DRN-2749179

The complaint

Mr D has complained about Phoenix Wealth Services Limited (Phoenix). Amongst other complaint points raised, he's said Phoenix ignored his instructions when dealing with paying cash distributions into his pension. As a result, he feels he has lost out financially.

What happened

Mr D held a pension with Phoenix which was invested in part in the Woodford Equity Income Fund (WEIF). In June 2019 the fund was suspended and subsequently formally wound up in January 2020.

Following this the Authorised Corporate Director (ACD) of the fund, a business not related to Phoenix, began the first phase of paying out any available capital distributions to relevant investors. And in relation to Mr D's pension investment, the ACD sent a portion of his share of the capital raised to Phoenix to attribute back to his pension.

For Mr D, and any other clients affected in the same way, Phoenix invested these cash distributions into the Artemis Income Fund (Artemis) which it says was chosen because it closely matched the characteristics of the WEIF. It also made it clear it would continue to do this with any further distributions that would follow.

Phoenix informed Mr D of the action it had taken in February and March 2020. In these letters Phoenix included a statement that the fund switch to Artemis had been completed *in accordance with Mr D's instructions*. This is what prompted Mr D to raise his complaint initially. He's said he had instructed Phoenix to pay the capital distributions received from the ACD to him directly so by reinvesting the monies it had failed to follow his instructions. He was also unhappy that Phoenix had said the payment into Artemis was made in accordance with his instruction when this wasn't true.

When Phoenix investigated the complaint, it agreed its letters had contained incorrect information about what Mr D had instructed it to do but explained this is what the ACD of WEIF has directed it do. It also accepted that it should have sent the flexi access drawdown benefit options form to Mr D when it wrote out to him which would have enabled him to release the monies if he had wanted. It apologised for the error and offered Mr D compensation. It also stated it would ensure Mr D would not suffer any loss if he returned those forms completed.

Mr D remained unhappy so further communication between him and Phoenix continued. Mr D also contacted the ACD to find out exactly what instructions it had provided to Phoenix and he found it hadn't provided any such instructions.

Mr D raised this with Phoenix and it apologised again for this error and offered further monies by way of compensation.

As Mr D remained unhappy with Phoenix he brought his complaint to this Service. He reiterated the point that the cash should have been paid directly to him rather than be re-invested. He also commented that as Phoenix had already provided incorrect/untrue information how can it be trusted. He also questioned why he should incur charges to start the drawdown process when, in his view, Phoenix should have paid the monies directly to him in the first place.

The complaint was assessed by one of our investigators who was of the view it couldn't be upheld. She felt that it was reasonable for Phoenix to have reinvested the cash distributions in to Mr D's pension. And she was satisfied with the amount Phoenix had offered Mr D to compensate for the errors it had made.

Mr D didn't agree with the assessment.

As no agreement could be reached the complaint has been passed to me to decide.

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 am not upholding this complaint.

As outlined above Mr D has expressed how unhappy he is Phoenix reinvested his cash distributions released from the suspended WEIF rather than paying him directly. He's said there is nothing that states this can't be done so he feels Phoenix has made a mistake by reinvesting into Artemis. Therefore, any loss suffered by being in this fund along with any fees and charges incurred by moving out of this fund should be covered by Phoenix.

However, from everything I have seen, in my view Phoenix didn't do anything wrong in reinvesting the money received from the ACD.

When a pension is still in place if anything needs to be paid into it as a result of a redress payment born out of an error the first course of action is always to pay that money back into the pension – it is the pension that has suffered a loss therefore it is the pension that should be made good again. This is the approach used in this Service and it's based on the principal of trying, as much as possible, to put a consumer into the position they would have been in had the error not occurred. Only if this can't be done would we expect a cash payment to be made directly to the pension holder. And in reality this is a last resort because the cash being paid to a consumer would have tax implications.

So in relation to what Phoenix did with the cash distributions I don't think it did anything wrong, and even though Mr D feels he provided clear instructions for the payment to be made directly I am satisfied that Phoenix acted correctly in reinvesting the cash distributions it received from the ACD. It is right for the funds to be paid back into the pension and if Mr D wants those monies, he can follow the drawdown process already explained to him.

With regards to the choice of Artemis, it is confirmed that it was Phoenix's choice because it was close to the characteristics of the WEIF. It isn't for me to challenge this, but I am satisfied with Phoenix's rationale for choosing the fund. The fact that it may have performed badly isn't because of anything Phoenix has done nor is it it's responsibility – this is the nature of investing and the value of an investment can go up and down at any time. I also don't think Phoenix had any reason to ask Mr D where he wanted the cash distributions paid because as I have said above the first method in a situation like this is to always pay any loss back into the pension.

However, having said that, it is disappointing to see that Phoenix gave wrong information to Mr D about the ACD choosing Artemis. I am also disappointed to see that Phoenix stated in its letters that Mr D had *instructed* them knowing full well this wasn't the case. I therefore understand why this would affect the trust Mr D now has in Phoenix. But I can see Phoenix has already offered Mr D a total of £250 in recognition of these errors and in my view this amount sufficiently recognises the impact of these mistakes. So I have no reason to ask Phoenix to pay anything further.

Fundamentally, Mr D is now in the position he would have been in had there been no problems with the WEIF and there had never been any cash distribution payments required. If Mr D now wants to release this money from his pension, in line with the terms and conditions of his plan he can start the drawdown process. And even though Mr D had already started this for his existing pension he would now be entitled to a maximum of 25% of the Artemis fund value as tax free and the remainder would be transferred to the drawdown and Mr D would have the option to take the taxable income or switch funds. While these actions would mean Mr D would incur charges, I am satisfied with Phoenix's actions of paying into Artemis and these charges are something Mr D would have always been charged therefore would always have had to pay them.

I understand Mr D's frustration and I do think Phoenix could have done better from a customer service and information perspective. But I am satisfied it has sufficiently recognised its errors. I am also satisfied with Phoenix paying the cash distributions back into Mr D's pensions because this is the right way handling such matters when a pension has been disadvantaged and is still active.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 November 2021.

Ayshea Khan
Ombudsman