

The complaint

Mr F complains about mistakes made by Phoenix Life Limited (Phoenix) in relation to the transfer of his pension

What happened

Mr F said that when he transferred his four pensions, Phoenix applied a market value reduction (MVR) of around £17,000. It later agreed it should have told him there was a date at which he could transfer without an MVR. It asked him to return the transfers so that it could pay the correct amount. Mr F arranged for the return but Phoenix then said the original amount paid was too high as incorrect bonus rates had been applied. The value should have been around £151,000 and not the £168,000 that was paid. Mr F said he had taken advice based on what he had been told about values at the time. The overall reduction was around £34,000. This had created a lot of stress and worry and it had dragged on for several months. He wanted them to honour the original figures set out in their letter of 14 March 2023 and cover the loss due to the delays.

Phoenix apologised. It said the values originally transferred on 29 and 30 December 2022 and 3 January 2023 were incorrect. It could not honour the previous payment amount that had been returned to them. It offered £1,000 as compensation. It also noted that the transfer value was constantly moving up and down so by the time it responded the value was around £148,000. However it offered to transfer the amount of around £151,000 and complete a loss assessment for the delay to reflect lost investment performance. It had already apologised and offered £200 for the failure to notify Mr D of the MVR free date which resulted in the MVR being applied.

My Provisional decision

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

It was clear that Phoenix made a mistake in the amount transferred and that was not disputed.

Where there was a mistake I could consider an award for financial loss and distress and inconvenience arising from that mistake.

Financial loss

An award for financial loss would seek to put Mr F back in the position he would have been in but for the mistake. In effect I needed to consider what would have happened had everything gone correctly according to plan. In reality that would have meant that Mr F's pension plans would have been transferred without the application of an MVR and that the amount transferred would have been correctly calculated.

For that reason I could not direct that Mr F should receive the higher amount actually paid out nor the higher amount plus the MVR which he hoped to receive. To make such a direction would give him more than he was entitled to receive.

I had considered that the money was actually paid and then returned in the expectation of a higher amount being returned. But while I could understand this caused a huge loss of expectation I didn't think it entitled Mr F to either higher amount. I said that because had the money not be returned Phoenix could still have pursued Mr F for the overpaid amounts. I asked it about its approach to overpaid transfers and it said that broadly speaking for overpayments like this it would generally try to recover those overpayments in line with its process where it felt appropriate to do so. So there was no guarantee that Mr F would not have had to repay the overpayment made to him once it was realised there had been an overpayment.

I had also considered what it said in its letters at the time. These said that it would 'reinstate the plans, without the MVR, and re-transfer the full funds' which is what it is still offering to do.

However I did think Mr F had lost out in that the money still had not been transferred. While it may have increased in value with Phoenix it might have increased at a greater rate had it been transferred and invested in the new fund that his adviser recommended. I could see that Phoenix had offered to pay the around £150,000 value that would have applied at Mr F's 66 birthday (as that is the date at which the MVR would cease to apply) plus lost investment returns. I thought that was reasonable but due to the time that had passed I also thought this needed to be checked to make sure his remaining policy was not of greater value.

I asked Mr F what he would have done differently had he known the correct figures at the start. He provided copies of a cashflow analysis that showed he needed to scale back his plans for retirement and in fact needed to continue working, which is what he had done.

Under the original plan he was going to use some of the money to travel and have a holiday with wider family and possibly help his children financially. He confirmed that he had not entered into any financial obligations in the light of the higher transfer values. So I didn't think he made a financial loss in reliance on the higher amount being paid.

Given the time that had elapsed Mr F may need to take new advice about the decision to transfer. If he had to take further financial advice in respect of the new transfer I thought it was reasonable that Phoenix should pay for that. I proposed to allow a period of 3 months from my final decision for Mr F to take advice and request a transfer. If he did not request a transfer within this time Phoenix would not need to make any further payment other than for distress and inconvenience and further financial advice if any.

Distress and inconvenience

An award for distress and inconvenience was intended to reflect the impact of the mistake on Mr F and not to punish Phoenix. I thought that Mr F had significant loss of expectation and been put to significant time and trouble to arrange the re transfer of the money, then chase Phoenix to find the money. Further he had to continue working. The events had gone on for nearly a year and still were not resolved due to this complaint. I thought these events had caused substantial distress, upset and worry.

However I thought the offer to pay £1,000 was fair and reasonable in the circumstances and was of the magnitude I would have awarded had Phoenix not made an offer.

I proposed to uphold the complaint and direct that Phoenix Life Limited should

1. within 30 days of Mr F indicating that he accepts this decision pay Mr F £1,000 for distress and inconvenience (such amount is in addition to the £200 which was offered and may have been paid pursuant to the first complaint about the application of MVRs) plus such an

amount for further financial advice about any new proposed transfer as I specified in my final decision (subject to receipt of an invoice from Mr F for that amount).

2. If within 90 days of Mr F accepting this decision Mr F submitted a valid request to transfer his benefits from all four of the policies affected by this decision then Phoenix should transfer the:-

(a) The value of his policies at the date of valuation for the purposes of the transfer request (without any MVR), or if greater

(b) The total amount of the transfer value as at Mr F's 66 birthday (which for the avoidance of doubt does not include any market value adjustment) together with investment return on such amount from the date of his 66 birthday to the date before actual payment pursuant to this decision as though the money had been invested solely in Royal London Governed Portfolio since his 66th birthday.

I proposed to uphold this complaint and make the direction for loss and distress and inconvenience set out above.

Phoenix said it had no further comments.

Mr F said he wasn't happy with my conclusions. He still felt it was unfair as his plans for retirements had to change. He suspected Phoenix would not have pursued him for the overpaid amount if he had not returned it. He felt the whole process created a general mistrust of the financial services industry. He said he would probably need further financial advice which would cost up to 2% of the value transferred.

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.

Based on what the parties have said I have not changed my mind.

Putting things right

In order to put things right Phoenix Life Limited should pay the amounts I have proposed for any financial loss and distress and inconvenience.

My final decision

I uphold this complaint.

I direct that Phoenix Life Limited should :-

1. within 30 days of this service informing it that Mr F accepts this decision pay Mr F £1,000 for distress and inconvenience (such amount is in addition to the £200 which was offered and may have been paid pursuant to the first complaint about the application of MVRs) AND.
2. Within 90 days of Mr F accepting this decision pay Mr F such amount not exceeding 2% (plus VAT) of the total transfer amounts for the policies, in respect of further financial advice about any new proposed transfer (subject to receipt by Phoenix of a valid invoice from Mr F for that amount). For the avoidance of doubt this amount should be paid whether or not Mr F then requests a transfer of the policies within the

90 days referred to.

2. If within 90 days of Mr F accepting this decision Mr F submits a valid request to transfer his benefits from all four of the policies affected by this decision then Phoenix shall transfer the:-

(a) The value of his policies at the date of valuation for the purposes of those transfer requests (without any MVR), or if greater

(b) The total amount of the transfer values as at Mr F's 66 birthday (which for the avoidance of doubt does not include any market value adjustment) together with investment returns on such amount from the date of his 66 birthday to the date before actual payment pursuant to this decision as though the money had been invested solely in Royal London Governed Portfolio since his 66th birthday to the day before payment of the transfer amounts.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 29 February 2024.

Colette Bewley
Ombudsman