

## **The complaint**

Mr W complains that there were undue delays in the transfer of his Phoenix Life Limited ('Phoenix') pension to another provider.

During these delays the pension transfer value fell, causing Mr W financial loss.

In addition, Mr W does not believe the fall in value of the pension is reasonable given the size of the fall when compared to the wider economic circumstances at that time.

Mr W is being assisted in this complaint by his financial adviser.

## **What happened**

Phoenix issued a retirement pack to Mr W on 3 November 2021. At this time the transfer value of the pension was around £40,000 with the documentation issued confirming that this value was not guaranteed. Reminder letters were issued on 3 March 2022 and 28 April 2022.

There was a call between Mr W and Phoenix on 11 May 2022. During this call Mr W explained that he had chosen to take all the benefits as a cash payment. However, as the policy contained guarantees, and was valued at over £30,000, Phoenix explained that financial advice would be needed before Mr W could take such action.

Phoenix issued a retirement application pack on 18 May 2022. This provided a transfer value of around £35,000 but confirmed that this was not guaranteed. Mr W returned this to Phoenix on 27 June 2022.

On 6 July 2022 Phoenix wrote to Mr W and said that a letter confirming financial advice had been received remained outstanding. As no response was received Phoenix issued a reminder letter on 27 July 2022.

Mr W's adviser wrote to Phoenix on 4 August 2022 asking for policy information. Phoenix responded on 13 August 2022 stating that the signature included on the letter of authority provided by the adviser did not match Phoenix's records, and as such two forms of identification for Mr W would need to be provided before the information could be sent. Phoenix sent another letter asking for this identification on 2 September 2022.

Following a call between the adviser and Phoenix on 6 September 2022 appropriate identification was emailed to Phoenix on that day. Phoenix subsequently issued the policy information to the adviser on 7 September 2022. This policy information included a transfer value of around £33,000.

There was a further call between the adviser and Phoenix on 23 September 2022. During this call it was confirmed that the transfer of the funds could be requested via the online Origo system and that the letter confirming financial advice remained outstanding.

The advice letter was received on 6 October 2022 with the transfer request received via the Origo system the following day.

As the value of the policy had dropped to around £27,000, Phoenix updated the Origo system on 10 October 2022 to ask for confirmation whether the transfer was still to proceed.

Between 10 and 31 October 2022 this transfer value dropped further by around £800 however the higher value of around £27,000 was honoured by Phoenix, with the £800 being considered an ex-gratia payment.

The transfer was completed on 31 October 2022.

Given the reduced transfer value Mr W's adviser had raised a complaint with Phoenix on his behalf. Phoenix issued their response to this complaint on 16 November 2022. This explained that the complaint was not being upheld as Phoenix did not believe they had delayed the transfer of the policy.

Whilst there had been a delay in issuing policy information to Mr W's adviser this was due to inconsistent signatures and Phoenix stood by their decision to seek further identification before issuing the policy information. Phoenix also stood by their calculation of the transfer value.

Mr W's adviser did not accept the response provided and asked additional questions of Phoenix regarding their decision to reject the letter of authority, the transfer value calculation that had been performed, and why the transfer had not been completed automatically as soon as the policy value fell below £30,000 (as at that point financial advice would no longer have been required).

A second response letter was issued by Phoenix on 3 January 2023. Firstly, they explained that they stood by their process to check the relevant signatures. They also explained that were sorry they had previously said they would provide detail into their transfer value calculation however this was considered business sensitive information and as such no further detail could be provided. Finally, Phoenix explained that it was not their standard process to monitor transfer values to check whether they fall below the £30,000 limit where financial advice becomes necessary.

On 17 January 2023, Phoenix wrote to Mr W's adviser to re-state that the complaint was not being upheld.

Phoenix wrote to Mr W's adviser on 24 February 2023, this re-confirmed their stance regarding the complaint.

As Mr W and his adviser did not accept Phoenix's responses to the complaint the issue was referred to this service.

Our investigator looked into things and issued findings which concluded that Phoenix had not acted unreasonably and as such the complaint was not upheld.

Mr W did not agree with the investigator's findings and stated that given he had submitted a request to encash the policy (in June 2022) this should have been acted upon as soon as the policy value fell below the £30,000 limit, with the subsequent information requests from his adviser not withdrawing this initial request. Additionally, whilst Mr W noted his policy value was linked to annuity rates, he did not believe the reduction in value was proportionate to changes in annuity rates.

Finally, Mr W noted that Phoenix had failed to act appropriately in relation to a subject access request that had been submitted, that the change in transfer value could not be considered in line with the Customer Duty rules (or treating customers fairly) and that if Phoenix had unfairly applied a Market Value Adjustment on Mr W's policy.

The investigator was not minded to change their findings and as no agreement could be reached the case has been passed 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.

As part of this complaint Mr W and his adviser have questioned whether Phoenix's actions are in line with the Consumer Duty standard introduced by The Financial Conduct Authority. The Consumer Duty applies to open products and service from 31 July 2023 and to closed products and services from 31 July 2024. As such the principles set out in the Consumer Duty cannot be applied to this complaint.

Additionally, Mr W has questioned Phoenix's actions in responding to a Subject Access Request. This issue is regulated by the Information Commissioners Office and is not something which this service can consider. Phoenix have provided all the information requested of them by this service in relation to this complaint and as such I have gone on to consider the relevant complaint issues.

There are several issues which need to be considered and as such I have tried to break these down and consider them individually below.

Dealing firstly with the timeline above and whether Phoenix unfairly delayed the transfer I cannot see a point during the timeline when Phoenix's actions were unreasonably delayed.

Mr W was informed that confirmation of financial advice would be needed on 11 May 2022 with this not being received by Phoenix until 6 October 2022. The only period between 11 May 2022 and 6 October 2022 specifically questioned by Mr W (and his adviser) relates to Phoenix's decision to reject the initial letter of authority included in the 4 August 2022 request for policy information.

Phoenix stated that the signatures on this request did not match the ones on file and as such they requested additional identification. There were differences between the signatures and whilst I accept that is entirely reasonable (and not unusual) for a signature to change over the length of time this policy had been in force, businesses must have strict processes in place to ensure they protect their policyholder's data.

As such, I do not consider it unreasonable for Phoenix to request further identification before releasing Mr W's policy information to a third party.

Within the complaint Mr W has stated that he had submitted a request to encash the entirety of the policy and only sought financial advice as this was mandatory given the policy was valued at over £30,000. As such, as soon as the policy value fell below this £30,000 mark the initial encashment request should have been triggered.

However, for this to occur Phoenix would have to calculate transfer values for the policy each day, something which I do not believe it is reasonable to expect.

Some pensions have transfer values based on the performance of the investments held within that pension. Standard unit linked investment funds update their unit prices daily, with the value of the pension simply being the total value of the units held. Other pensions are invested in with profits investments with the transfer value being the policyholders share of the underlying with profits fund.

Mr W's pension operated differently. Whilst his contributions were invested into the with profits fund, his pension transfer value was based on the income the pension guaranteed to pay him in retirement. The transfer value represented the cost of providing this income (rather than the performance of the with profits fund) and as such was impacted by several factors, most notably changes in annuity rates.

As such Mr W's transfer value required a more complex calculation, and to ask Phoenix to complete such a calculation, daily, for all consumers with this type of policy once the process of an encashment or transfer has commenced, is not considered reasonable.

I would also note that whilst this would, potentially, have meant that as soon as the policy value fell below £30,000 this could have been paid directly to Mr W, this was not the course of action Mr W eventually chose. When informed that the value had fallen to around £27,000, Mr W and his adviser were asked by Phoenix whether the transfer was still to proceed. At this point Mr W could have instructed Phoenix to pay the £27,000 directly to himself, however, chose to proceed with the transfer to a new pension provider.

I have considered the fact that Phoenix did provide Mr W with an ex-gratia payment of around £800 to reflect the changes in policy value between 10 and 31 October 2022. As per the investigator's findings, and in line with the documentation on file, I do not consider this to be an admission of wrongdoing on Phoenix's part and as such have not given this further consideration within this decision.

Within the initial discussions between Phoenix, Mr W and his adviser, Phoenix originally stated that they would provide detail on their transfer value calculation. Subsequently Phoenix have stated that this calculation is business sensitive, and no detail can be provided. This is not unusual, and I would not expect any business to reveal such information.

Within his complaint submissions to this service Mr W has noted that from 20 September 2022 to 31 October 2022 annuity rates rose by around 6% whilst the transfer value fell by around 18% and as such considers the fall in value of his pension to be inconsistent with changes to annuity rates.

Phoenix did provide further clarification stating that they were happy that the basis of the calculation was fair and in line with their internal policy. In addition, Phoenix noted that they expected annuity rates had improved by around 10% since the start of 2022 and had also seen significant rises in Gilt yields which impacted their calculation and the transfer value.

Overall, I see no reason to doubt the calculation performed by Phoenix. I can appreciate Mr W's observation that the reduction in transfer value seems inconsistent with changes in annuity rates, however Phoenix have checked their calculation and confirmed that it is correct. I can also understand Mr W's desire to see and check this calculation for himself however this is not something I would expect Phoenix to offer.

In respect of the reduction in value Mr W's adviser has questioned whether a Market value Adjustment ('MVA') of this size can be implemented by Phoenix without sufficient clear explanation of why it is being applied. However, I can't see that a MVA penalty has been applied to this policy, as above, Mr W's policy did not have a traditional fund value, with its

transfer value only ever being an estimated cost (or value) of the income it would provide in retirement.

Whilst I can appreciate Mr W's frustration at the lack of detail available in relation to the calculation of his transfer value, I do not consider Phoenix's actions to be inconsistent with the requirement for them to provide "clear, fair, and not misleading" information to their policyholders.

It is unfortunate that the generally opaque nature of with profits investments, and the business sensitive nature of the transfer value calculation limits what information can be provided. However, overall, Phoenix have provided all the information I would reasonably expect them to.

As such, in line with the outcome issued by our investigator I am not upholding this complaint. I have concluded that Phoenix did not unduly delay the transfer of Mr W's pension with their being no evidence that the transfer value calculation is incorrect.

### **My final decision**

Whilst I sympathise with Mr W's circumstances, and appreciate that his policy fell considerably in value, I have concluded this was not as a result of any error made by Phoenix Life Limited and as such am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 February 2024.

John Rogowski  
**Ombudsman**