

The complaint

Mr W complains that the value of the Free Standing Additional Voluntary Contribution plan (FSAVC) he held with Phoenix Life Limited (Phoenix) fell by around £7,000 just before he claimed his benefits. He also complains that Phoenix gave him conflicting information and didn't respond to his complaints in a timely manner.

What happened

Mr W had an FSAVC with Phoenix which started on 1 October 1993. The plan was set up with a Normal Retirement Date (NRD) in July 2022. And had always been invested in a With Profits (WP) fund.

On 27 April 2022, Phoenix sent Mr W a retirement options pack as he was approaching his NRD. This stated that the estimated value of the plan at NRD was £100,005.21. The pack stated that the value shown wasn't guaranteed. And explained why this was the case.

I understand that Mr W called Phoenix on both 6 May 2022 and 9 May 2022 for information about his retirement options. Phoenix said it explained his options and the claim process during these calls.

On 9 May 2022, Phoenix wrote to Mr W to tell him that the estimated transfer value for the plan at that date was £99,450. It detailed how this value had been reached. And noted that the value quoted included a final bonus amount which wasn't guaranteed. It also said that the actual amount of the final bonus payable would only be known at the time benefits were taken.

Mr W called Phoenix again on 27 June 2022. He told it he was going to take a Tax-Free Cash (TFC) lump sum. And then use the remainder of his pension to buy an annuity with a provider I'll refer to as provider C using the Open Market Option (OMO). He also said he wanted correspondence by email as well as post. Phoenix said that during this call, it informed him that his plan would be disinvested on his NRD and placed into a cash fund. It also said that it explained the final bonus on this call. And that it wasn't guaranteed. Phoenix said that it told Mr W that it would send the forms both he and provider C would need to sign by email as requested. And that he could email the completed forms back to it.

Phoenix issued a "starting pension benefits" letter dated 27 June 2022. This confirmed Mr W's his retirement choices. And showed an estimated value of £93,944.29 at his NRD.

Mr W called Phoenix on 28 June 2022. He said he hadn't received the 27 June 2022 letter. Phoenix said it would send it to him by email. And explained that as it needed the claim forms as a wet copy, Mr W wouldn't be able to email completed forms back to it, despite what it'd told him the previous day.

Mr W spoke to Phoenix again on 1 July 2022. Phoenix said that during this call, it explained that after NRD the WP investments would be disinvested and go into a cash fund. It said it also told him that although the guaranteed sum and any bonuses added wouldn't change before NRD, the final bonus could.

I understand that Mr W checked his plan value on his myPhoenix website on 27 June 2022. He said the value was £99,450 on this date. But the value quoted in the retirement pack that had the same issue date was only £93,944. So he called Phoenix on 4 July 2022 to ask it why there was a £6,000 difference in the values he had been given on the same day.

Mr W called Phoenix again on 5 July 2022 as he wanted information on plan values. He also wanted to know what happened to his plan after NRD. Phoenix said it again told him the plan would go into the cash fund. Mr W said he'd been told it would stay in the WP fund. He didn't think any of the paperwork he'd received explained this disinvestment at NRD.

Mr W felt that he'd been given conflicting information which was delaying his claim. He was also unhappy that Phoenix hadn't called him back when it said it would.

Mr W called Phoenix again on 8 July 2022 to raise a complaint about its standards of communication. He felt it hadn't allowed him to make an informed decision about taking his benefits.

Phoenix then received a letter from provider C on 14 July 2022 about the annuity Mr W wanted to set up. It wrote to Mr W on 18 July 2022 to tell him that it'd paid £23,486.07 in TFC directly to his bank account. And that the remaining £70,458.22 had been used to buy the annuity with provider C. The total of these two payments was £93,944.29, which matched the amount quoted in the 27 June 2022 retirement pack.

I understand that Mr W called Phoenix on 14 July 2022. And that it gave him conflicting information about final bonuses as he'd now passed his NRD.

Phoenix issued its final response letter dated 31 March 2023, although Mr W disputes that it was sent at that point. He said he didn't receive it until by post until 26 June 2023.

The response covered the following complaint points:

- Mr W's frustration that he'd received inconsistent responses from Phoenix when he'd asked what would happen to his WP investments at his NRD if he didn't claim his plan benefits.
- Mr W not receiving a promised call back.
- Phoenix giving Mr W inconsistent answers about how he could send his completed claim form back to it.
- Mr W's unhappiness that he had two very different figures for the value of his plan as at 27 June 2022. And that when he'd called Phoenix to query this he didn't get an appropriate answer.
- Mr W felt that this information should've been made much clearer earlier on in the process. And that he hadn't been able to make an informed decision.

Phoenix acknowledged that it had given Mr W conflicting information about what would happen to the WP fund at his NRD. And how he could send it a completed claim form. It also apologised for promising Mr W a call back. It said this shouldn't have been promised as the team that would be dealing with Mr W's query didn't undertake call backs.

Phoenix offered Mr W £200 for the delay in answering his complaint. It also offered him £150 for the trouble and upset the conflicting information it had provided, and the incorrect promise to call him back, had caused him. It also offered him £20 to cover the cost of the

calls Mr W had needed to make.

Phoenix didn't uphold Mr W's last two complaint points. It said it was sorry that what happened to the fund at NRD wasn't mentioned in the pre-NRD documentation it'd sent Mr W. And said it would feed this back to the business. But it said that Mr W wouldn't have been able to take his benefits before his NRD, or before the bonus rate change on 1 July 2022. Phoenix also explained why Mr W had seen two different figures for the value of his plan as at 27 June 2022. It said that the myPhoenix value was a transfer value which represented the value that would've been paid if Mr W had claimed his benefits on that day. And that the lower figure quoted in the letter of the same date was the figure at NRD based on the new bonus rates which were now known and which would come into effect from 1 July 2022.

Unhappy with Phoenix's response, Mr W brought his complaint to this service in June 2023.

He said that there was a lot of information in Phoenix's final response which wasn't mentioned in any literature it'd previously sent him. And that this information was vital to allow him to make an informed decision about when to take his benefits. He felt that he'd lost almost £7,000 because of this. Mr W also felt that Phoenix hadn't provided sufficient compensation for this loss.

Our investigator felt that the steps Phoenix had offered to take to put things right were reasonable. She felt that Phoenix had provided incorrect and conflicting information. But she didn't think that Phoenix's actions had led to Mr W losing almost £7,000. She felt it had provided enough information to allow Mr W to make an informed decision when choosing his retirement options.

Mr W didn't agree with our investigator. He made the following points:

- Phoenix's compensation offer was too low. He felt the time he'd taken should also be considered.
- He felt our investigator had failed to consider many of his points because she didn't feel they had a direct impact on any loss incurred. He felt this was a very narrow view and that all his points formed part of the overall complaint.
- Mr W felt that Phoenix had violated the fundamental principle of providing complete and correct information to customers so that they could make efficient transactional decisions.
- He felt that the retirement packs were worded to protect Phoenix, rather than fulfilling their real purpose, which was to provide complete and correct information so that he could make an informed decision about his retirement options.
- Mr W said that Phoenix had acknowledged that it had failed to tell him that his WP funds would be moved to cash at NRD. He said that he'd never expressed to Phoenix that he wanted to take his benefits before NRD because it hadn't told him that his WP investments would be moved to cash at NRD. He also felt that Phoenix should've told him in the April 2022 retirement pack that there'd be a bonus rate change on 1 July 2022. He said this was especially the case when the NRD fell shortly after 1 July 2022, and so would be affected by any change.
- Mr W also said that it'd taken Phoenix a year to respond to his complaint. And that it had backdated its final response letter.
- Mr W felt that Phoenix should be required to pay him a much larger compensation

amount that it had offered. He felt that this would act as an incentive to improve its service.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm going to uphold it. But I consider that Phoenix made a fair offer in its final response letter. So I'm not going to ask it to change its offer. I know this will be disappointing for Mr W. I'll explain the reasons for my decision.

Before I start, I'd like to acknowledge Mr W's comment that our investigator had failed to consider some of his points. Like our investigator's view, my decision below will focus on the crux of the complaint. While I've read all of the information provided by both parties, I won't be commenting directly on every single point made. But I have considered each point in making my overall decision.

As Mr W feels that Phoenix violated the fundamental principle of providing him with complete and correct information so that he could make efficient transactional decisions, I first considered whether Phoenix provided Mr W with enough information about the final bonus for him to be able to make an informed decision about his pension options.

Did Phoenix provide Mr W with enough information about the final bonus?

Mr W said that the April 2022 retirement pack didn't state that final bonus rates would be reviewed twice a year on 1 January and 1 July. He also said it didn't state that the plan value shown in that retirement pack was based on the bonus rates applicable as at 1 January 2022. Or that the plan value at his NRD – which was after 1 July – would be based on the bonus rates applicable on 1 July 2022.

Phoenix said that although it usually reviewed its final bonus rates twice a year on 1 January and 1 July to reflect the latest market conditions, it did reserve the right to amend them at any time if required. It felt that it had explained that the final bonus wasn't guaranteed and could change at any time. It also said that this information was provided in the policy documentation and literature Mr W had received when the policy was taken out.

I've carefully considered all of the documentary evidence provided, as well as the testimony from both parties. Having done so, I'm satisfied that Phoenix did explain to Mr W in good time that final bonus wasn't guaranteed and could change at any time. I say this for the following reasons:

- the annual statement dated 11 March 2022 stated: *"It should be remembered that the final bonus, if applicable, is only payable when your plan becomes a claim. Final bonuses are reviewed at least twice a year, but we may change them at any time and are not guaranteed."*
- After providing the details of the guaranteed benefits in the plan, the 11 March 2022 statement also stated: *"Final bonus - In addition to the amounts shown above, a final bonus might be payable. The payment of a final bonus is not guaranteed and the value is reviewed regularly. Accordingly, final bonus levels are not shown on this annual statement."*

- The retirement pack Phoenix sent Mr W on 27 April 2022 stated that his plan was worth an estimated £100,005.21 at his NRD. It also stated: *“Please note that the above figures are not guaranteed. The pension savings value includes any amount of final bonus allocated to the plan(s) to date. Final bonus amounts are not guaranteed, and are adjusted to match the overall plan payout to the asset share (the underlying value of the assets, stocks, shares, bonds, cash etc that support the plan’s share of the overall fund) earned on the plan since its inception. If the value of the plan’s asset share falls between the date of this letter and the date when pension savings are taken, there can be a significant reduction in the value actually paid out.”*
- The 9 May 2022 information Phoenix sent Mr W stated that final bonus wasn’t guaranteed. And said that the actual amount of the final bonus payable would only be known at the time benefits were taken.
- The 27 June 2022 quote stated on the first page: *“The estimated pension savings value quoted in this pack is not guaranteed so it may change before we can make payment.”* It also stated, underneath the estimated value of the plan of £93,944.29: *“Please note that the above figures are not guaranteed.”* It then explained why this was the case, using similar wording to that used in the 27 April 2022 retirement pack.

I agree with Mr W that the April 2022 retirement pack didn’t state that final bonus rates would be reviewed on 1 January and 1 July 2022. It also didn’t state when final bonus rates would next be reviewed, or that the values shown were based on bonus rates applicable as at 1 January 2022. But I don’t think that the retirement pack should’ve provided the information Mr W feels is missing. I also acknowledge that Mr W feels that the retirement packs were worded to protect Phoenix. But I don’t agree. I’ll explain why.

The April 2022 retirement pack was sent as Mr W was approaching his NRD. I’ve seen no evidence that it was sent because Mr W asked if he could take his retirement benefits before his NRD. So I wouldn’t expect the April 2022 retirement pack to cover anything except options for taking benefits at NRD.

I wouldn’t normally expect details of bonus rate changes to be included in a retirement pack like this one. This is because bonus rate reviews had been in place since the plan started. And they weren’t directly relevant to the retirement pack, which Phoenix automatically sent to Mr W as he approached his NRD. And which was therefore based on the estimated plan value at his NRD. Phoenix had told Mr W in its 11 March 2022 statement that: *“As you approach your retirement date, we’ll automatically contact you to provide details of the options then available.”* So he should’ve been aware why he’d received the pack. It must be remembered that Mr W didn’t ask Phoenix for a retirement quote at a specific date. Instead, the pack was automatically issued based on his NRD.

In any event, the 27 April 2022 retirement pack did state: *“If the value of the plan’s asset share falls between the date of this letter and the date when pension savings are taken, there can be a significant reduction in the value actually paid out”*. I think this is clear that there was a possibility that the estimated plan value shown could reduce significantly. And that this could happen at any time. Therefore, even if the April 2022 pack had stated that the estimated value was based on the 1 January 2022 final bonus rates, it couldn’t reasonably have stated that the plan value at Mr W’s NRD would be based on the rates applicable as at 1 July 2022. I say this because Phoenix had the right to make changes at any time.

Even if Phoenix had been able to state with confidence that the plan value at Mr W’s NRD would be based on the rates applicable on 1 July 2022, I’m not persuaded this would’ve given Mr W any additional useful information. He would’ve had no way of knowing if the rates would be better or worse after the 1 July 2022 rate change.

As I've noted above, Phoenix provided Mr W with details about when the final bonus would be payable and how often it would be reviewed, on a number of occasions in the months before Mr W's NRD. It also made it clear that it could review final bonuses at any time.

I also note that Mr W decided to take his benefits after he was fully informed about final bonus rates and when they might apply. Therefore I'm satisfied that Phoenix provided Mr W with clear and not misleading information in the months before he reached his NRD that final bonus rates weren't guaranteed and could change at any time.

I next considered if Phoenix had provided Mr W with enough information about what would happen at NRD to his WP funds.

Did Phoenix provide Mr W with enough information about what would happen at NRD to the WP funds?

Mr W said that Phoenix had failed to tell him what would happen at NRD to his WP funds in a timely fashion. He said that if he'd left his plan with Phoenix after his NRD, it would mean that no further growth was possible. And that this meant that he had no option to leave the pension running after NRD to give it time to recover from any loss as the market improved over time. He said if he'd known about this beforehand, he would've attempted to take his plan benefits much earlier. But he said he only found out what would happen at NRD to his WP funds when he got Phoenix's final response letter. He felt Phoenix should've mentioned this in the April 2022 retirement pack.

Mr W also said that he'd never told Phoenix that he wanted to take his benefits before NRD because it hadn't told him that his WP investments would be moved to cash at NRD. He said that none of the documentation Phoenix has sent him explained that his WP funds would be moved to a cash fund at NRD.

Phoenix acknowledged that it had failed to mention in the documentation it sent Mr W in 2022 that his WP funds would be moved to cash at NRD.

The evidence shows that Phoenix told Mr W during calls on 27 June 2022, 1 July 2022 and 4 July 2022 that after NRD the WP fund would be disinvested and go into a cash fund. I haven't found any documentary evidence of Phoenix providing Mr W with this information before this date. But I'm not persuaded that this omission led to Mr W being unable to request taking his plan benefits before his NRD.

I say this because having carefully considered all of the documentary evidence provided, I can see that Phoenix did explain to Mr W in good time that he could take his benefits before NRD. I say this for the following reasons:

- The 11 March 2022 statement Phoenix sent to Mr W stated: "**Assumed pension date** - You have the option to take the retirement benefits from your plan at any time from the normal minimum pension age of 55". And: "**Transfer value** - It is possible for the current transfer value of your plan to be paid into another registered pension scheme, if the new scheme is willing to accept it.
- The 27 April 2022 retirement pack stated that it was possible to change the plan NRD.
- The 9 May 2022 information stated, under "When can benefits be taken?": "Benefits can usually be taken at any time from the Normal Minimum Pension Age (NMPA) of 55 (going up to 57 from 6 April 2028)".

Therefore I'm satisfied that Mr W was made aware that he could take his benefits before his NRD in time to have done so if he'd wanted to. But there's no evidence that he chose to do so.

I appreciate that Mr W considers that he might've acted differently if he'd known earlier about what happened to the WP funds at NRD, but I can't fairly agree. I say this because the evidence shows that Phoenix did clearly explain to Mr W what would happen just before his NRD. Therefore he was in a position to take steps to remove his funds on or around the time that his WP funds would be disinvested. Mr W did then decide to remove his funds from Phoenix. And they were transferred on 14 July 2022, shortly after his NRD. So I can't reasonably say that Phoenix's failure to provide this information earlier caused any loss.

I went on to consider our investigator's point that she disagreed with Phoenix's statement in its final response letter that Mr W couldn't have taken his benefits before his NRD. I do agree that Phoenix wasn't completely clear about what it meant when it stated:

"You would not have been able to take your benefits before your NRD of [date in July 2022] or prior to the bonus rate change on 1 July 2022."

But I don't think that Phoenix thought Mr W couldn't retire early. The documentary evidence I've detailed above shows that Mr W did always have the option to take his benefits after age 55, so he was entitled to take them before his NRD. And the final response letter itself explained that the 27 June 2022 value quoted on myPhoenix represented the amount that would've been paid if Mr W had claimed his benefits on that day. So I'm satisfied that this shows Phoenix knew that Mr W was entitled to retire before his NRD.

I think that Phoenix intended to convey in its final response letter that it wouldn't have been *practically* possible for Mr W to have taken his benefits before his NRD. And I agree.

I say this because Mr W first requested his TFC and the OMO on 27 June 2022. Phoenix issued the relevant retirement options pack on the same day. And emailed the required forms for the transfer to Mr W on 28 June 2022. I don't think Phoenix caused any meaningful delays here.

Completed forms were also required from provider C. But there were now only 2 working days before the final bonus adjustment was made on 1 July 2022.

I'm therefore satisfied that it wouldn't have been possible for Mr W's OMO request to have been completed before the final bonus adjustment was made.

Overall, I can't fairly agree with Mr W that Phoenix violated the fundamental principle of providing him with complete and correct information so that he could make efficient transactional decisions. I say this because I'm satisfied that the evidence shows he had enough information to make an informed decision. So I don't uphold this part of the complaint.

I next considered the compensation Phoenix has offered Mr W.

Compensation

Phoenix acknowledged it had provided Mr W with conflicting information. And that it had made an incorrect promise to call him back. It offered him £150 for the trouble and upset this had caused him. It also offered him £20 to cover the cost of calls.

The evidence shows that Phoenix gave Mr W incorrect information on 27 June 2022 when it

said that he could email the forms back. But that it corrected this the following day. The evidence also suggests that Phoenix gave Mr W incorrect information about what happened to the WP fund after NRD on 14 July 2022, after providing him with the correct information about this on three earlier occasions. From what I've seen, the provision of the incorrect information didn't itself lead to any financial loss.

Mr W feels that Phoenix's compensation offer is too low. He wants the time he's spent on the complaint to be taken into account. He also feels that Phoenix should pay him a much larger compensation amount. And that this would act as an incentive to improve its service.

We're not the regulator, so we can't punish a business. So I'm not able to ask Phoenix to pay Mr W more as an incentive to improve its service. But we can consider the impact the error has had on a consumer and award compensation accordingly.

From what I've seen, Phoenix quickly corrected its error. Therefore I'm of the view that the £150 it has offered is fair and reasonable under the circumstances of the complaint.

I acknowledge that Mr W feels that the £20 offered to cover the cost of calls doesn't take account of the time they cost him. But this service doesn't generally make awards for the time consumers have needed to spend in pursuing their complaints. Therefore I also consider that this offer is fair.

Phoenix also offered Mr W £200 for the delay in answering his complaint. So I next considered its complaint handling.

Complaint handling

Mr W said it'd taken Phoenix a year to respond to his complaint. And that it had backdated its final response letter.

I understand Mr W's frustration with the time it has taken Phoenix to deal with his concerns. And I appreciate the effort he's had to put in to get to this point. But I can't consider his complaint made in that respect because it's about an activity – complaint handling – that is not a regulated activity that this service has jurisdiction to consider complaints about.

Therefore I'm unable to comment on this aspect of Phoenix's offer.

I understand why Mr W is disappointed that his plan value fell shortly before he claimed the benefits. But I've found no evidence that Phoenix mismanaged the retirement process.

I'm sorry that Mr W is unhappy with Phoenix's remediation offer. But I consider that it took reasonable steps to put things right in its final response letter dated 31 March 2023. Therefore, although I'm upholding the complaint, I'm not asking Phoenix to take any further steps than it has already offered to take to put things right.

Putting things right

Phoenix Life Limited has already made an offer to pay Mr W £200 for the delay in answering his complaint. And £150 for the trouble and upset caused by the conflicting information and the incorrect promise for a call back. It also offered him £20 to cover the cost of the calls he made. I think this offer is fair in all the circumstances.

So my final decision is that Phoenix Life Limited should take the steps it offered in its final response letter.

My final decision

For the reasons set out above, I uphold Mr W's complaint. Phoenix Life Limited must take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 April 2024.

Jo Occleshaw
Ombudsman