

The complaint

Mr P says Phoenix Life Limited (Phoenix) provided him and his financial adviser with incomplete and misleading advice about options for taking benefits from his personal pension. He says this led to delays, an impact on the decisions he could make about his plans, financial detriment and anxiety.

What happened

Mr P took out a personal pension plan in 1988, it provided for a Guaranteed Minimum Payment (GMP). Phoenix subsequently acquired the business of his former provider. The maturity date of his pension was his 65th birthday, in December 2022. The value of his plan was about £41,000.

Mr P had an independent financial adviser (IFA) who managed his other pensions. He hoped to transfer his Phoenix pension on maturity into his existing drawdown pension. However, when his IFA contacted Phoenix in summer 2022, he discovered the plan contained protected tax free cash (TFC) and a small GMP element.

Mr P says he was advised not to make the switch and instead it was recommended he take the protected TFC lump sum and an annuity. He says he was made aware he could've opted not to take his IFA's advice, but he decided that he would.

It's agreed by both parties the interactions between Phoenix, Mr P and his IFA didn't go smoothly. This meant that although he started to explore what to do with his pension benefits around the summer of 2022, it wasn't until October 2023 that Mr P began to receive payments he was entitled to access from December 2022.

Phoenix noted Mr P's application for TFC and the switch of his residual funds to another provider wasn't actually received until April 2023. He puts this down to Phoenix's inadequate information and advice.

Five weeks after submitting his application Mr P was asked to sign an additional form for the transfer to take place. A further four weeks later he was asked to sign a letter confirming he was prepared to waive his GMP entitlement. Ultimately, he was informed in August 2023 his pension provider of choice wouldn't accept liability for the GMP element of his pension and so the switch didn't proceed.

Mr P told this Service:

"...As a result of all this, my only realistic option was to take an annuity from Phoenix Life, which I realised would be lower than I could have obtained from [my preferred provider], but I did not wish to lose any of the tax-free cash benefit. Phoenix received my annuity application on 11th September. Both [my IFA] and I were advised the timescale would be 10 working days and I was also told that the application had been marked as high priority...However it took 16 working days. I received the tax-free cash and first annuity payment on 3rd October. The annuity was backdated to 12 September..."

Mr P raised an initial complaint with Phoenix in July 2023. It responded in September 2023 upholding his case, recognising it had been outside of its normal service standards when responding to some of his IFA's enquiries and that this had caused delays.

Phoenix offered Mr P £400 for the trouble and upset it had caused and £100 for the length of time it had taken to deal with his complaint. It also gave him an undertaking to perform a loss assessment to ensure he hadn't lost out as a result of the delays it had caused. It subsequently carried out this assessment and made a further payment to him of around £700 making the assumption his annuity should've started in April 2023.

Mr P thought Phoenix's proposal to put things right was insufficient. He approached this Service in October 2023 and summarised his complaint points in the following terms:

- 1. Over a period of over 9 months, Phoenix provided [my IFA] with incomplete and misleading advice about the possibility of my applying for an open market transfer for an enhanced annuity without losing the enhanced tax-free cash benefit applied to my policy.*
- 2. All the illustrations I had from Phoenix mentioned the advisability of considering an open market transfer, but nowhere was it mentioned that the GMP on my policy could affect this. Had I known about this at the start I would have considered other options such as transferring to another provider.*
- 3. I received an illustration in September 2022 with tax-free cash of £23892.76 but in December 2022 this had been reduced to £14601.53. No explanation has been given.*
- 4. After I applied for an open market transfer in April 2023 it took almost 5 months before Phoenix refused the request, despite their having a) asked me to sign a letter agreeing to give up the GMP. b) told me in writing in July and [my IFA] by phone in August that the transfer would go ahead.*
- 5. I registered a complaint with Phoenix on 13th July 2023 but nothing was done by them until I had a call on 14th September.*
- 6. I have had no information from Phoenix about how much interest was earned by my fund between 10/12/2022 and 3/10/2023 and what the final value of my fund was.*
- 7. The annuity rate I have finally received is less than that quoted in December 2022 despite my being 9 months older and the addition of interest to my fund.*
- 8. I have received a payment of £707.23, apparently in respect of arrears and late payment interest. However no detail of the payment has been provided and it is less than I would have expected, even if tax has been deducted.*
- 9. I received a compensation payment of £500 in September 2023 (this included £100 for the delay in replying to my complaint). However I believe this is inadequate given the scale of delays, misinformation and anxiety to which they have subjected me.*

An Investigator considered Mr P's case and upheld it. He concluded Mr P had received the right amount of TFC. He thought the date Phoenix had used to conduct a loss assessment of April 2023 was reasonable. However, he considered the method it used hadn't been correct. Rather than working from the value of the annuity established in September 2023, it should've used values that would've been available in April 2023. He also thought the award Phoenix had made for distress and inconvenience was reasonable.

Mr P disagreed. In summary he said:

"I think your response is based on the assumption that I always intended to take a Phoenix annuity. However, the financial advice given to me by [my IFA] was to take an open market transfer and an enhanced annuity, while retaining the protected tax-free cash. They first

contacted Phoenix in summer 2022 with the intention of ascertaining whether or not this was possible while still having access to the protected tax-free cash.”

“All the illustrations I received from Phoenix recommended consideration of an open market option; it was never mentioned that the existence of GMP could affect this...Phoenix did not inform us that the transfer could not go ahead until August 2023...over a year after the initial contact. Phoenix had ample opportunity to tell us this before December 2022. Had they done so and made clear that the only options were a full fund transfer (losing the protected tax-free cash in excess of 25%) or a Phoenix annuity, I would have seriously considered a full fund transfer, either for an enhanced annuity, or to transfer into my existing drawdown pension or to take one or more lump sums and accept the tax liability. After waiting for over a year I was not willing to start the whole process again (given the poor response times to date from Phoenix this could have taken many more months), so I opted for the Phoenix annuity.”

Phoenix considered Mr P’s comments and offered to increase its award for distress and inconvenience. It told the Investigator:

“Having reviewed this case, we agree with your view in relation to the redress calculations and your comments that backdating the claim to April 2023 is fair. We have also reviewed the client’s comments and given the difficulties he has had in obtaining correct information, receiving incorrect quotes, and us paying an incorrect redress amount, we are happy to increase the D&I by a further £200.00, a total amount of £700.00.”

Mr P responded to Phoenix’s increased offer in the following terms:

“I am pleased that Phoenix have recognised some of the complaints I had and offered an additional £200 in respect of them. However I still think an important point has been missed, namely that Phoenix misled [my IFA] and me, resulting in [my IFA] giving me advice to take an action that was not possible, and it took over a year from initial contact before we were finally informed that an open market transfer was not permitted because of the GMP. Had Phoenix provided prompt and accurate information, [my IFA] might have advised me differently and I might also have considered other options.”

“However after the delay I felt I had no choice but to accept the Phoenix annuity as I did not wish to wait any longer for the tax-free cash. This in particular is something I wish the ombudsman to consider as I do not feel it has been addressed by Phoenix and the compensation does not cover it...”

Mr P also made further representations. It was clear that both parties couldn’t agree with the Investigator’s conclusions. So, Mr P’s complaint has been passed to me to consider afresh and to issue 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.

Where there’s conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what’s most likely to have happened.

I’ve not provided a detailed response to all the points raised in this case. That’s deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I’ve taken into account all submissions, I’ve concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr P's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by Phoenix for Mr P. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr P's complaint.

Mr P has told this Service he is now satisfied with certain of the explanations and redress Phoenix has offered in relation to some of the complaint points he's raised. Recently he said:

"...In summary, I accept that the initial £500 compensation covers the delay in processing my application and responding to my complaint, while the additional £200 covers the incorrect quote and redress payment. However the failure to make clear that an open market transfer would require the receiving company to honour the GMP (which they were not) before I actually applied for the transfer in April has still not been explained by Phoenix, and I believe my loss of options resulting from this justifies additional compensation."

So, this is where I will focus my attention.

As part of the process of warming Mr P up to his retirement options, he thinks Phoenix should've made clear that in the circumstances where he chose to transfer to a new pension provider there would need to be checks with any prospective firm that it would be prepared to accept his business. As we know, his chosen provider didn't want to accept liability for the GMP element of his policy and so the switch didn't happen.

On this point the Investigator said:

"...I don't reasonably think it was Phoenix's responsibility to advise you on whether an open market transfer would require the receiving company to honour the GMP. They were required to let you know about the open market option. It was then open for you to explore whether specific providers would accept receipt of funds using the open market option given the specific features of your Phoenix pension. My understanding is that there isn't anything in the rules to prevent providers accepting receipt of such funds, rather providers can choose not to do so."

Mr P responded in the following terms:

"You commented that 'It was then open for you to explore whether specific providers would accept receipt of funds using the open market option given the specific features of your Phoenix pension'. The problem is that we were not informed of these 'features' until several months after I had applied for the transfer, and over a year after [my IFA] had first contacted Phoenix."

I've thought about Mr P's argument and I understand the point he makes. But I don't agree with him for several reasons.

Firstly, I've seen that in the months running up to Mr P's 65th birthday, Phoenix sent him and his IFA a series of letters about his pension and the decisions he had to consider. This included the fact that he could switch his benefits to another provider and the reasons why that might be in his interests. It provided clear warnings that should he choose to transfer his funds he could lose certain valuable guarantees and protections associated with his existing policy. It also recommended he seek financial advice given the importance of the decision he was about to take.

Further, having read Phoenix's communications from August 2022 and onwards, I'd observe these do indicate the inclusion of a GMP with his pension plan could have an impact on his decisions. Under the dedicated section about the special features, restrictions and conditions of his plan, it said of his GMP (bolding is my emphasis):

*"This is the minimum annuity income that must be provided for employers schemes that contracted-out of the State Earnings Related Pension Scheme (SERPS)...**The requirement to provide your GMP may restrict the options available to you both before and at retirement.**"*

And I don't find the information Phoenix provided Mr P or his adviser implied either that he must seek to switch his pension funds, or that there was any certainty he would find an alternative provider that better met his requirements, only that this might be the case. As the letters stated, the right provider would depend on his needs and circumstances.

It was for Mr P and his IFA to explore the market and decide on which alternative provider(s) might be best. Phoenix had no role to play in that matter. It had to deal with his choices once he'd made these. As already acknowledged, once his application to switch providers was received there were a series of delays and problems, for which Phoenix has accepted responsibility.

In his most recent submissions Mr P has advanced a different methodology for calculating his losses, which he estimates as around £10,000. This is predicated on the basis of Phoenix making clear to him before April 2023 that his chosen provider might not have accepted his GMP liability, scuppering the switch he wanted to make. I've already set out why I think this argument is flawed.

Further, I find the danger with Mr P's argument about appropriate redress is the potential for this to be influenced by hindsight. I note as his complaint journey has unfolded he has evolved his position from one of questioning whether if he'd had all the right information at the right time he *might* have made a different decision or received different advice, to asserting most recently that he would've taken different decisions.

Putting things right

I'm upholding Mr P's complaint, but not to the extent he'd like. So he needs to be returned to the position he'd have been in now, or as close to that as reasonably possible, had it not been for Phoenix Life Limited's failings.

I Require Phoenix Life Limited to carry out the following calculation:

Calculation of past loss

A) Total of the notional tax-free cash sum and all the net income payments which Mr P would've received from his annuity since 3 April 2023 (at the values that would've been applicable at that date), with interest added to each payment at 8% per year simple from the date these were made until the date of settlement.

B) Total of the actual tax-free cash sum and all the net income payments Mr P has received from his actual annuity since it was established with interest added to each payment at 8% per year simple from the date these were paid until the date of settlement. Phoenix can include in this figure any sum it has already paid to Mr P in respect of these payments (I understand it has paid about £707 in this regard).

C) Mr P's past loss is $A - B$. So, if result is negative, there's a past gain and no redress is payable. If the answer is positive, this is the loss Phoenix Life Limited should now pay Mr P.

Calculation of future loss

Phoenix Life Limited should arrange for Mr P's annuity going forward to be changed so that he receives the value he would be receiving now had his annuity been established on 3 April 2023. All other aspects of the annuity should remain the same.

On this matter I note that Mr P has indicated he'd prefer a capitalised sum, rather than a small additional annuity. Given the administrative overheads associated establishing a small additional annuity, Phoenix Life Limited may also prefer the same approach. So long as both parties can agree what that sum should be, then such agreement will fulfil this element of the redress I require to be made.

Distress and inconvenience

When I'm considering a complaint like Mr P's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Phoenix Life Limited has accepted it got things wrong for Mr P. Following the Investigator's view it increased its offer to him from £500 to £700 in recognition of the distress and inconvenience it had caused. I think that award is fair in the circumstances of this case. If it has not paid this sum, or any element of it to date, it should now honour the award.

My final decision

For the reasons I've already set out, I'm upholding Mr P's complaint. I now require Phoenix Life Limited to put matters right in the way I've directed.

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

Kevin Williamson

Ombudsman