

The complaint

Mr J complains that Phoenix Life Limited (Phoenix) hasn't applied correct increases to his two annuities since they started in February 1999.

What happened

Mr J has two annuities that he purchased in February 1999 through a business which I understand has been part of Phoenix since 2011.

Phoenix wrote to Mr J on 2 January 2023 about his annuity payment. It said there was a change to the monthly annuity payment for one of his annuities which would be due on 6 January 2023. Phoenix said that the gross annuity at this time was £388.24 each month.

Mr J feels he has paperwork which shows that these annuities should've increased by 3% annually. He says that Phoenix has failed to increase either of his two annuities since purchase. And believes it should reimburse him for the increases that he didn't receive.

Mr J is also concerned that one of his annuities has been incorrectly taxed. He said he'd started paying tax on this annuity in 2011, around the same time Phoenix took over the business.

I understand that Mr J first raised the annuities' annual increase issue with Phoenix when he called it on 9 January 2023. Phoenix said that it explained to Mr J on this call that 3% escalation only applied to a small part of one of his annuities. But Mr J wanted his complaint to be escalated.

Phoenix wrote to Mr J on 17 January 2023 to confirm that a small part of one of his annuities did increase at 3% each year. But that the large majority of that annuity didn't increase. It also confirmed that the other annuity didn't increase at all.

Mr J wasn't satisfied with Phoenix's response. So he wrote to it again on 25 January 2023.

Phoenix said that it set up the complaint at this point. It said it forwarded that complaint to its Annuities Department which issued a response to Mr J on 31 January 2023. It said that one of Mr J's annuities contained post-1988 Guaranteed Minimum Pension (GMP) benefits. And that only post-1988 GMP benefits provided a 3% annual increase. It also said that pre-1988 GMP didn't increase.

Phoenix said that if Mr J believed his annuity benefits didn't match those set out in the policy documentation, he should provide a copy of this so it could investigate further.

After a number of holding letters, Phoenix issued its final response to the complaint on 16 May 2023. It said the annuities had been set up correctly. It said it'd explained in its 31 January 2023 letter that only post-1988 GMP benefits increased at 3% each year. Phoenix repeated its offer to review any annuity documentation Mr J might have which disagreed with this.

Regarding Mr J's tax complaint, Phoenix said that his annuity payments would be affected

by changes to HMRC tax codes, and that it would continue to keep him updated with any changes that were made.

Phoenix acknowledged that Mr J had made a series of phone calls to chase for a resolution to his complaint. It offered Mr J £10 to cover the cost of the calls. It also acknowledged that Mr J had been waiting some time for a reply. It apologised for the time it'd taken to provide a complaint response. And offered Mr J £100 compensation for this.

Mr J didn't agree with Phoenix's response. He wrote to it on 25 May 2023. He didn't think his annuities had been set up correctly as the 3% increase he felt applied had never been added.

Mr J shared a copy of a document headed: "*Phoenix Life: Annuity Summary Information Form*". This stated the following:

<i>Annuity number:</i>	<i>004495882001</i>
<i>Annuitant</i>	<i>Mr J</i>
<i>Annuitant's DOB</i>	<i>[date of birth]</i>
<i>Annual annuity amount</i>	<i>£4,658.88</i>
<i>Before deduction of tax</i>	
<i>Amount and frequency of gross annuity instalments</i>	<i>£388.24 payable Monthly in advance</i>
<i>Annuity commencement date</i>	<i>06/02/1999</i>
<i>First payment date</i>	<i>06/02/1999</i>
<i>Last payment date</i>	<i>Payments to be made until the date of your death</i>
<i>Current tax code</i>	<i>129L</i>
<i>Annuity type</i>	<i>Joint life...</i>
<i>Increases</i>	<i>Annuity increases annually at 3.00%</i>

Mr J felt that this document clearly stated that the annuity should increase annually at 3%. So he felt that he should be reimbursed for Phoenix's failure to pay that increase since 6 February 1999, when the annuity started. He also felt that as he'd started both of his annuities at the same time, the 3% increase was due on both annuities.

Mr J also said that although he'd kept a copy of every statement he'd been sent since 1999, no increase had ever been added.

Mr J also said that while he'd paid no tax on one of the annuities between 1999 to 2010, he'd had to pay tax on both policies since 2011. He didn't think this was correct.

Mr J felt that Phoenix should take the following actions to put things right:

- Add an annual 3% increase to both annuities since their start date and pay the missing amount to him, with interest. Then start paying him the correct amount, with

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 not going to uphold it. I know this will be disappointing for Mr J. I'll explain the reasons for my decision.

Before I start, I'd like to say that I'm sorry that Mr J is unwell.

I first considered the policy documentation from around the time of the annuity purchase.

Documentation from around the time of the annuity purchase:

Mr J has provided this service with a document which he must have received at some point after Phoenix took over in 2011. This appears to be a partial document with some information missing.

Phoenix has provided three separate documents from around the time of the sale. I consider that these show that one of Mr J's annuities doesn't increase at all and the other only has 3% annual increases on that small proportion of the other annuity which represents post-1988-GMP.

I acknowledge that Mr J felt that our investigator hadn't mentioned the "*Annuity Summary Information*" document which he'd provided. He felt that this clearly stated that the annuities should increase by 3%.

While I can see why Mr J feels the way he does, I'm more persuaded by the documentation from around the time of the sale than I am by a partial document that must've been issued after 2011, when Mr J said that Phoenix took over the business.

I say this because although the "*Annuity Summary Information*" document states that the annuity will increase by 3% annually and doesn't differentiate between pre-1988 GMP and post-1988 GMP, as Mr J states, I consider that this is because this document is incomplete. And I'm more persuaded by the documents from around the point of sale that the annuities were actually set up with only a 3% annual increase applying to the post-1988 GMP element of one of the annuities. I also say this because I'm satisfied that the 9 March 1999 fax I've covered above was used by Phoenix's predecessor business to set up the specific payment details with the chosen annuity provider. And those specific payment details only included 3% annual increases on the post-1988 GMP element of one of the two annuities.

I also acknowledge that Mr J said he'd never seen the three documents from around the time of the sale that I've covered earlier. I don't think this is surprising for 9 March 1999 fax, as this wasn't intended for Mr J. But I consider that it's more likely than not that Mr J did see the other two documents, or similar paperwork showing the details of the annuities he wanted to set up, around the time he set them up. I say this because I'd expect the business to want to ensure that the correct annuities were being set up.

I also note that Mr J felt that the 16 March 1999 document stated that the annuities would increase by 3% each year on a compounded basis. Looking at the wording in that document, I can understand why Mr J felt this way as I don't think it's completely clear. But I don't think he's correct.

I say this because although it states, under "*What is the cost of buying the Protected Rights annuity?*": "*The pension will be payable by monthly instalments in advance and is*

guaranteed for your lifetime. It will increase by 3.00% each year on a compound basis.”, this only applied to the post-1988 part of the Protected Rights annuity. The vast majority of this annuity was pre-1988, so didn’t increase at all in payment.

The 2 February 1999 document showed that the post-88 GMP to be used in respect of Mr J’s annuity purchase was less than 4% of his total GMP. This meant that only a very small amount of the annuity would increase at 3% each year.

I appreciate that Mr J felt that as both of his annuities had started after 1988, he should be due the 3% increase Phoenix’s 31 January 2023 letter had stated. But I don’t agree that’s what that letter said. It stated:

“We can confirm that your above annuities contain Guaranteed Minimum Pension (GMP) benefits in respect of contracted out employment before and after April 1988. Only post 1988 GMP benefits provide a 3% annual increase, pre 1988 GMP does not increase.”

This means that the benefits that Mr J had built up in his employment after April 1988 had a 3% annual increase. It doesn’t mean that because the annuity was set up in 1999, both annuities had a 3% annual increase. The 2 February 1999 document details the proportions of benefit that had built up before and after April 1988.

While I acknowledge that Mr J doesn’t think he’s ever received an increase, the evidence shows that the payments from one of his annuities have increased by a small amount over time, while the other hasn’t increased at all. This is what I would expect given the small proportion of one of the annuities that was set up to increase at 3% each year.

I next considered Mr J’s complaint that he had incorrectly paid tax on one of his annuities since 2011, when Phoenix had taken over.

Tax

Phoenix said it received automatic notifications about any tax payable, which it then applied. And that it had written to Mr J each time his tax situation had changed. Phoenix said that Mr J would need to contact HMRC about his tax query.

I’ve not been provided with any evidence that Mr J has been taxed incorrectly. So I can’t reasonably conclude that Phoenix has done anything wrong here. But if, after Mr J has contacted HMRC about his tax situation, he considers that Phoenix has made an error with the tax deductions, he can make a further complaint to Phoenix.

I next considered Mr J’s complaint that Phoenix had been difficult to deal with for over a year.

Complaint handling

I acknowledge that it’s taken considerable time and effort for Mr J to pursue his complaint with Phoenix. Phoenix has offered him £100 as an apology for the time the complaint response took. And £10 to cover the cost of the calls.

I understand Mr J’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.

In summary, the policy documentation around the time of the sale shows that only a small

part of one of the two annuities was set up to increase at 3% each year. And that the other annuity and the majority of the pension containing 3% increases was set up not to increase at all. The evidence shows that Phoenix has correctly applied the increases in line with the annuities that Mr J set up. So I can't fairly ask Phoenix to reimburse Mr J for any missed increases because I haven't found any evidence of any. I also acknowledge that Mr J didn't pay tax on one of his annuities between 2000 and 2010 and then started to pay tax on that annuity in 2011, when Phoenix took over. But I haven't seen any evidence that Phoenix has incorrectly taken tax from the annuity payments. As I've found no evidence that Phoenix did anything wrong, I can't fairly uphold the complaint.

My final decision

For the reasons explained above, I don't uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 April 2024.

Jo Occleshaw
Ombudsman