

The complaint

Mr C complains about poor communication from Phoenix Life Limited (Phoenix) about his pension.

What happened

Mr C said there was a Benefit Guarantee attached to his pension policy. The transfer value for this reduced and he was wrongly told this was due to his age. He wanted Phoenix to honour the higher transfer value. Mr C thought the offer of £150 compensation was trivial and it should honour the higher transfer value.

Phoenix apologised and said it had given Mr C wrong information. The transfer value associated with the benefit guarantee would never be less because he reached age 55. The reason for the change was due to changes in Gilt yields. It offered £150 for the upset and confusion and an additional £50 for the delay in dealing with his complaint.

I issued a provisional decision in the case and said the following.

It was clear that Phoenix made a mistake as it accepted that it gave Mr C wrong information about the reason that the amount of his transfer value had reduced. Where there was a mistake, I could consider an award for financial loss and distress and inconvenience caused by the mistake.

Mr C said he was called by Phoenix around the time of his 55 birthday. He called back without success and then received an email from Phoenix of 28 July 2022 it said:-

Morning Mr C, I had just picked up your message I can confirm that my colleague was just calling to confirm that that as you are now 55 the offer we previously sent is no longer valid. When you do decide to commence or transfer out in the future the Guarantee value will then be dealt with under separate cover from your basic policy benefits.

Your Benefit Guarantee remains in force until death, retirement or transfer out once one of those events occur we will commence our checks again to re calculate your Benefit Guarantee.

I thought this email was factually correct as the transfer value that was issued in April 2022 (which showed a value of around £283,000 of which around £233,000 was due to the benefit guarantee) said it was guaranteed until 11 June 2022. The transfer value was clear that once expired the future value could be higher or lower.

So by the time of the July email the previous 'offer' was no longer available. However the email suggested that is because he was 55 whereas the offer had already lapsed. There was a change post age 55 but this was not explained. I asked Phoenix to explain what it meant by the previous offer and whether it was referring to something else, but it had not replied to explain this. The email did not say that the transfer value will be lower because Mr C is now 55 but it seems this is what he has implied from the email. I didn't think the email was clear and I didn't think it was clear what is meant by the previous offer.

Mr C then received a retirement pack in early September 2022 but it did not mention the Benefit guarantee. This was provided a few days later but the total value of both, was around 30% lower than that quoted in April 2022. The value for the main policy was now around £46,000 and the Pension Guarantee around £167,000 (around £213,000 in total). Mr C was told this was because he had reached age 55 but he had not been warned about this change. In fact this was wrong which is why it was never mentioned.

This service did not have any copy email or telephone call setting out this conversation but Phoenix refer to this in their final response letter. So assumed this is what was actually said. I asked Phoenix for a copy of the communication but had not received it.

Phoenix explained in its letter of April 2023 that now he had turned 55 he could take his retirement benefits or take an open market option. It could not pay the benefit guarantee until either he transferred or started to take his benefits. However because he was 55 the benefit guarantee was now dealt with under separate cover from his basic plan benefits. The method of calculating the value of the guarantee had not changed and was prescribed by the financial regulator with investment assumptions updated quarterly. Due to changes in Gilt yield the amount had changed.

Based on what Mr C said in reply to the view from the investigator he still seemed unclear what changed when he reached 55 and why. I agreed that this had not been fully explained and it wasn't clear why the benefit guarantee is now quoted separately from the rest of his pension and further what changed post 55 and why. To that extent I thought Phoenix had failed in its obligation (set out in the Financial Regulator's handbook) to pay due regard to Mr C's information needs and to communicate in a way that is clear fair and not misleading.

Financial loss

An award for financial loss is intended to put Mr C back as closely as possible back into the position he would have been had there not been a mistake.

In this case the mistake was giving Mr C the wrong reason for the change in the amount of the transfer value. But I had no evidence to show the amount of transfer value quoted was wrong.

If Phoenix had given the correct reason the amount of the transfer value quoted would not have changed as it was always correct. So Mr C didn't miss out because he was given the wrong reason for the change and he didn't suffer any financial loss as a consequence of being given wrong information by Phoenix. So I cannot direct that Phoenix should pay him a higher transfer value that is no longer valid as it has expired.

Distress and inconvenience

I could however consider an award for distress and inconvenience caused by the impact of that mistake. The purpose of such an award is not to punish Phoenix or to impose a penalty large enough that it would notice but to reflect the impact of the mistake on Mr C.

I considered what Mr C had said about the impact on him. In considering this impact I had considered how long the events continued and his circumstances at the time.

I could see he says the mistake was very upsetting for him and caused him distress. He thought that he had missed out on an opportunity to take a higher transfer value because of his age, but this had not been explained to him before he turned 55. He was so concerned he spoke to a financial adviser. He also said that when Phoenix called with the outcome of his complaint he explained to them that he was recently bereaved but the call continued.

This added to his stress.

It seemed to me that he was given incorrect information in July or September 2022 and Phoenix gave correct information in its reply in April 2023. The time period over which Mr C felt there was a mistake extended to more than six months. In the light of what Mr C had said about the impact on him and the time period that the circumstances continued, I thought an award of £450 was fair and reasonable in all the circumstances of this case.

I noted that Phoenix had offered £50 for delay in dealing with his complaint. This service can't consider complaints about how Phoenix dealt with his complaint. I understand that the total award offered by Phoenix remains at £200 including this £50.

Before I issued my final decision I invited Phoenix to:-

1. Provide a copy of the call or email that it accepts caused confusion.
2. Explain again in a manner that will help Mr C to understand what changed when he reached age 55 and why that change was made.

I proposed to uphold this complaint in part.

I proposed to direct that Phoenix Life Limited should within 30 days of this service notifying it that Mr C had accepted this decision pay him a total of £450. However for the avoidance of doubt if and to the extent that it had already paid all or part of the £200 it need only pay such further amount as is required to bring the total to £450.

Mr C said that the communication issues continued. He said Phoenix had told him the February 2023 Guarantee value would not have changed. He challenged this and was promised a call back but had not had one. He had requested a current valuation for his pension but not received one for the guaranteed part. He could not see that the guaranteed value from February would be current given the lapse of time. He later added that he had now received an updated pension guarantee value and both mis-sold plans were listed. However later only one plan number was listed. He didn't think Phoenix had calculated the correct figure.

Phoenix said that it agreed with the timeline of events it had been sent. It said there was no change in the options available to Mr C when he turned 55. While he was under 55 it offered a valuation of both the personal pension and guarantee together. Over 55 it provided these separately. With respect to the offers sent, he was under 55 when the offer dated 28 April 2022 was sent. That included both the policy and guarantee values. The next offer dated September 2022 was made after Mr C reached 55. It stated

"Please note that we cannot pay the value of the Guarantee as below until you either transfer out your personal pension policy XX(number) or commence the benefits held in your employer's pension scheme. If neither of these events happen the Benefit Guarantee will remain in place until you do decide to transfer or retire, or will also be payable on death."

Phoenix confirmed that the method of calculation did not change after he reached age 55, just that it now quoted the benefits separately. It said the drop in the value of the Guarantee was because less money was required to fund the benefit that Mr C lost out on. It had explained that *"to place a value to a defined benefit, we estimate the amount of money needed which, if invested, would be sufficient to provide the benefit. The investment returns are linked to Gilt yields, the return on which, was particularly low for a number of years. This means a greater sum of money is required now, to fund the defined benefit payable. During the past 12 months, returns on Gilts (the yield) has increased dramatically, this has resulted*

in a smaller pot of money required to fund the defined benefit. It is important to note the assumptions for investment returns and inflation is set by the FCA for pensions review mis-selling cases”

It said the fact Mr C was now over 55 had no bearing on the calculation it was the timing of it. Each quarter, starting on 1 January, the assumptions for returns and inflation are updated. This can lead to a decrease or increase in the transfer value. All of Mr C’s offers have been calculated in different quarters. It’s nothing to do with the fact that he was under or over 55 that the value may go up or down.

With respect to the recent figures provided to Mr C it apologised that only one plan number was listed on one of the options. It said this seemed to be an administrative error.

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.

I have considered the replies from both parties. I note that Phoenix has not as requested supplied a copy of the call or email that caused Mr C confusion, so I have not changed my mind that it did cause confusion.

Based on the evidence presented and my experience, on balance, it seems that the changes in the value of Mr C’s pension is due to the changes in the underlying assumptions for calculation of the guarantee values.

I can understand that it is frustrating that Phoenix has now decided to send valuations of the different parts of his pension separately and not together as was the case before Mr C reached age 55. But that is a business decision for Phoenix as to the manner in which it runs its business and I cannot tell it how to do that.

I note Mr C’s comments about the February valuation of the guarantee remaining valid. I also note the administrative error on the options issued to Mr C. These are not part of his original complaint so I have not considered them further here other than to note that Phoenix has commented on what it believes is the reason for this. It remains open to Mr C to raise a further complaint about matters not covered by this complaint.

I remain of the view that Phoenix did not communicate clearly and Mr C was left with a wrong impression for around 6 months.

For those reasons I have not changed my mind.

Putting things right

I think Phoenix should within 30 days of this service notifying it that Mr C has accepted this decision pay him a total of £450.

My final decision

I uphold this complaint in part.

I direct that Phoenix Life Limited should within 30 days of this service notifying it that Mr C has accepted this decision pay him a total of £450. However for the avoidance of doubt if and to the extent that it had already paid all or part of the £200 it need only pay such further amount as is required to bring the total to £450.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 January 2024.

Colette Bewley
Ombudsman