequate. But it enclosed more detailed wording about how and why its With-Profits Committee and Board reviewed the NCFs associated with Mr M's kind of plan. This wording also included information on charges which said that there were no explicit charges deducted from either the premiums that were paid into the policy or from the fund value of the policy itself. But that the total expenses PL incurred in administering all of its With Profit SERP policies would be deducted from the investment profits made on the total fund in which all of these policies were invested. Then after the deduction of these expenses the remaining investment profits would be distributed to individual SERP policyholders.

PL sent Mr M an annual plan update dated 17 March 2022. This said that Mr M had a guaranteed yearly pension at his chosen retirement date of £8,411.33. And that the transfer value on 17 March 2022 was £104,028.64.

PL sent Mr M an annual plan update dated 16 March 2023. This said that Mr M had a guaranteed yearly pension at his chosen retirement date of £8,411.33. And that the transfer value on 16 March 2023 was £86,039.95.

The annual plan update included a section on the charges Mr M had paid in 2022. The section "Fund Charges" stated:

"You hold a plan in which your contribution, along with those of many other policyholders, are invested in a with-profits fund. The investments and costs of the fund are worked out within the fund itself, rather than for each individual plan, with the aim of smoothing out ups and downs of investment values.

The fund charges shown below are an indication only and will not precisely reflect your own plan charges.

With-profits investment fund charges: £728.49

With-profits investment transaction charges: £4.58

Total Fund Charges: £733.07"

Mr M complained to PL on 14 April 2023 about the fund charges. He said he wasn't aware of any transactions. And asked PL to refund the transaction charges immediately. He also said that the investment fund charges hadn't been explained or broken down. He felt the charges

were excessive in relation to the fund value. He also felt that PL must've mismanaged his investments, given the massive drop in the value of his fund since 2021. He didn't think a fee should be charged at all given this decrease in value. And asked for the charge to be immediately cancelled.

PL acknowledged the complaint on 26 April 2023. Mr M chased for a response on 2 May 2023.

PL issued a response to Mr M's query about charges on 5 May 2023. It provided a similar explanation to the one it'd previously provided about the fund charges alongside its February 2022 final response.

PL also provided a further response to Mr M on 19 May 2023 about his SERP. It said that during 2021, it'd reviewed the NCFs six times. And that during 2022, it'd reviewed them nine times. And that on the majority of dates, the NCF rates had fallen. PL said this was the main reason the cash value of Mr M's plan had changed.

PL issued its final response to the complaint on 22 May 2023. It acknowledged that the communications Mr M had received weren't clear and had caused confusion. And that as it hadn't provided an explanation before he'd seen the drop in his plan value, this might've caused some upset. So it offered Mr M £50 for any trouble and upset caused.

PL said that if the explanations it'd provided in its 5 and 19 May 2023 letters had left anything unclear, Mr M shouldn't hesitate to get back in touch. But that it'd found that Mr M's plan had been operating within the terms and conditions.

I understand that Mr M contacted PL again on 6 June 2023 as he wasn't happy with its explanation about how it'd calculated the fund value of his plan.

Mr M brought his complaint to this service in August 2023. He felt that PL had tried to ignore his complaint and pretend that charges weren't applied.

PL issued a further final response on 31 August 2023. It apologised for the length of time it'd taken to respond to Mr M. And offered him £50 compensation for the delay. But it felt its explanations had been sufficient and that there was nothing more it could add.

PL felt it'd provided Mr M with a clear explanation of how his fund worked in both 2021 and 2023.

Our investigator didn't think that PL should be asked to do anything else to put things right. She acknowledged that there were times when PL could've handled matters better. But felt that it'd tried to address Mr M's queries. And that when PL hadn't been as clear as it could've been it'd offered fair compensation. Our investigator also appreciated that Mr M wanted more information from PL than it'd already provided. But felt that what it'd provided was consistent with industry expectations.

Mr M didn't agree with our investigator. He made the following points:

- The fall in his fund value was so extreme that it couldn't simply be blamed on market conditions. He felt that PL hadn't evidenced that it'd actually managed the fund by altering the spread of investments or otherwise. And that PL had done nothing but wait and hope that market conditions would improve. He didn't think this could be considered acceptable fund management.
- Given the fall in fund value, Mr M felt it was unacceptable for any charges to be

levied. He wanted PL to refund the charges with interest.

As agreement couldn't be reached, the complaint has come to me for 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'm not going to uphold it. I understand this will be disappointing for Mr M. I'll explain the reasons for my decision.

I first considered whether there's any evidence of mismanagement of Mr M's fund by PL.

Management of the With-Profits fund

Mr M clearly feels strongly that PL must've mismanaged his fund given its cash value has fallen significantly in value over the last two years. He told this service that he didn't feel PL had evidenced that it'd actually managed the fund appropriately. And that he felt it'd simply waited and hoped that market conditions would improve.

I agree with our investigator that for this service to determine that a business has done something wrong with its fund management, we need specific evidence of that mismanagement. This is because as returns on investments can't be guaranteed, we don't consider that falls in value demonstrate mismanagement. Therefore, my decision will focus on whether there's evidence of mismanagement. I acknowledge that Mr M feels that it should instead focus on whether PL can evidence that it managed the fund appropriately. But that's not the case. However, I will take into account all of the evidence presented to me in this decision.

PL issued an additional explanatory note to Mr M alongside its February 2022 final response. This stated the following:

"Our With-Profits Committee and Board review the basis used for calculating the NCFs annually to ensure that it remains fair, and we update the NCFs at least quarterly to reflect current conditions in the fixed interest markets. As specified in our Principles and Practices of Fund Management (PPFM), which are also annually reviewed by the With-Profits Committee and Board, the NCFs are reviewed each week using the interest rates from the end of the previous week. The magnitude of the change in NCFs is monitored against a tolerance level specified in our PPFM (paragraph 7.4.8). If the change in the NCFs is significant enough to be outside the tolerance, then NCFs may be updated in between quarterly reviews."

PL's booklet covering Mr M's plan also explains how the With Profits fund works. And who is responsible for it.

PL's 19 May 2023 response to Mr M also noted that it'd reviewed the NCFs six times in 2021 and nine times in 2022.

I consider that the evidence shows that PL didn't simply wait and hope that market conditions would improve, as Mr M has alleged. Instead, I'm satisfied that it followed its own PPFM when it regularly reviewed the NCFs applicable to Mr M's policy.

Based on everything I've seen, I'm satisfied that there's no evidence of PL mismanaging the funds. I acknowledge that Mr M has other pensions which have performed better over the

period in question. But I can't reasonably say that this shows that PL failed to manage the With-Profits fund.

I went on to consider whether PL fairly applied charges to Mr M's plan.

Charges

Mr M felt that PL had tried to ignore his complaint and pretend that it hadn't applied charges to his plan. And that as his fund had fallen in value, PL shouldn't have levied any charges.

As our investigator noted, there have been regulatory changes to the provisions about how charges are displayed. So the Financial Conduct Authority (FCA) now requires businesses across the financial sector to publish costs and charging information in more detail.

PL said that the requirement to show charges on annual updates started in August 2022. So the 2023 update was the first one that contained this indicative information.

As I noted in the background section of this decision, the March 2023 annual plan update stated the charges that applied to Mr M's plan. It said that as the costs of the With-Profits fund were worked out at the fund level, rather than for each individual plan, the fund charges shown were indicative rather than exact. It also stated that there were no policy charges on the plan.

The 2023 annual plan update also included a link to PL's PPFM, within which the charges PL applied to the plan were explained in more detail.

I acknowledge that Mr M was surprised to see the level of charges on his March 2023 annual update. Charging information hadn't previously been included on annual updates. And PL had confirmed to him on more than one occasion that there were no explicit charges deducted from his premiums or from the fund value of the plan itself. So it's not surprising that Mr M wanted to know what the charge was for.

Having said that, I consider that other documentation Mr M had access to already explained how the costs of running the fund would be met. For example, PL's booklet covering Mr M's plan stated under section 1, *"How does this fund work"*:

"...We also pay our running costs and tax from this fund."

I also note that PL had on more than one previous occasion explained to Mr M that although there were no explicit plan charges, the total expenses it incurred in administering all of its With Profit SERP policies would be deducted from the investment profits made on the total fund in which all of these policies were invested. So I'm satisfied that PL provided Mr M with enough information for him to have been aware of what the charges were for.

I also note that although PL must now provide charges information in its annual plan updates, its calculation of charges has remained the same since the start of Mr M's plan.

I understand that Mr M would like PL to return his charges with interest. But I can't fairly ask it to do that. I say this because, given I've noted earlier that there's no evidence of mismanagement of the With-Profits fund, the charges connected to the management of that fund must be fairly shared between all of the policyholders who are invested in it. This is true regardless of whether or not the With-Profits fund makes an investment profit. Therefore I can't reasonably ask PL to refund Mr M his charges. If I did, the remaining policyholders would have to take on a bigger share of the cost of managing/administering the With-Profits fund. And this would clearly be neither fair nor reasonable.

In summary, I've seen no evidence that PL mismanaged the With-Profits fund. And although it could've responded quicker and more clearly to Mr M's queries, I'm satisfied that the compensation PL has offered Mr M is fair under the circumstances. So I don't uphold the complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 February 2024.

Jo Occleshaw
Ombudsman