

The complaint

Mr H has complained about how Phoenix Wealth Services Limited (trading as Phoenix Wealth) dealt with distributions paid into his pension account. He feels he has lost out financially. He is also unhappy that they didn't transfer his account to another provider, as he had requested.

Mr H is being represented in this complaint but for ease I have referred throughout only to Mr H.

What happened

Mr H held a pension account 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 H's holding, the ACD sent a portion of his share of the capital raised to Phoenix to attribute back to his account.

For Mr H, 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 H 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 H's instructions. This prompted Mr H to ask his advisor to switch into another fund. When this fund wasn't available and upon the advisor realising that Mr H had not chosen the Artemis fund, a complaint was raised and a request to transfer to another provider was made.

When Phoenix investigated the complaint, it agreed its letters had contained incorrect information about what Mr H had instructed it to do. However, they maintained they had been instructed to reinvest by the ACD and had acted fairly in investing the proceeds into the Artemis fund. They also confirmed that they weren't able to transfer the account to another provider as it still had a holding in the suspended WEIF.

Mr H remained unhappy so further communication between him and Phoenix continued and after further distributions had been paid from WEIF, they agreed they could transfer Mr H's account to another provider.

As Mr H remained unhappy with Phoenix he brought his complaint to this Service. He reiterated the point that the cash shouldn't have been paid to a fund that he didn't choose and didn't think it was fair that the transfer had initially not been accepted.

The complaint was assessed by one of our investigators who was of the view it couldn't be upheld in full. She felt that it was reasonable for Phoenix to have reinvested the distributions as it did. And she was satisfied that the decision not to allow the transfer out due to the WEIF holding was a fair one. However, she did think Phoenix had caused distress in their communications and by suggesting to the advisor in a letter that Mr H had selected the Artemis fund. She was of the opinion that £250 compensation should be paid, which Phoenix agreed to.

Mr H 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.

Mr H has expressed how unhappy he is Phoenix reinvested his cash distributions released from the suspended WEIF, into a fund he didn't choose. He feels Phoenix has made a mistake by reinvesting into Artemis. Therefore, any loss suffered by being in 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 in the way they did.

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.

I appreciate that Mr H and his advisor are unhappy with the Artemis fund that was chosen. However, I am satisfied that Phoenix acted fairly in choosing a fund that they felt was a similar fit, attempting to put Mr H back in the position he would have been in but for the WEIF issue. It was fair to keep the amount within the pension and I haven't seen anything to conclude it could have been held as cash within this pension policy. Further, I am not sure that would have been the fair thing to do instead of reinvestment with the option of switching.

The main issue here appears to be the wording of the letters from Phoenix and that they implied to the advisor that Mr H had chosen the Artemis fund to reinvest into. Phoenix acknowledge that this wording (on multiple letters) was misleading and agreed to pay £250 for the distress and inconvenience they caused. I agree that this is fair. I acknowledge that the Artemis fund price fell significantly between the distribution payments in January and February 2020 and Mr H's request to switch funds and that Mr H's advisor was led to believe that the fund choice was Mr H's.

However, Mr H also received letters in January and February 2020, which informed him of the transaction and his option to switch into another fund of his choice. It was the latter letter that prompted a switch request. Whilst I think compensation should be paid for the inconvenience, I don't think Phoenix should compensate for the fall in the Artemis fund price as Mr H received letters and could have switched prior to the price fall.

Mr H is also unhappy that his request to transfer this pension to another provider was not allowed in June 2020. Phoenix confirmed at the time that this was because there was a suspended fund holding and further distributions to come after it was wound up. I think it was reasonable for Phoenix to make a choice to allow the transfer or not, and decided they wouldn't. I can see that following all distributions Phoenix then decided they would allow the transfer. They wrote to the new provider they had received the transfer request from in November 2021 and January 2022, explaining a new transfer form was needed. I think Phoenix acted fairly here and it was reasonable to contact the new provider for this new information.

In summary, I think Phoenix acted reasonably with the fund choice for the WEIF distribution. Whilst their communications were mis-leading, Mr H was still aware of what had happened and could have requested a switch prior to the price fall. I think that the £250 offered is reasonable in the circumstances. I also think Phoenix acted reasonably in making a decision not to allow the transfer as it had a suspended holding and took reasonable steps to communicate their later change of decision.

My final decision

My final decision, for the reasons set out above, is that I uphold this complaint in part.

I require Phoenix Wealth Services Limited (trading as Phoenix Wealth) to pay Mr H £250, if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 December 2022.

Yoni Smith
Ombudsman