

The complaint

Mr K's complaint against Phoenix Life Limited (trading as Standard Life Assurance Limited) is about the partial transfer of his pension to another pension provider. Mr K is unhappy that some of the funds sold were then held in cash for over a month before they were transferred.

What happened

I issued my provisional decision on this complaint on 14 June 2024. The background and circumstances to the complaint and the reasons I was provisionally minded to uphold it were set out in that decision. I've copied the provisional decision near the end of this decision, and it forms part of this final decision.

I asked both parties to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr K said he was very disappointed that he was held out as the most guilty party, and was still struggling to understand why he would be expected to monitor the progress of the pension transfer requested. However as there appeared to be no other way forward, he was prepared to accept the compensation as provided for in the provisional decision.

Phoenix Life said, in summary:

- It didn't think it was reasonable to expect a processing team to have to read into or consider the wider context of the request made by the IFA on 10 October 2022. It said the processing team's role was to take action when it received an instruction, and it wouldn't be expected to gather background information to understand its context. It said this would not be practical.
- The IFA was the one giving the instruction. So he had a duty to be completely clear on what he wanted it to do. There was no ambiguity in the instruction the IFA gave – it was in bold on the e-mail request.
- An IFA and/or customer could give an instruction to sell before it got the transfer request as happened in this case. It said the IFA was letting it know it would be getting the Origo request confirming it would be a partial transfer of just the uncrystallised monies in the coming days. It got the Origo instruction the following working day – 11 October 2022.
- It had explained that section 7.28 in the terms wasn't relevant because the proceeds of the SLIP funds were not going to be used to buy other investments in its SIPP.
- It thought it key that the IFA got the confirmation to show the SLIP funds had been sold. The IFA confirmed to Mr K on 24 October 2022 by e-mail that it had requested the sale of the DFM funds and the sale of the SLIP funds. It said if that was genuinely not what either of them wanted or expected it to do they would have immediately contacted it and queried it – but neither of them did. It said this showed that it had done exactly what the IFA had asked it to do. It said it seemed the issue was being

raised with the benefit of hindsight knowing how the markets actually performed over that period. And this shouldn't be allowed to happen.

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 I explained in my provisional decision, although I accept section 7.28 of the terms *isn't* strictly applicable to the circumstances here, I think its principles are relevant and consistent with the firm's regulatory obligations (which apply irrespective of 7.28) to obtain the best possible results for its clients when executing orders. Standard Life has said its normal process is to sell its external funds first and then the SLIP funds, so that the proceeds become available at around the same time. Given it won't have control selling the external funds, I think that is consistent with meeting its obligations in terms of acting in the best interests of its clients and obtaining the best result.

Section 15.3 of the terms also provided:

'If you ask us to transfer only part of your plan, you must tell us which investments we should sell to pay the transfer payment...'. And this was consistent with what the IFA had been told in his conversation with Standard Life.

The adviser's letter of 10 October 2022 included *"...we have asked [the new SIPP provider] to forward a revised request to yourselves for a partial transfer at this time of just the uncrystallised monies."*

The letter clearly said it was a partial transfer. So I think its content had to be considered in that context, which required clarification about which investments to sell. Whilst I accept what Phoenix Life has said about putting unreasonable expectations on its processing team, I do think it was reasonable for it to consider the wider context given it was initially clearly flagged it was a partial transfer and the requirements that went with that. The letter showed there had been previous communications about the issue, and said it was to fulfil a transfer request that would be sent through Origo. I don't think it was a clear 'instruction' to sell immediately, or that the adviser was responsible for failing to be clear. The adviser identified the e-mail related to a partial transfer, and provided clarification about what investments to sell as he'd been asked to do, and in accordance with 15.3 of the terms.

So I'm not persuaded Standard Life should have sold the funds in question at the time that it did. And I think its usual process should have applied on receipt of the Origo instruction – to sell the external funds first and then the SLIP funds. So Mr K wouldn't have been in cash for as long as he was.

I agree with Phoenix Life that these matters shouldn't be considered with the benefit of hindsight, and I have thought carefully about this in making my decision. Mr K's evidence has been consistent, and I've seen no persuasive evidence to suggest the adviser's e-mail of 10 October 2022 was always intended to move some of the funds to cash whilst the remainder of the funds were sold. I'm also satisfied, on balance, that Mr K wasn't actually aware that his money had been sitting in cash for the period it was – albeit, for the reasons I set out in my provisional decision, I think he ought reasonably to have been alerted it was in cash by 24 October 2022. And on the basis that he *ought reasonably to have known*, would have been obliged to have acted to mitigate his position. Therefore in all the circumstances, I don't think it would be fair or reasonable to hold Standard Life liable for any losses resulting from Mr K being in cash assuming he'd acted on 24 October 2022.

So for the reasons outlined above and in my provisional decision, I think Mr K's complaint should succeed in part.

Putting things right

My aim is to put Mr K as closely as possible into the position he would probably have been in but for the error by the firm – taking into account, as I have said above, I think he ought to have known he was in cash and so should have mitigated his position.

I therefore order that Phoenix Life Limited calculates a notional value of the funds that were sold following the adviser's 10 October 2022 e-mail assuming they hadn't been sold until 27 October 2022 (if I am correct that they were sold on 13 October 2022). If I am wrong about that and they were sold at a different date, then the same period to actually sell should be used in the calculation.

If the notional value is higher than the actual value when sold, Standard Life should then ask the new SIPP provider to calculate what the difference between those values would be worth at the date of a final decision if it had received them on the same date as it received the transfer value. Given the size of the fund, I think it's difficult to say exactly how those funds would have been proportionally invested. So I think it should use the investment performance of the whole fund since transfer to the date of a final decision.

If there's a loss, Phoenix Life Limited should pay into Mr K's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If it's not possible to pay the compensation into the pension it should be paid directly to Mr K. But if this money had been in a pension, it would have provided a taxable income. Therefore compensation paid in this way should be reduced to notionally allow for any income tax that would otherwise have been paid.

To make the reduction for any cash payment it should assume Mr K is a higher rate taxpayer. So 75% of his pension would be taxed at 40% if he is entitled to take the remaining 25% tax-free. This results in an overall reduction of 30%, which should be applied to the compensation amount if it's paid directly in cash to Mr K. If Mr K isn't entitled to take any further tax-free cash the deduction should be 40%. This is only if any compensation can't be paid into the pension.

If payment of compensation is not made within 28 days of Phoenix Life Limited receiving Mr K's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment. Income tax may be payable on any interest paid. If Phoenix Life Limited deducts income tax from the interest, it should tell Mr K how much has been taken off. Phoenix Life Limited should give Mr K a tax deduction certificate in respect of interest if Mr K asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Phoenix Life Limited should also pay Mr K £200 for the inconvenience I'm satisfied the matter has caused.

My final decision

My final decision is that I uphold Mr K's complaint in part.

I order Phoenix Life Limited to calculate and pay compensation to Mr K as I have set out

above under 'Putting things right'.

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

Copy of provisional decision

Complaint

Mr K's complaint against Phoenix Life Limited (trading as Standard Life Assurance Limited) is about the partial transfer of his pension to another pension provider. Mr K is unhappy that some of the funds sold were then held in cash for over a month before they were transferred.

What happened

Mr K's complaint was considered by two of our investigators. The background and circumstances to the complaint were set out in their assessments of it, which were sent to both parties. So I won't repeat them all here. But to recap, Mr K was transferring his Self-Invested Personal Pension (SIPP) to a SIPP with another pension provider. Some of the pension was invested in a suspended fund. So the pension was transferred on a partial basis, which included transferring a portfolio managed by an external investment manager and some Standard Life Investment Policy funds (SLIP funds).

Mr K's adviser had e-mailed Standard Life on 10 October 2022 saying:

'To fulfil this transfer request, we would be grateful if you could encash the uncrystallised allocation in the various investment funds, except the SL Aviva Investors Property Pension Fund of course, and also the [name of investment manager] portfolio in its entirety, making up any shortfall, if necessary, with cash from [another] portfolio.'

Standard Life submitted the request to sell down the Standard Life funds on 13 October 2022, and on the same day sent the account closure instruction to the portfolio's investment manager. The money from Standard Life's funds was received on 17 October 2022 and put in the cash account. The funds from the investment manager weren't received by Standard Life until 16 November 2022. During this period the money from the Standard Life funds' sale remained in cash. The partial transfer was completed on 21 November 2022.

Our first investigator didn't recommend that Mr K's complaint should be upheld. He said Standard Life had a responsibility to action the request it had received on 10 October 2022 in a prompt manner, and in accordance with its terms and conditions. He referred to section 7.23 of the terms addressing timely execution which provided:

'We try to place every instruction to buy or sell Standard Life investment policy funds with the insurer as soon as reasonably practicable after receiving it. Subject to sections 7.24 and 7.28, units will be allocated or cancelled no later than the third business day following the business day on which we received your instructions to do so.'

The investigator didn't think sections 7.24 or 7.28 were relevant in the circumstances. And he said in his opinion Standard Life had correctly followed its own procedures about timely execution when selling the funds. He said he didn't think there were any grounds for Standard Life to have delayed selling the funds.

The investigator said Mr K's adviser had asked why the proceeds from the sale of the Standard Life funds hadn't been transferred straight away once they had been sold with the remainder to follow. The investigator referred back to the correspondence sent to Standard Life on 10 October 2022, saying this hadn't instructed it to transfer the funds as they became available. He noted section 15.5 of the terms and conditions said:

'If you ask for a transfer under section 15,1, you may suggest the transfer date. We'll meet

that date where it is reasonably practicable for us to do so. We do however need time to make sure that we comply with the requirements on transfers in the rules. And we can't make a transfer until we've sold the assets that we need to sell to provide the transfer payment.'

The investigator thought Standard Life had correctly followed its internal procedures when it waited for all the funds to become available before completing the transfer – it hadn't been instructed of a particular transfer date.

The investigator concluded that he didn't think the complaint should be upheld.

Mr K didn't accept the investigator's findings. He said, in summary, that the Financial Conduct Authority required firms to treat their customers fairly (TCF) under its conduct of business rules. He said the 10 October 2022 instruction was required under section 15.3 of the terms:

'If you ask us to transfer only part of your plan, you must tell us which investments we should sell to pay the transfer payment...'

He said although the instruction didn't specify when to sell the funds, there was no requirement to do so in the terms. He said the instruction was not solely to sell funds, but to transfer the proceeds to an alternative provider. He said it was this part of the instruction Standard Life had failed to comply with given its responsibility to act in a prompt manner. Although there was no specific instruction to transfer the funds as they became available, there again was no requirement in the terms to do so.

Mr K said section 15.5 of the terms included *'And we can't make a transfer until we've sold the assets that we need to sell to provide the transfer payment.'* He said the sentence didn't read *'... we can't make a transfer until we've sold ALL the assets that we need to sell to provide the transfer payment IN FULL'*. And Standard Life had confirmed to his financial adviser that it was able to make staggered transfers, if so required, as and when monies became available.

Mr K said although the investigator had discounted section 7.28 as it applied to switching between Standard Life's funds or reinvestment, he thought under TCF Standard Life had the same duty of care to clients when transferring monies to alternative providers. He said although the investigator thought Standard Life had correctly followed its internal procedures, there was nothing in the terms that prevented Standard Life from transferring the proceeds from the Standard Life funds in a timely manner.

Another one of our investigators made further enquiries with Standard Life. He sent both parties his opinion of the complaint. He said, in summary, that Standard Life had confirmed its normal procedure when a transfer request was received through the Origo system was to sell external funds first, then the Standard Life funds, with all the monies then being sent to the new provider. It said this didn't happen where it received a separate specific instruction to sell investments.

The investigator thought the instruction Standard Life had received had been actioned in a timely manner. He agreed that the terms and conditions didn't say there were any requirement to specify when to sell funds. But he said that didn't mean Standard Life had done anything wrong.

The investigator said Standard Life had correctly acted on the instruction to encash the uncrystallised allocation in various funds in order to fulfil the transfer request. And when all the sale proceeds had been received they had been transferred as requested. He said the request hadn't stated when to sell funds or to send any monies as and when realised, or asked for the transfer to be carried out in a particular way. The investigator said if it had been important for Mr K to be out of the market for as short a time as possible, this ought to have been specified in the instruction. He said Standard Life's approach was to complete the transfer when all monies had been realised.

Overall, he didn't think Standard Life had done anything wrong when processing the transfer.

Mr K responded to say he agreed his adviser had informed Standard Life that a new Origo instruction would be received from the new provider and confirmed which assets were to be sold. However he said his adviser had been requested by Standard Life to forward those specific instructions in order to clarify how it was to make up any shortfall in the external investments part of the uncrystallised account. And it had subsequently sought further clarification from the adviser on 17 October 2022. He said he didn't understand what prompted Standard Life to move away from its normal procedure. He said that there was nothing in the instruction referring to timing of the disinvestments, and nothing that he could see that prevented Standard Life from applying its normal procedure.

Mr K said he agreed Standard Life had followed the instruction as to how the transfer monies were to be raised. But it didn't with regards the timings of the necessary encashments. And it didn't follow its normal procedures which he assumed were designed to avoid any unnecessary detriment to clients.

Mr K's adviser also provided a recap of the circumstances of the transfer. He confirmed the instruction to encash specific investments was only provided to Standard Life to fulfil its request for clarification as to how to cover the likely shortfall in the external investments part of the transfer. He said there was certainly no instruction, and indeed no intention, for Standard Life to deviate from its normal practice regarding the encashment of the investments.

The investigator responded to say, in summary, that on 21 September 2022 Standard Life had e-mailed the adviser and set out some options as to how any shortfall in the transfer value would be covered. He said the e-mail ended:

'We would also need a cash transfer request from the new provider. This can be via Origo'.

And a call on 4 October 2022 between the adviser and Standard Life reiterated that a new Origo request would be required.

The investigator said the subsequent e-mail from the adviser to Standard Life said to encash various funds to fulfil the transfer request. He said Standard Life therefore had to act on this request. And if it hadn't, and prices had moved negatively, it was exposing itself to a claim that it hadn't acted on a specific request. So the investigator thought it was reasonable for Standard Life to have proceeded in the manner it did. He said his view was still that the complaint shouldn't be upheld.

Mr K provided a further response from his adviser. The adviser said, in summary, that he thought Standard Life had *'totally misconstrued'* his instruction (of 10 October 2022). The adviser said he fully expected Standard Life to apply its normal procedure to the instructions, i.e. sell the external funds first and then the Standard Life Investment Policy (SLIP) funds. He said he was familiar with its procedure having dealt with Standard Life for many years. And he wouldn't have even forwarded the instruction had Standard Life not requested confirmation regarding the external investments. The adviser said he didn't intend for Standard Life to move away from its normal procedure, or indeed effect an immediate encashment of the SLIP funds otherwise he would have used the words *'immediately'*, *'with immediate effect'* or *'straightaway'*.

The adviser said he accepted that Standard Life was concerned about exposing itself to a claim if it had failed to act on the instruction and prices had moved negatively. But he said it did just that by holding onto the sale proceeds for a prolonged period when prices increased significantly. And he said the argument around consistency and efficiency fell apart where the first part of the process, i.e. the timing of the sale of the assets, wasn't adhered to. He said Standard Life hadn't tried to adapt its process accordingly.

Mr K said he didn't understand why Standard Life wasn't at fault when it completely

misunderstood the instruction from his adviser and made no effort to seek clarification. He said had it followed its normal procedure the transfer would have been completed without any financial detriment to him.

What I've provisionally 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.

I understand why Standard Life interpreted the 10 October 2022 e-mail as an instruction to sell immediately. Taking the particular paragraph in isolation, it might have appeared that way on the face of it. But I think that 'instruction' has to be considered in the appropriate context. This wasn't a straightforward transfer. On 4 October 2022 there was a discussion between the adviser and Standard Life about the technicalities of how the partial transfer could be arranged. Standard Life's call handler said she wasn't an expert and the transfer would be processed by a different department. She said the adviser should put in a request to the processing department to see what was possible and ask it to confirm, and *"...then just confirm to them what you are going to do going forward then when you get the answer back just send that request in through Origo."*

A fuller version of the adviser's e-mail to Standard Life dated 10 October 2022 read:

'Thank you for your letter of 10 October 2022 confirming it is not possible to arrange for the whole of the holding in the SL Aviva Investors Property Pension Fund under the above account to be assumed as uncrystallised.

For this reason, we have asked [the new SIPP provider] to forward a revised request to yourselves for a partial transfer at this time of just the uncrystallised monies. You should hopefully receive this, via Origo, in the coming days.

To fulfil this transfer request, we would be grateful if you could encash the uncrystallised allocation in the various investment funds, except the SL Aviva Investors Property Pension Fund of course, and also the [name of investment manager] portfolio in its entirety, making up any shortfall, if necessary, with cash from [another] portfolio.'

So I think the 'instruction' has to be read firstly in the context of the adviser's conversation with Standard Life a few days before. And then reading the whole of the e-mail which said *'To fulfil the transfer request' that was going to be sent through Origo 'in the coming days'.*

I accept this needed a careful reading. However in my opinion the e-mail should have been read in the context as I have explained. I don't think it was a clear 'instruction' to sell immediately. I recognise there was a risk if Standard Life didn't sell and the intention was to sell immediately it may have been open to a claim if the market moved against Mr K. But I think if there was any ambiguity Standard Life should have checked with the adviser or Mr K.

The e-mail was also consistent with the requirement in section 15.3 of the terms which provided:

'If you ask us to transfer only part of your plan, you must tell us which investments we should sell to pay the transfer payment...'

As Mr K and his adviser have said, the instruction didn't specify any particular timings.

So I'm not persuaded Standard Life should have sold the funds in question at the time that it did. My understanding is that its normal process was to sell external funds first, and then sell the SLIP funds so that the proceeds become available at around the same time. That is consistent with clause 7.28 in the terms. Although 7.28 isn't strictly applicable to the circumstances here, I think the same principles ought to apply. I think this is consistent with Standard Life's obligation to obtain the best possible results for its clients when executing orders and given the time taken to sell external funds was to a large degree outside of its

control.

So should Standard Life have transferred the funds that were in cash earlier? Mr K said Standard Life didn't advise him that it wasn't following his instructions to transfer the proceeds of the sale of his pension funds and was actually sitting on the proceeds in cash. However I don't think that was the position here. Standard Life was processing the transfer. Standard Life wasn't asked to transfer the monies in separate amounts as soon as they became available. In my experience the majority of transfer values are sent to a new provider as a single amount. So I don't think it was ordinarily unusual or unreasonable for Standard Life to wait until all the funds were ready to be transferred before transferring them to the new provider. Mr K has said whilst he was aware there was a delay in selling some of the funds he assumed the funds would be transferred immediately. However I don't think that's based on information that Standard Life gave him. As I've said, it's normal practice to send transfer values across as a single sum. Although Standard Life could send staggered transfers that was on request – and it wasn't requested here.

In arranging the transfer itself, I think Standard Life acted in a timely manner, in as far as it didn't delay those parts of the process it had control over. But in my view Standard Life shouldn't have sold the funds when it did. I'm not persuaded there was any obligation on it to transfer the SLIP funds earlier or prior to the remainder of the funds being available to transfer. So the position was that Mr K had a significant sum in cash whilst there was a delay in the external funds being sold.

There is always likely to be some period of time that an investor is out of the market when transferring. This may or may not work out in an investor's favour, depending on how markets move during the period that they are in cash, albeit I accept more generally the shorter the period of time the investor doesn't have control the better. But being in cash doesn't necessarily lead to financial detriment in itself - whether it worked for or against Mr K was only seen after the event.

Standard Life sent Mr K and his adviser separate letters dated 17 October 2022. The letters said 'Important – Please check all details are correct and let us know if any changes are required'. It said 'Change to investment details' and that it was writing to confirm the changes to Mr K's investments from 17 October 2022. It showed the funds that Mr K was invested in prior to the changes (including several of the SLIP funds). And those after the changes - just the SL Aviva Investors Property Pension Fund and Additional investments. Additional Investments were explained as:

“Additional Investments are a total of all self-invested assets including the SIPP bank account.”

Mr K said he didn't recall seeing the letter. I note the adviser says he received his letter – albeit not until 24 October 2022. Whilst I clearly cannot say for sure, given Mr K's letter was addressed correctly, I think on the balance of probabilities it was more likely than not delivered. Mr K said that now the letter had been brought to his attention he said the first page of the statement appeared to show the holdings before and after the change as he would have expected to see. And he would probably have stopped reading at that point. He said the “Additional Investments” on page 2 appeared to be the proceeds from the sale of the funds. But he said this was really easy to miss, and he only saw it because he'd been looking at it in detail. He said he didn't think it clearly indicated that the funds were being held in cash.

Whilst I agree that the fact the money had moved to cash may not have been immediately obvious, I think it was reasonable to have expected Mr K to have considered the content of the whole letter. I accept that Mr K was a layman and not a financial professional. But again, I think the letter should be considered in the context of it being sent. Mr K was in the process of transferring over £1 million. The letter said it was 'Important' in bold, and to check the details were correct. I think given the nature, and in particular the value of the transaction, it's reasonable to expect that Mr K would have given it appropriate attention. In my opinion the letter ought to have alerted Mr K that the majority of his money had been disinvested.

And in the circumstances, if he wasn't sure what was meant by 'Additional Investments', I think it's reasonable to expect he would have looked into it or clarified with the adviser/Standard Life where he would have discovered it was in cash.

However even setting that aside, I think Mr K's adviser should have been aware the money had been moved to cash on receipt of that letter. The adviser has said he was familiar with Standard Life's processes, and I think ought to have been aware of the meaning of the letter. The adviser has said he didn't receive that letter until 24 October 2022. The adviser e-mailed Mr K on the same date saying:

"Just a quick line to let you that (sic) that I have this morning received a communication from Standard Life advising me that they have now instructed [one of the DFMs] to disinvest the portfolio they manage on your behalf. I am also aware Standard Life have started the process of encashing the uncrystallised monies outside the [DFMs] portfolios in preparation of the proposed transfer to [the new SIPP provider].

I will update you further as and when I receive further news,. If you should have any queries in the meantime, then please do not hesitate to contact me."

So I think by 24 October 2022 at the latest, both Mr K and his adviser ought reasonably to have been aware that a significant amount of capital was in cash. And that other funds had started to be sold. The SLIP funds had already been in cash for a week. And there was some uncertainty to the time it would take to sell the external funds.

So I think Standard Life processed the parts of the transfer that it had control over in a timely manner. But I don't think it should have sold the SLIP funds as early as it did. I can't see there was a good reason to depart from its normal process to sell external funds first, and then the slip funds when the external funds became available for transfer.

However, as I've said, being in cash for a relatively short period isn't detrimental in itself. In my opinion, Mr K and his adviser ought reasonably to have been aware that he was in cash by 24 October 2022. And on the basis that they ought to have known, I think would have been obliged to have acted to mitigate that position if Mr K was unhappy with being in cash – for example by asking to transfer what was in cash without waiting for the remainder or reinvest whilst the remaining funds were sold. I don't think it would be fair or reasonable to hold Standard Life liable for any losses resulting from Mr K being in cash from 24 October 2022 in those circumstances.

My provisional decision

Accordingly, my provisional decision is to uphold Mr K's complaint in part.

My aim is to put Mr K as closely as possible into the position he would probably have been in but for the error by the firm – taking into account, as I have said above, I think he ought to have known he was in cash and so should have mitigated his position.

I therefore intend to order that Phoenix Life Limited calculates a notional value of the funds that were instructed to be sold in the adviser's 10 October 2022 e-mail assuming they hadn't been sold until 27 October 2022 (if I am correct that they were sold on 13 October 2022). If I am wrong about that and they were sold at a different date, then the same period to actually sell should be used in the calculation.

If the notional value is higher than the actual value when sold, Standard Life should then ask the new SIPP provider to calculate what the difference between those values would be worth at the date of a final decision if it had received them on the same date as it received the transfer value. Given the size of the fund, I think it's difficult to say exactly how those funds would have been proportionally invested. So I think it should use the investment performance of the whole fund since transfer to the date of a final decision.

If there's a loss, Phoenix Life Limited should pay into Mr K's pension plan, to increase its

value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If it's not possible to pay the compensation into the pension it should be paid directly to Mr K. But if this money had been in a pension, it would have provided a taxable income. Therefore compensation paid in this way should be reduced to notionally allow for any income tax that would otherwise have been paid.

To make the reduction for any cash payment, I'm currently assuming Mr K is likely to be a higher rate taxpayer given the size of his overall fund. If this assumption isn't correct Mr K can provide evidence of his income tax rate for last year. So 75% of his pension would be taxed at 40% if he is entitled to take the remaining 25% tax-free. This results in an overall reduction of 30%, which should be applied to the compensation amount if it's paid directly in cash to Mr K. If Mr K isn't entitled to take any further tax-free cash the deduction should be 40%. This is only if any compensation can't be paid into the pension.

If payment of compensation is not made within 28 days of Phoenix Life Limited receiving Mr K's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment. Income tax may be payable on any interest paid. If Phoenix Life Limited deducts income tax from the interest, it should tell Mr K how much has been taken off. Phoenix Life Limited should give Mr K a tax deduction certificate in respect of interest if Mr K asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

I also intend to order Phoenix Life Limited to pay Mr K £200 for the inconvenience I'm satisfied the matter has caused.

David Ashley
Ombudsman